FEDERAL REGISTER

Vol. 87 Friday

No. 241 December 16, 2022

Pages 76919–77457

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 87 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:	
Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 87, No. 241

Friday, December 16, 2022

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

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
457.....76919

10 CFR
429.....77298
431.....77298

14 CFR
39 (2 documents).....76919, 76922
71.....76924

Proposed Rules:
39 (2 documents).....77037, 77040
71 (2 documents).....77043, 77044

15 CFR
744.....76924

17 CFR

Proposed Rules:
270.....77172
274.....77172

18 CFR
101.....76928
201.....76928

22 CFR

Proposed Rules:
120.....77046

25 CFR
585.....76928

31 CFR
587 (3 documents).....76930, 76931
594.....76932

Proposed Rules:
1010.....77404

32 CFR
310 (2 documents).....76933, 76935

33 CFR
165.....76937

37 CFR
385.....76937

39 CFR
20.....76942

40 CFR
52.....76944
180 (2 documents).....76944, 76946

42 CFR

Proposed Rules:
8.....77330

47 CFR
1.....76949
8.....76959

Proposed Rules:
8.....77048

48 CFR
Ch. 2.....76988
212 (2 documents).....76980, 76984
225 (2 documents).....76980, 76984
252 (2 documents).....76980, 76984

Proposed Rules:
204.....77053
232.....77053
252 (2 documents).....77053, 77055

50 CFR
17.....77368
216.....76998
660 (2 documents).....77000, 77007

Rules and Regulations

Federal Register
Vol. 87, No. 241
Friday, December 16, 2022

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC–22–0007]

RIN 0563–AC80

Walnut Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Correcting amendment.

SUMMARY: On October 25, 2022, the Federal Crop Insurance Corporation (FCIC) revised the Walnut Crop Insurance Provisions. That final rule contained an incorrect instruction in the Settlement of Claim section. This document makes the correction.

DATES: Effective December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926–7730; email *francie.tolle@usda.gov.* Persons with disabilities who require alternative means of communication should contact the USDA Target Center at (202) 720–2600 or (844) 433–2774.

SUPPLEMENTARY INFORMATION:

Background

The Common Crop Insurance Regulations in 7 CFR part 457 were revised by a final rule with request for comments published in the **Federal Register** on October 25, 2022 (87 FR 64365). Changes were made in that rule to the Walnut Crop Insurance Provisions. In reviewing the changes made, FCIC found an incorrect instruction in the Settlement of Claim section. This document makes the correction in the Walnut Crop Insurance Provisions.

List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 457 is corrected by making the following amendment:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(o).

■ 2. In § 457.122, in the ''Walnut Crop Provisions,'' in section 11, revise paragraph (d).

The revision reads as follows:

§ 457.122 Walnut crop insurance provisions.

* * * * *

11. Settlement of Claim

* * * * *

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association or during our loss adjustment process. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. If walnut production exceeds 30 percent mold damage and will not be sold, the production to count will be zero.

* * * * *

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2022–27228 Filed 12–15–22; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1237; Project Identifier MCAI–2022–00434–T; Amendment 39–22264; AD 2022–25–08]

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 all Airbus SAS Model A300 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes); and Model A310 series airplanes. This AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A300, A300–600, and A310 series airplanes. This AD requires repetitive inspections and electrical test measurements (ETMs) of the affected parts, and applicable corrective actions, and prohibits the installation of affected parts under certain conditions, 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 January 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 20, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1237; 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–2022–1237.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 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 all Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 C4–605R Variant F airplanes; Model A300 F4–605R and F4–622R airplanes; and Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes. The NPRM published in the **Federal Register** on September 27, 2022 (87 FR 58463). The NPRM was prompted by AD 2022–0058, dated March 28, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0058) (referred to after this as the MCAI). The MCAI states that a Model A319 airplane lost the right-hand front windshield in flight, with consequent rapid flight deck depressurization, causing damage to flight deck items and systems, and significant increase of flightcrew workload. The investigations identified several contributing factors, including manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion, which led to a thermal shock and overheat, damaging more than one windshield structural ply and impairing the structural integrity of the windshield. Due to the design similarity, this condition can also exist or develop on Model A300, A300–600, and A310 series airplanes. This condition, if not addressed, could lead to failure of the windshield, possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

In the NPRM, the FAA proposed to require repetitive inspections and ETMs of the affected parts, and applicable corrective actions, and prohibit the installation of affected parts under certain conditions, as specified in EASA AD 2022–0058. The FAA is issuing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1237.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, International (ALPA) and FedEx Express 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 comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0058 specifies procedures for repetitive detailed inspections and ETMs of the affected parts, and applicable corrective actions. The corrective actions include replacing any affected window with a serviceable window. EASA AD 2022–0058 also prohibits installing certain part numbers.

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 **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 120 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 per inspection cycle	$40,800 per inspection cycle

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
20 work-hours × $85 per hour = $1,700	$11,393	$13,093

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all 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:

2022–25–08 Airbus SAS: Amendment 39–22264; Docket No. FAA–2022–1237; Project Identifier MCAI–2022–00434–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS airplanes identified in paragraphs (c)(1) through (6) of this AD, certificated in any category.

(1) Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes.

(3) Model A300 B4–605R and B4–622R airplanes.

(4) Model A300 C4–605R Variant F airplanes.

(5) Model A300 F4–605R and F4–622R airplanes.

(6) Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Unsafe Condition

This AD was prompted by a report that a Model A319 airplane lost the right-hand front windshield in flight. Due to the design similarity, this condition can also exist or develop on Model A300, A300–600, and A310 series airplanes. The FAA is issuing this AD to address possible windshield failure. This condition, if not addressed, could possibly result in injury to the flightcrew and in-flight depressurization of the airplane, and would significantly increase pilot workload.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0058, dated March 28, 2022 (EASA AD 2022–0058).

(h) Exceptions to EASA AD 2022–0058

(1) Where EASA AD 2022–0058 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Note 2 to paragraph (3) of EASA AD 2022–0058 specifies that, ''operators may refer to the SB'' when a lack of data impairs the determination of the windshield age or utilization, for this AD replace those words with ''operators must refer to the SB''.

(3) Where paragraph (6) of EASA AD 2022–0058 refers to a ''defect, as identified in the SB,'' for purposes of this AD, defects include manufacturing variability, fretting between windshield components, water ingress, and electrical braids corrosion.

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0058.

(i) No Reporting Requirement

Although paragraphs (11) and (12) of EASA AD 2022–0058 and the service information referenced therein specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (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 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.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(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.

(k) 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.*

(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 the AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0058, dated March 28, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0058, 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: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on November 29, 2022.

Christina Underwood,

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

[FR Doc. 2022–27304 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0985; Project Identifier AD–2022–00096–T; Amendment 39–22260; AD 2022–25–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and 747–8 series airplanes. This AD was prompted by reports of three opened door 5 right ceiling stowage boxes that fell freely and injured a flight attendant in each event. This AD requires replacing certain snubbers of the door 5 ceiling stowage boxes on certain airplanes, and replacing certain snubbers and changing the location of the snubber attachments on certain other airplanes. This AD also requires an operation check of the stowage boxes or snubber, as applicable, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 20, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 20, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0985; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0985.

FOR FURTHER INFORMATION CONTACT: Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3684; email: *Julie.Linn@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 The Boeing Company Model 747–400 and 747–8 series airplanes. The NPRM published in the **Federal Register** on September 20, 2022 (87 FR 57422).

The NPRM was prompted by reports of an opened door 5 right ceiling stowage box that fell freely approximately 12 inches on a Model 747–8 airplane, and two additional door 5 ceiling stowage box free fall events on Model 747–400 airplanes. In one reported occurrence, an opened door 5 ceiling stowage box fell freely approximately 10 inches; in another, the stowage box fell freely approximately 8 inches. In each occurrence, a flight attendant was injured. Boeing and the supplier have since investigated and analyzed affected snubbers, part number (P/N) SP5378, used on the door 5 ceiling stowage boxes on Model 747–400 and 747–8 airplanes. It was determined that over time, air can get into the cylinder of the affected snubber and delay its damping functionality, which means the affected snubber will not meet the requirement of the door 5 ceiling stowage boxes to open at a rate of not more than 15 degrees per second, when open more than 2.5 inches. The supplier has designed a replacement snubber, P/N SP26172, which meets those requirements.

In the NPRM, the FAA proposed to require replacing certain snubbers of the door 5 ceiling stowage boxes on certain airplanes, and replacing certain snubbers and changing the location of the snubber attachments on certain other airplanes. The NPRM also proposed to require an operation check of the stowage boxes or snubber, as applicable, and applicable on-condition actions.

The FAA is issuing this AD to address an unlatched door 5 ceiling stowage box, which can open and fall freely more than 2.5 inches, possibly resulting in injury to the flightcrew or maintenance personnel.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, 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

The FAA reviewed Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022. This service information specifies procedures for replacing certain snubbers of the door 5 ceiling stowage boxes on certain airplanes, and replacing certain snubbers and changing the location of the snubber attachments on other airplanes. The service information also specifies procedures for an operation check of the stowage boxes or snubbers, as applicable, to ensure that the free-fall distance is no greater than 2.5 inches, and applicable on-condition actions including a post-snubber-replacement check until eventual replacement of any affected snubber. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

Costs of Compliance

The FAA estimates that this AD affects 45 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
Snubber replacement and operation check	2 work-hours × $85 per hour = $170	$3,712	$3,882	$174,690
Snubber replacement, snubber attachment relocation, and operation check.	7 work-hours × $85 per hour = $595	4,232	4,827	217,215

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Snubber replacement	1 work-hour × $85 per hour = $85	$928	$1,013
Post-snubber-replacement check	1 work-hour × $85 per hour = $85	0	85

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:

2022–25–04 The Boeing Company: Amendment 39–22260; Docket No. FAA–2022–0985; Project Identifier AD–2022–00096–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 20, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–8 series airplanes, certificated in any category, as identified in Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of three opened door 5 right ceiling stowage boxes that fell freely and injured a flight attendant in each event. The FAA is issuing this AD to address an unlatched door 5 ceiling stowage box, which can open and fall freely more than 2.5 inches, possibly resulting in injury to the flightcrew or maintenance personnel.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 747–25–3726, dated January 6, 2022, which is referred to in Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

(h) Exceptions to Service Information Specifications

Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022, use the phrase ''the original issue date of Requirements Bulletin 747–25–3726 RB,''

this AD requires using ''the effective date of this AD.''

(i) Alternative Methods of Compliance (AMOCs)

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

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

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

(j) Related Information

For more information about this AD, contact Julie Linn, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3684; email: *Julie.Linn@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Requirements Bulletin 747–25–3726 RB, dated January 6, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.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, *fr.inspection@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on November 28, 2022.

Christina Underwood,

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

[FR Doc. 2022–27302 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0571; Airspace Docket No. 22–ANM–46]

RIN 2120–AA66

Establishment of Class E Airspace; Christmas Valley Airport, OR; Correction

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

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule that appeared in the **Federal Register** on December 9, 2022. The Final Rule incorrectly annotated the airspace class designation in the text header of the newly designated Class E airspace beginning at 700 feet above the surface at Christmas Valley Airport, OR. This action corrects the error.

DATES: Effective 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference under 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.

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:

History

The FAA published a final rule in the **Federal Register** (87 FR 75465; December 9, 2022) for Docket FAA–2022–0571, which established Class E airspace extending upward from 700 feet above the surface at Christmas Valley Airport, OR. Subsequent to publication, the FAA identified that the Final Rule incorrectly annotated the airspace class designator in the text header of the newly established Class E airspace beginning at 700 feet above the surface at Christmas Valley Airport, OR. The legal description's text header currently reads ''ANM OR E Christmas Valley, OR [New], but should read ''ANM OR E5 Christmas Valley, OR [New].'' This action corrects the error.

The Class E5 airspace designation is published in paragraph 6005 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 E airspace designation 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.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to the FAA, ''Establishment of Class E Airspace; Christmas Valley Airport, OR'', published in the **Federal Register** of December 9, 2022 (87 FR 75465), FR Doc. 2022–26646, is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 75466, in the third column, line 1 is corrected to read:

ANM OR E5 Christmas Valley, OR [New]

Issued in Des Moines, Washington, on December 12, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–27268 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 221209–0268]

RIN 0694–AJ02

Revisions to the Unverified List and the Entity List

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

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) by removing 9 persons from the Unverified List (UVL) and adding them to the Entity List, all under the destination of Russia. BIS has been unable to verify the *bona fides* of all 9 persons being removed from the UVL and added to the Entity List, due to the foreign government's prevention of timely end-use checks. BIS is also amending the

EAR by removing 27 persons from the UVL, one under the destination of Pakistan and 26 under the destination of China, because BIS was able to verify their *bona fides.*

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

FOR FURTHER INFORMATION CONTACT: *For questions on the Entity List revisions, contact:* Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

For questions on the Unverified List revisions, contact: Linda Minsker, Director, Office of Enforcement Analysis, Phone: (202) 482–4255, Email: *UVLRequest@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Entity List Changes

The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List and Removal From the Unverified List

The ERC determined to add the following entities to the Entity List pursuant to § 744.11(b)(4)(ii) under the destination of Russia: Alliance EG Ltd.; FSUE Rosmorport Far Eastern Basin Branch; Intercom Ltd.; Nasosy Ampika; Nuclin LLC; SDB IRE RAS; Security 2 Business Academy; Tavrida Microelectronics; and VIP Technology Ltd. These entities are being added due to the long-term (60 days or greater) prevention of a successful end-use check conducted by or on behalf of BIS. Specifically, there has been a sustained lack of cooperation by the host government to schedule and facilitate the completion of a timely end-use check of persons listed on the Unverified List. As a result of the sustained inability to conduct an end-use check, there is an unacceptable risk of diversion or misuse of items subject to the EAR. The ERC believes that prior review of exports, reexports, or transfers (in-country) involving the entities and the possible imposition of license conditions or license denial enhance BIS's ability to prevent violations of the EAR. These entities are added to the Entity List with a license requirement for all items subject to the EAR. BIS will review license applications pertaining to these entities under a policy of denial, pursuant to § 746.8(b). No license exceptions are available for exports, reexports, or transfers (in-country) to these entities.

As a conforming change, each of the entities added to the Entity List by this rule is also removed from the Unverified List. For other changes to the Unverified List made by this rule, which are separate from this action, please see below.

Unverified List Changes

The UVL, found in supplement no. 6 to part 744 of the EAR, contains the names and addresses of foreign persons who are or have been parties to a transaction, as described in § 748.5 of the EAR, involving the export, reexport, or transfer (in-country) of items subject to the EAR. These foreign persons are added to the UVL because BIS or federal officials acting on BIS's behalf were unable to verify their *bona fides* (*i.e.,* legitimacy and reliability relating to the end use and end user of items subject to the EAR) through the completion of an end-use check. Sometimes these checks, such as a pre-license check (PLC) or a post-shipment verification (PSV), cannot be completed satisfactorily for reasons outside the U.S. Government's control.

There are any number of reasons why these checks cannot be completed to the satisfaction of the U.S. Government. The reasons include, but are not limited to: (1) reasons unrelated to the cooperation of the foreign party subject to the end-use check (for example, BIS sometimes initiates end-use checks but is unable to complete them because the foreign party cannot be found at the address indicated on the associated export documents and BIS cannot contact the party by telephone or email); (2) reasons related to a lack of cooperation by the host government that fails to schedule and facilitate the completion of an end-use check, for example by host government agencies' lack of responses to requests to conduct end-use checks, actions preventing the scheduling of such checks, or refusals to schedule checks in a timely manner; or (3) when, during the end-use check, a recipient of items subject to the EAR is unable to produce the items that are the subject of the end-use check for visual inspection or provide sufficient documentation or other evidence to confirm the disposition of the items.

BIS's inability to confirm the *bona fides* of foreign persons subject to end-use checks for the reasons described above raises concerns about the suitability of such persons as participants in future exports, reexports, or transfers (in-country) of items subject to the EAR; this also indicates a risk that such items may be diverted to prohibited end uses and/or end users. Under such circumstances, there may not be sufficient information to add the foreign person at issue to the Entity List under § 744.11 of the EAR. Therefore, BIS may add the foreign person to the UVL.

As provided in § 740.2(a)(17) of the EAR, the use of license exceptions for exports, reexports, and transfers (in-country) involving a party or parties to the transaction who are listed on the UVL is suspended. Additionally, under § 744.15(b) of the EAR, there is a requirement for exporters, re-exporters, and transferors to obtain (and maintain a record of) a UVL statement from a party or parties to the transaction who are listed on the UVL before proceeding with exports, reexports, and transfers (in-country) to such persons, when the exports, reexports and transfers (in-country) are not subject to a license requirement. Finally, pursuant to § 758.1(b)(8), Electronic Export Information (EEI) must be filed in the Automated Export System (AES) for all exports of tangible items subject to the EAR where parties to the transaction, as described in § 748.5(d) through (f), are listed on the UVL.

Requests for the removal of a UVL entry must be made in accordance with § 744.15(d) of the EAR. Decisions regarding the removal or modification of UVL entry will be made by the Deputy Assistant Secretary for Export Enforcement, based on a demonstration by the listed person of their *bona fides.*

Removals From the UVL

This final rule removes 27 persons from the UVL after BIS was able to verify their *bona fides.* This rule removes ENGRO Polymer & Chemicals Limited under the destination of Pakistan and the following 26 persons under the destination of China: ''Beijing Naura Magnetoelectric Technology Co., Ltd.;'' ''CCIC Southern Electronic Product Testing Co., Ltd.;'' ''Center for High Pressure Science and Technology Advanced Research;'' ''Changchun National Extreme Precision Optics Co., Ltd.;'' ''Chinese Academy of Geological Sciences, Institute of Mineral Resources;'' ''Chinese Academy of Science (CAS) Institute of Chemistry;'' ''Dongguan Durun Optical Technology Co., Ltd.;'' ''Foshan Huaguo Optical Co., Ltd.;'' ''Guangdong University of Technology;'' ''Guangxi Intai Technology Co., Ltd.;'' ''Guangxi Yuchai Machinery Co., Ltd.;'' ''Guangzhou Hymson Laser Technology Co., Ltd.;'' ''Heshan Deren Electronic Technology Co., Ltd.;'' ''Hubei Longchang Optical Co., Ltd.;'' ''Hubei Sinophorus Electronic Materials Co., Ltd.;'' ''Kunshan Heng Rui Cheng Industrial Technology;'' ''Shanghai Fansheng Optoelectronic Science & Technology Co. Ltd.;'' ''Shanghai Micro Electronics Equipment (Group) Co., Ltd.;'' ''ShanghaiTech University;'' ''Southern University of Science and Technology, Department of Mechanical and Energy Engineering;'' ''University of Chinese Academy of Sciences, School of Chemical Sciences;'' ''University of Shanghai for Science and Technology;'' ''Vital Advanced Materials Co., Ltd.;'' ''Wuhan Juhere Photonic Tech Co., Ltd.;'' ''Wuxi Biologics (Shanghai) Co., Ltd.;'' and ''Zhongshan Thincloud Optics Co., Ltd.;''. BIS is removing these 27 persons pursuant to § 744.15(c)(2) of the EAR.

Removal of a person from the UVL because BIS was able to verify their *bona fides* does not affect any other section of the EAR that imposes a license requirement for exports, reexports, transfers (in-country), or exports from abroad or activities of U.S. persons. In addition, this action does not preclude subsequent action, including adding such persons to the Entity List pursuant to part 744 of the EAR.

Export Control Reform Act of 2018

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

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**], pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Executive Order Requirements

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

This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

Paperwork Reduction Act Requirements

Notwithstanding any other provision of law, no person is required to respond to, nor is 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.

The Entity List additions involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

BIS believes that the overall increases in burdens and costs will be minimal and will fall within the already approved amounts for these existing collections.

Administrative Procedure Act and Regulatory Flexibility Act Requirements

Pursuant to Section 4821 of ECRA, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking and opportunity for public participation.

Further, no other law requires notice of proposed rulemaking or opportunity for public comment for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Amend Supplement no. 4 to part 744 under RUSSIA, by adding in alphabetical order, entries for ''Alliance

EG Ltd.'', ''FSUE Rosmorport Far Eastern Basin Branch'', ''Intercom Ltd.'', ''Nasosy Ampika'', ''Nuclin LLC'', ''SDB IRE RAS'', ''Security 2 Business Academy'', ''Tavrida Microelectronics'', and ''VIP Technology Ltd.'' to read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
RUSSIA	*	*	*	*
	Alliance EG Ltd., Leninsky Prospect 139, Office 310 St., Petersburg 198216, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	FSUE Rosmorport Far Eastern Basin Branch, Nizhneportovaya Street 3 Primorskiy Territory, Vladivostok 690003, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	Intercom Ltd., Kalinina Street 13 Saint Petersburg 198099, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	Nasosy Ampika, 3-ya Institutskaya St. Bld. 15 Moscow, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	Nuclin LLC, Serebryakova Proezd 14 Moscow, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	SDB IRE RAS, 1 Vvedenskogo Square Fryazino, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	Security 2 Business Academy, a.k.a., the following two aliases: — S2BA —Academy of Business Security. Deguninskaya Street 10 Moscow, Russia; *and* Novoslobodskaya Str. 14/19 Moscow, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	Tavrida Microelectronics, Zelenaya Street 1 Dolgoprudnyy Moscow 141700, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
	VIP Technology Ltd., Bechtereva Street 3/2, Office 40 Saint Petersburg 192019, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial. See § 746.8(b).	87 FR [INSERT FR PAGE NUMBER], December 16, 2022.
	*	*	*	*
*	*	*	*	*

* * * * *

■ 3. Supplement no. 6 to part 744 is amended by:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF, removing the following entries: ''Beijing Naura Magnetoelectric Technology Co., Ltd.'', ''CCIC Southern Electronic Product Testing Co., Ltd .'', ''Center for High Pressure Science and Technology Advanced Research'', ''Changchun National Extreme Precision Optics Co., Ltd.'', ''Chinese Academy of Geological Sciences, Institute of Mineral Resources'', ''Chinese Academy of Science (CAS) Institute of Chemistry'', ''Dongguan Durun Optical Technology Co., Ltd.'', ''Foshan Huaguo Optical Co., Ltd.'', ''Guangdong University of Technology'', ''Guangxi Intai Technology Co., Ltd.'', ''Guangxi Yuchai Machinery Co., Ltd.'', ''Guangzhou Hymson Laser Technology Co., Ltd.'', ''Heshan Deren Electronic Technology Co., Ltd.'', ''Hubei Longchang Optical Co., Ltd.'', ''Hubei Sinophorus Electronic Materials Co., Ltd.'', ''Kunshan Heng Rui Cheng Industrial Technology'', ''Shanghai Fansheng Optoelectronic Science & Technology Co., Ltd.'', ''Shanghai Micro Electronics Equipment (Group) Co., Ltd.'', ''ShanghaiTech University'', ''Southern University of Science and Technology, Department of Mechanical and Energy Engineering'', ''University of Chinese Academy of Sciences, School of Chemical Sciences'', ''University of Shanghai for Science and Technology'', ''Vital Advanced Materials Co., Ltd.'', ''Wuhan Juhere Photonic Tech Co., Ltd.'', ''Wuxi Biologics (Shanghai) Co., Ltd.'', and ''Zhongshan Thincloud Optics Co., Ltd.'';

■ b. Under PAKISTAN, removing the entry for ''ENGRO Polymer & Chemicals Limited''; and

■ c. Under RUSSIA, removing the following entries: ''Alliance EG Ltd.'',

''FSUE Rosmorport Far Eastern Basin Branch'', ''Intercom Ltd.'', ''Nasosy Ampika'', ''Nuclin LLC'', ''SDB IRE RAS'', ''Security 2 Business Academy'', ''Tavrida Microelectronics'', and ''VIP Technology Ltd.''

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2022–27149 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 101 and 201

[Docket No. RM92–1–000; Order No. 552]

Revisions to Uniform Systems of Accounts To Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A; Announcing OMB Approval of Information Collection and Recordkeeping Requirements

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule; approval of OMB information collection and recordkeeping requirements.

SUMMARY: In Order No. 552, published in the **Federal Register** on April 7, 1993, the Commission noted that the Office of Management and Budget (OMB) had not yet approved information collection and recordkeeping requirements associated with the Commission's accounting requirements for certain emissions allowances, regulatory assets, and liabilities. OMB issued the approvals for that collection of information and the associated changes to Form Nos. 1–F, 2, and 2A on May 25, 1993, and Form No. 1 on August 18, 1993. In Order No. 552, the Commission also stated that upon approval by OMB, notice of the effective date would be published in the **Federal Register**. This issuance provides notice.

DATES: As of December 16, 2022, the information collection and recordkeeping requirements in the final rule amending 18 CFR parts 101 and 201, published on April 7, 1993 (58 FR 17982), were approved by OMB on May 25, 1993, and August 18, 1993.

FOR FURTHER INFORMATION CONTACT: Daniel Birkam (Technical Information), Office of Enforcement, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8035, *Daniel.Birkam@ferc.gov.*

Nathan Lobel (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8456, *Nathan.lobel@ferc.gov.*

SUPPLEMENTARY INFORMATION: Order No. 552 [1] adopted accounting requirements for allowances for emission of sulfur dioxide under the Clean Air Act Amendments of 1990, and for assets and liabilities created through the ratemaking actions of regulatory agencies. It also adopted new reporting schedules and revised other schedules to be used by jurisdictional companies in reporting information on allowances and regulatory assets and liabilities. These accounting requirements are collections of information under OMB control nos. 1902–0021, 1902–0028, 1902–0029, and 1902–0030. Order No. 552 was published in the **Federal Register** on April 7, 1993 (58 FR 17982). It became effective on January 1, 1993, with the exception of the information collection provisions, which became effective upon OMB approval. The Commission submitted a copy of the changes to Form Nos. 1–F, 2, and 2A to OMB for its review on April 8, 1993, and OMB approved the information collection on May 25, 1993, under OMB control nos. 1902–0028, 1902–0029, and 1902–0030. The Commission submitted a copy of the changes to Form No. 1 on July 19, 1993, and OMB approved the information collection on August 18, 1993, under OMB control no. 1902–0021.

Dated: December 9, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27261 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 585

RIN 3141–AA75

Appeals to the Commission

AGENCY: National Indian Gaming Commission, Interior.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC or Commission) amends its regulations regarding appeal before the Commission to include a settlement procedure and to limit the motions that may be filed during an appeal before the Commission.

DATES: Effective January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240. Telephone: 202–632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (''NIGC'' or ''Commission'') and set out a comprehensive framework for the regulation of gaming on Indian lands. IGRA, in several instances, requires that the Commission provide an opportunity for a hearing on proposed fines, temporary closure orders, and removals of a certificate of self-regulation. Also through regulatory action, the Commission has afforded appeals for notices of violations, modified and voided management contracts, and notices of late fees and late fee assessments. As to all these areas, part 585 of NIGC regulations offers appeals to the Commission on written submissions.

The Commission comprehensively updated the appeals regulations in 2012, consolidating them in one subchapter. (77 FR 58941–01). This rule augments the appeals regulations by inserting a comprehensive settlement procedure for appeals under part 585, rectifying its absence in the current regulations, and limits the motions permitted during an appeal.

II. Development of the Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the appeals regulations in part 585. Prior to consultation, the Commission sent another Notice of Consultation, dated September 13, 2021, and released a proposed discussion draft of the regulations for review. The proposed amendments to these regulations were intended to solicit Tribes' views on: (1) the Commission inviting, directing or granting leave to the Chair to file or respond to motions and (2) supplying a settlement procedure for appeals to the Commission on written submissions. The Commission held three virtual consultation sessions in September and

[1] *Revisions to Uniform Systems of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1–F, 2 and 2–A,* Order No. 552, 58 FR 17982 (April 7, 1993), FERC Stats. & Regs. ¶ 30,967 (1993) (cross-referenced at 62 FERC ¶ 61,299).

October of 2021 to receive tribal input on the possible changes. The Commission reviewed all comments received as part of the consultation process.

Upon reviewing the comments received during the consultation period, the Commission published a notice of proposed rulemaking (''NPRM'') on August 10, 2022. 87 FR 48615. The NPRM invited interested parties to participate in the rulemaking process by submitting comments and any supporting data to the NIGC by September 9, 2022.

III. Review of Public Comments

The Commission received no comments to the proposed rule.

Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions, nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0007.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to, the ability of an Indian tribe to regulate its Indian gaming; an Indian Tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the written submissions appeal process. Specifically, the Commission sought consultation on whether it should invite, direct, or grant leave to the Chair to file or respond to motions or add a comprehensive settlement procedure. On July 27, 2021, and July 28, 2021, the Commission held two virtual consultations on the proposed changes.

List of Subjects in 25 CFR Part 585

Administrative practice and procedure, Gambling, Indians—lands, Penalties.

For the reasons set forth in the preamble, the Commission amends 25 CFR part 585 as follows:

PART 585—APPEALS TO THE COMMISSION

■ 1. The authority citation for part 585 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2711, 2712, 2713, 2715, 2717.

■ 2. Revise § 585.4(a) to read as follows:

§ 585.4 Are motions permitted?

(a) Only motions for extension of time under § 580.4(f) of this subchapter, motions to supplement the record under § 581.5 of this subchapter, motions to intervene under § 585.5, and motions for reconsideration under § 581.6 of this subchapter, are permitted.

* * * * *

■ 3. Add § 585.8 to read as follows:

§ 585.8 What is the process for pursuing settlement in an appeal to the Commission?

(a) *General.* At any time after the commencement of a proceeding, but before the date scheduled for the Commission to issue a final decision under § 585.7, the parties may jointly move to stay the proceeding for a reasonable time to permit negotiation of a settlement or an agreement disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further proceedings before the Commission regarding the specific matter(s) settled under the agreement; and

(2) That the agreement shall constitute dismissal of the appeal of the specific matter(s) settled, a final order of the Commission, and final agency action.

(c) *Submission.* Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Notify the Commission that the parties have reached a full or partial settlement and have agreed to dismissal of all or part of the action, subject to compliance with the terms of the settlement agreement; or

(2) Inform the Commission that an agreement cannot be reached.

(d) *Disposition.* If the parties enter into a full or partial settlement agreement, it shall constitute: full or partial dismissal of the appeal, as

applicable; a final order of the Commission; and final agency action.

Edward Simermeyer,

Chairman.

Jean Hovland,

Vice Chair.

[FR Doc. 2022–27034 Filed 12–15–22; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General License 13C

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 13C, which was previously made available on OFAC's website.

DATES: GL 13C was issued on November 21, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On November 21, 2022, OFAC issued GL 13C to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 13C was made available on OFAC's website (*www.treas.gov/ofac*) when it was issued. The text of GL 13C is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 13C

Authorizing Certain Administrative Transactions Prohibited by Directive 4 Under Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, U.S. persons, or entities owned or controlled, directly or indirectly, by a U.S. person, are authorized to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications, to the extent such transactions are prohibited by Directive 4 under Executive Order 14024, *Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation,* provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons or entities, through 12:01 a.m. eastern standard time, March 7, 2023.

(b) This general license does not authorize:

(1) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or

(2) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

(c) Effective November 21, 2022, General License No. 13B, dated September 8, 2022, is replaced and superseded in its entirety by this General License No. 13C.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 21, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–27238 Filed 12–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General License 54

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of a web general license.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing one general license (GL) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GL 54, which was previously made available on OFAC's website.

DATES: GL 54 was issued on November 18, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On November 18, 2022, OFAC issued GL 54 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. At the time of issuance, OFAC made GL 54 available on its website (*www.treas.gov/ofac*). The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 54

Authorizing Certain Transactions Involving VEON Ltd. Prohibited by Executive Order 14071

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the purchase or receipt of any debt or equity securities of VEON Ltd. that are prohibited by section 1(a)(i) of Executive Order (E.O.) 14071 are authorized, provided that the debt or equity securities were issued prior to June 6, 2022.

Note to paragraph (a). Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to facilitating, clearing, and settling of transactions authorized by paragraph (a) of this general license that are prohibited by section 1(a)(i) of E.O. 14071 are authorized.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 18, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–27226 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Determination and Web General Licenses 55, 56, and 57

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of determination and web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a determination issued pursuant to an April 6, 2022 Executive order, which was previously made available on OFAC's website. OFAC is also publishing three general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 55, 56, and 57, each of which was previously made available on OFAC's website.

DATES: The determination issued pursuant to section 1(a)(ii) of Executive Order 14071 was issued on November 21, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On April 6, 2022, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), issued Executive Order (E.O.) 14071, ''Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression'' (87 FR 20999, April 8, 2022). Among other prohibitions, section 1(a)(ii) of E.O. 14071 prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any category of services as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, to any person located in the Russian Federation.

On November 21, 2022, the Secretary of the Treasury, in consultation with the Secretary of State, issued a category of services determination pursuant to E.O. 14071, ''Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin.'' OFAC made this determination available on its website (*www.treas.gov/ofac*) on November 22, 2022. The determination takes effect at 12:01 a.m. eastern standard time on December 5, 2022. The text of this determination is provided below.

Also on November 22, 2022, OFAC issued GLs 55, 56, and 57 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. At the time of their issuance, OFAC made GLs 55, 56, and 57 available on its website (*www.treas.gov/ofac*). The text of these GLs is provided below.

Determination Pursuant to Section (1)(a)(ii) of Executive Order 14071

Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin

Pursuant to sections 1(a)(ii), 1(b), and 5 of Executive Order (E.O.) 14071 of April 6, 2022 (''Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression''), the Secretary of the Treasury, in consultation with the Secretary of State, hereby determines that the prohibitions in section 1(a)(ii) of E.O. 14071 shall apply to the following categories of services as they relate to the maritime transport of crude oil of Russian Federation origin (collectively, the ''Covered Services''):

- Trading/commodities brokering;
- Financing;
- Shipping;
- Insurance, including reinsurance and protection and indemnity;
- Flagging; and
- Customs brokering.

As a result, the following activities are prohibited, except to the extent provided by law, or unless licensed or otherwise authorized by the Office of Foreign Assets Control: the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any of the Covered Services to any person located in the Russian Federation.

Notwithstanding that prohibition, the Covered Services are hereby authorized when the price of the crude oil of Russian Federation origin does not exceed the relevant price cap determined by the Secretary of the Treasury, in consultation with the Secretary of State.

The prohibitions on Covered Services in this determination shall take effect beginning at 12:01 a.m. eastern standard time on December 5, 2022. This determination excludes Covered Services with respect to crude oil of Russian Federation origin when such crude oil is loaded onto a vessel at the port of loading prior to 12:01 a.m. eastern standard time on December 5, 2022, and unloaded at the port of destination prior to 12:01 a.m. eastern standard time on January 19, 2023.

This determination does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Janet L. Yellen,

November 21, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 55

Authorizing Certain Services Related to Sakhalin-2

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the determination of November 21, 2022 made pursuant to section 1(a)(ii) of Executive Order 14071 (''Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin'') related to the maritime transport of crude oil originating from the Sakhalin-2 project (''Sakhalin-2 byproduct'') are authorized through 12:01 a.m. eastern daylight time, September 30, 2023, provided that the Sakalin-2 byproduct is solely for importation into Japan.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 22, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 56

Authorizing Certain Services With Respect to the European Union

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the determination of November 21, 2022 made pursuant to section 1(a)(ii) of Executive Order 14071 (''Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin'') related to the

importation of crude oil into the Republic of Bulgaria, the Republic of Croatia, or landlocked European Union Member States as described in Council Regulation (EU) 2022/879 of June 3, 2022, are authorized.

(b) This general license does not authorize any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 22, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 57

Authorizing Certain Services Related to Vessel Emergencies

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by the determination of November 21, 2022 made pursuant to section 1(a)(ii) of Executive Order 14071 (''Prohibitions on Certain Services as They Relate to the Maritime Transport of Crude Oil of Russian Federation Origin'') that are ordinarily incident and necessary to addressing vessel emergencies related to the health or safety of the crew or environmental protection, including safe docking or anchoring, emergency repairs, or salvage operations, are authorized.

(b) This general license does not authorize:

(1) Any transactions related to the offloading of crude oil of Russian Federation origin, except for the offloading of crude oil that is ordinarily incident and necessary to address vessel emergencies authorized pursuant to paragraph (a) of this general license;

(2) Any transactions related to the sale of crude oil of Russian Federation origin; or

(3) Any transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), including transactions involving any person blocked pursuant to the RuHSR, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 22, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–27235 Filed 12–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 594

Publication of Global Terrorism Sanctions Regulations Web General License 21

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing a general license (GL) issued pursuant to the Global Terrorism Sanctions Regulations: GL 21, which was previously made available on OFAC's website.

DATES: GL 21 was issued on November 15, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treas.gov/ofac.*

Background

On November 15, 2022, OFAC issued GL 21 to authorize certain transactions otherwise prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594. At the time of issuance, OFAC made GL 21 available on its website (*www.treas.gov/ofac*). GL 21 has an expiration date of December 15, 2022. The text of this GL is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Global Terrorism Sanctions Regulations 31 CFR Part 594

GENERAL LICENSE NO. 21

Authorizing Limited Safety and Environmental Transactions Involving Certain Vessels

(a) Except as provided in paragraph (c) of this general license, all transactions that are ordinarily incident and necessary to one of the following activities involving the persons or vessels described in paragraph (b) of this general license that are prohibited by the Global Terrorism Sanctions Regulations, 31 CFR part 594 (GTSR), are authorized through 12:01 a.m. eastern standard time, December 15, 2022, provided that any payment to a blocked person must be made into a blocked account in accordance with the GTSR:

(1) The safe docking and anchoring of any of the blocked vessels listed in paragraph (b) of this general license (''blocked vessels'') in port;

(2) The preservation of the health or safety of the crew of any of the blocked vessels; and

(3) Emergency repairs of any of the blocked vessels or environmental mitigation or protection activities relating to any of the blocked vessels.

(b) The authorization in paragraph (a) of this general license applies to the following blocked persons and vessels listed on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List and any entity in which any of the following persons own, directly or indirectly, a 50 percent or greater interest:

- Artemov, Victor Sergioyovich
  - BOCEANICA, IMO 9267132
  - ZEPHYR I (f.k.a. ZHEN I), IMO 9255880
- Azul Vista Shipping Corp.
  - JULIA A (f.k.a. AZUL), IMO 9236353
- Blue Berri Shipping Inc.
  - RAIN DROP, IMO 9233208
- Harbour Ship Management Limited
  - B LUMINOSA, IMO 9256016
  - BLUEFINS, IMO 9221657
  - BUENO, IMO 9282443
- Pontus Navigation Corp.
  - NOLAN (f.k.a. OSLO), IMO 9179701
- Technology Bright International Ltd.
  - YOUNG YONG, IMO 9194127
- Triton Navigation Corp.
  - ADISA, IMO 9304667
- Vista Clara Shipping Corp.
  - LARA I (f.k.a. CLARA), IMO 9231767

(c) This general license does not authorize:

(1) The entry into any new commercial contracts involving the property or interests in property of any of the blocked persons or vessels described in paragraph (b) of this general license, except as authorized by paragraph (a);

(2) The offloading of any cargo onboard any of the blocked vessels; or

(3) Any transactions otherwise prohibited by the GTSR, including transactions involving the property or interests in property of any person blocked pursuant to the GTSR, other than the blocked persons described in paragraph (b) of this general license, unless separately authorized.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: November 15, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–27234 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2022–OS–0135]

RIN 0790–AL10

Privacy Act of 1974; Implementation

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

ACTION: Direct final rule with request for comments.

SUMMARY: The Department of Defense (DoD or Department) is giving concurrent notice of a modified Department-wide system of records titled ''Defense Accountability and Assessment Records,'' DoD–0012, and this rulemaking, which exempts portions of this system of records from certain provisions of the Privacy Act of 1974, as amended, because of national security requirements. This rule is being published as a direct final rule because the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be cancelled and a proposed rule for comments will be published.

DATES: The rule will be effective on February 24, 2023 unless comments are received that would result in a contrary determination. Comments will be accepted on or before February 14, 2023.

ADDRESSES: You may submit comments, identified by docket number, Regulation Identifier Number (RIN), and title, by any of the following methods.

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, DoD is modifying, renumbering, and renaming a system of records to reflect its status as a DoD-wide system of records and to support additional information systems being established within the DoD using the same categories of data for the same purposes. The system number is changing from DPR–39 to DoD–0012, and the name is changing from ''DoD Personnel Accountability and Assessment System'' to ''Defense Accountability and Assessment Records.'' This system of records covers DoD's maintenance of records about accountability for and status of DoD-affiliated individuals, including Military Service members, civilian employees, dependents and family members, contractors, and other DoD-affiliated personnel, in a natural or man-made disaster or public health emergency, similar events of concern, or when directed by the Secretary of Defense. Such events could include severe weather events, acts of terrorism or severe destruction, pandemics or major outbreaks, anomalous health incidents, and similar crises.

II. Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the exemption. The Office of the Secretary is amending 32 CFR part 310 to add a new Privacy Act exemption rule for this system of records. The DoD is claiming an exemption for this system of records because some of its records may contain classified national security information and providing notice, access, amendment, and disclosure of accounting of those records to an individual, as well as certain record-keeping requirements, may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to executive order. DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

III. Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be cancelled and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue that would have warranted a substantive response had it been submitted in response to a standard notice of a proposed rule. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

This direct final rule adds to the DoD's Privacy Act exemptions for Department-wide systems of records found in 32 CFR 310.13. Records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record. A notice of a modified system of records for DoD–0012 is also published in this issue of the **Federal Register**.

Regulatory Analysis

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

Executive Orders 12866 and 13563 direct agencies to assess all costs and

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

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

The Paperwork Reduction Act (PRA) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

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

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

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

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

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

■ 2. Amend § 310.13 by adding paragraph (e)(10) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(10) *System identifier and name.* DoD–0012, ''Defense Accountability and Assessment Records''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections of the Privacy Act of 1974, as amended, pursuant to exemption (k)(1) is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2).* Records in this system of records may contain information concerning individuals that is properly classified pursuant to executive order. Application of exemption (k)(1) for such records may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security. Accordingly, application of exemption (k)(1) may be necessary.

(B) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent an exemption is claimed from (d)(2).

(C) *Subsection (e)(1).* Records within this system may be properly classified pursuant to executive order. In the collection of information to respond to natural or man-made disasters, public health emergencies, and other crises or events of concern, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of these types of occurrences. Additionally, disclosure of classified records to an individual may cause damage to national security. Accordingly, application of exemption (k)(1) may be necessary.

(D) *Subsections (e)(4)(G) and (H) and Subsection (f).* These subsections are inapplicable to the extent exemption is claimed from the access and amendment provisions of subsection (d). Because portions of this system are exempt from the individual access and amendment provisions of subsection (d) for the reasons noted above, DoD is not required to establish requirements, rules, or procedures with respect to such access or amendment provisions. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access, view, and seek to amend records pertaining to themselves in the system would potentially undermine national security and the confidentiality of classified information. Accordingly, application of exemption (k)(1) may be necessary.

(E) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad information currently

published in the system notice concerning categories of sources of records in the system, an exemption from this provision is necessary to protect national security and the confidentiality of sources and methods, and other classified information.

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

Dated: December 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–27144 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2022–OS–0136]

RIN 0790–AL09

Privacy Act of 1974; Implementation

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

ACTION: Direct final rule with request for comments.

SUMMARY: The Department of Defense (DoD or Department) is giving concurrent notice of a new Department-wide system of records, ''Declared Public Health Emergency Exposure Records,'' DoD–0013, and this rulemaking, which exempts portions of this system of records from certain provisions of the Privacy Act of 1974, as amended, because of national security requirements. This rule is being published as a direct final rule as the Department does not expect to receive any adverse comments. If such comments are received, this direct final rule will be cancelled and a proposed rule for comments will be published.

DATES: The rule will be effective on February 24, 2023 unless comments are received that would result in a contrary determination. Comments will be accepted on or before February 14, 2023.

ADDRESSES: You may submit comments, identified by docket number, Regulation Identifier Number (RIN), and title, by any of the following methods.

* *Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, DoD is establishing a new Department-wide system of records titled ''Declared Public Health Emergency Exposure Records'' DoD–0013. This system of records covers DoD's collection, use, and maintenance of records about individuals necessitated as a result of a declared public health emergency. These records are maintained to assist the DoD in establishing safe environments, identifying and protecting DoD-affiliated individuals at risk of transmission of or contracting the disease or agent at issue, and in supporting mission readiness.

II. Privacy Act Exemption

The Privacy Act permits Federal agencies to exempt eligible records in a system of records from certain provisions of the Act, including the provisions providing individuals with a right to request access to and amendment of their own records and accountings of disclosures of such records. If an agency intends to exempt a particular system of records, it must first go through the rulemaking process to provide public notice and an opportunity to comment on the proposed exemption. The Office of the Secretary is amending 32 CFR part 310 to add a new Privacy Act exemption rule for this system of records. The DoD is claiming an exemption for this system of records because some of its records may contain classified national security information and providing notice, access, amendment, and disclosure of accounting of those records to an individual, as well as certain record-keeping requirements, may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to executive order. DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

III. Direct Final Rulemaking

This rule is being published as a direct final rule as the Department does not expect to receive any significant adverse comments. If such comments are received, this direct final rule will be cancelled and a proposed rule for comments will be published. If no such comments are received, this direct final rule will become effective ten days after the comment period expires.

For purposes of this rulemaking, a significant adverse comment is one that explains (1) why the rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a significant adverse comment necessitates withdrawal of this direct final rule, the Department will consider whether the comment raises an issue that would have warranted a substantive response had it been submitted in response to a standard notice of a proposed rule. A comment recommending an addition to the rule will not be considered significant and adverse unless the comment explains how this direct final rule would be ineffective without the addition.

This direct final rule adds to the DoD's Privacy Act exemptions for

Department-wide systems of records found in 32 CFR 310.13. Records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record. A notice of a new system of records for DoD–0013 is also published in this issue of the **Federal Register**.

Regulatory Analysis

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

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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. DoD will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This direct final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule is concerned only with the administration of Privacy Act systems of records within the DoD. Therefore, the Regulatory Flexibility Act, as amended, does not require DoD to prepare a regulatory flexibility analysis.

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

The Paperwork Reduction Act (PRA) was enacted to minimize the paperwork burden for individuals; small businesses; educational and nonprofit institutions; Federal contractors; State, local and tribal governments; and other persons resulting from the collection of information by or for the Federal government. The Act requires agencies obtain approval from the Office of Management and Budget before using identical questions to collect information from ten or more persons. This rule does not impose reporting or recordkeeping requirements on the public.

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

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates may result in the expenditure by State, local and tribal governments in the aggregate, or by the private sector, in any one year of $100 million in 1995 dollars, updated annually for inflation. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Executive Order 13132, ''Federalism''

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial effect on State and local governments.

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

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

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

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

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

■ 2. Amend § 310.13 by *adding paragraph (e)(12) to read as follows:*

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(12) *System identifier and name.* DoD–0013, ''Declared Public Health Emergency Exposure Records''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f).

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections of the Privacy Act of 1974, as amended, pursuant to exemption (k)(1) is justified for the following reasons:

(A) *Subsections (c)(3), (d)(1), and (d)(2).* Records in this system of records may contain information concerning individuals that is properly classified pursuant to executive order. Application of exemption (k)(1) for such records may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security. Accordingly, application of exemption (k)(1) may be necessary.

(B) *Subsections (d)(3) and (4).* These subsections are inapplicable to the extent an exemption is claimed from (d)(2).

(C) *Subsection (e)(1).* Records within this system may be properly classified pursuant to executive order. In the collection of information for historical activities, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of these types of activities. Additionally, disclosure of classified records to an individual may cause damage to national security. Accordingly, application of exemption (k)(1) may be necessary.

(D) *Subsections (e)(4)(G) and (H) and Subsection (f).* These subsections are inapplicable to the extent exemption is claimed from the access and amendment provisions of subsection (d). Because portions of this system are exempt from the individual access and amendment provisions of subsection (d) for the reasons noted above, DoD is not required to establish requirements,

rules, or procedures with respect to such access or amendment provisions. Providing notice to individuals with respect to the existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access, view, and seek to amend records pertaining to themselves in the system would potentially undermine national security and the confidentiality of classified information. Accordingly, application of exemption (k)(1) may be necessary.

(E) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad information currently published in the system notice concerning categories of sources of records in the system, an exemption from this provision is necessary to protect national security and the confidentiality of sources and methods, and other classified information.

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

Dated: December 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–27143 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0979]

Safety Zone; San Francisco New Year's Eve Fireworks Display; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in the navigable waters of the San Francisco Bay near the Ferry Plaza in San Francisco, CA for the San Francisco New Year's Eve Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. During the enforcement period, unauthorized persons or vessels are prohibited from entering, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM) or other federal, state, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

DATES: The regulation in 33 CFR 165.1191 will be enforced for the location described in Table 1 to § 165.1191, Item number 24, from noon on December 31, 2022 through 12:45 a.m. on January 1, 2023, or as announced via Broadcast Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Anthony Solares, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585 or email at *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone established in 33 CFR 165.1191, Table 1 to § 165.1191, Item number 24, for the San Francisco New Year's Eve Firework Display from noon on December 31, 2022, through 12:45 a.m. on January 1, 2023. The Coast Guard will enforce a 100-foot safety zone around the two fireworks barges during the loading, standby, transit, and arrival of the fireworks barges from the loading location to the display location and until the start of the fireworks display. On December 31, 2022, the fireworks barges will be loaded with pyrotechnics at Pier 50 in San Francisco, CA from appoximately noon until approximately 6 p.m. The fireworks barges will remain on standby at the loading location until their transit to the display location. From 10:45 p.m. to 11:15 p.m. on December 31, 2022 the loaded fireworks barges will transit from Pier 50 to the launch site near the San Francisco Ferry Plaza in approximate position 37°47′45″ N, 122°23′15″ W (NAD 83), where they will remain until the conclusion of the fireworks display. At approximately 11:59 p.m. on December 31, 2022, 15-minutes prior to the fireworks display, the safety zone will expand to encompass all navigable waters, from surface to bottom, within a circle formed by connecting all points 1,000 feet out from the fireworks barges. The firework barges will be near the San Francisco Ferry Plaza in San Francisco, CA in approximate position 37°47′45″ N, 122°23′15″ W (NAD 83) as set forth in 33 CFR 165.1191, Table 1, Item number 24. The safety zone will be enforced until 12:45 a.m. on January 1, 2023, or as announced via Broadcast Notice to Mariners.

In addition to this notification in the **Federal Register**, the Coast Guard plans to provide notification of the safety zone and its enforcement period via the Local Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol, defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. Additionally, each person who receives notice of a lawful order or direction issued by the PATCOM or Official Patrol shall obey the order or direction. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: December 9, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2022–27272 Filed 12–15–22; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 385

[Docket No. Docket No. 21–CRB–0001–PR (2023–2027)]

Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV)

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges publish final regulations that set rates and terms for physical phonorecords, permanent downloads, ringtones, and music bundles applicable during the period from January 1, 2023 through

December 31, 2027, for the statutory license for making and distributing phonorecords of nondramatic musical works.

DATES: Effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Anita Brown, Program Specialist, (202) 707–7658, *crb@loc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 2022, the Copyright Royalty Judges (Judges) received a Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations (Motion to Adopt Proposed Settlement 2) from National Music Publishers' Association, Inc. and Nashville Songwriters Association International (together, Licensors) and Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. (together, Labels). The Licensors and Labels (together, Moving Parties) sought approval of a partial settlement of the license rate proceeding before the Judges titled *Determination of Royalty Rates and Terms for Making and Distributing Phonorecords (Phonorecords IV),* Docket No. 21–CRB–0001–PR (2023–2027). The Moving Parties asserted that they had agreed to a settlement (Proposed Settlement 2) as to royalty rates and applicable regulatory terms relating to physical phonorecords, permanent downloads, ringtones, and music bundles presently addressed in 37 CFR part 385, subpart B (Subpart B Configurations). Proposed Settlement 2 would increase rates to 12 cents per track or 2.31 cents per minute of playing time or fraction thereof, whichever amount is larger, for physical phonorecords and permanent downloads for 2023 and include inflation-based adjustments for subsequent years of the rate period. Rates for ringtones would remain the same and the royalty rate for each element of a Music Bundle would be the rate required for physical phonorecords and permanent downloads or ringtones, as appropriate. Proposed Settlement 2 also addresses payment of late fees relating to Subpart B Configurations.

Previously, on May 25, 2021, the Judges received a Motion to Adopt Settlement of Statutory Royalty Rates and Terms for Subpart B Configurations from National Music Publishers' Association, Inc. and Nashville Songwriters Association International and Sony Music Entertainment, UMG Recordings, Inc., and Warner Music Group Corp. (Motion to Adopt Proposed Settlement 1). The Licensors and Labels sought approval of a partial settlement of the *Phonorecords IV* proceeding (Proposed Settlement 1). Proposed Settlement 1 would have maintained the current rates for Subpart B Configurations and also addressed payment of late fees relating to Subpart B Configurations.

On June 25, 2021, the Judges published Proposed Settlement 1 in the **Federal Register** and requested comments from the public. 86 FR 40793 (June 25, 2021). Following receipt of comments from both participants and non-participants to the *Phonorecords IV* proceeding, including non-participant songwriter groups and representatives who submitted comments in opposition, on March 30, 2022, the Judges published a notice that they were withdrawing the proposed settlement from consideration pursuant to section 801(b)(7). 87 FR 18342 (Mar. 30, 2022). The Judges' conclusion that Proposed Settlement 1 did not provide a reasonable basis for setting statutory rates and terms, and their withdrawal of Proposed Settlement 1 as a proposed rule, rested on a variety of interrelated factors regarding Proposed Settlement 1, chiefly that: (1) the subpart B mechanical rates that were first effective in 2006 would have remained unchanged; (2) potential conflicts of interest impacting the negotiations of Proposed Settlement 1; and (3) lack of transparency regarding a memorandum of understanding (MOU) that was contractually related to Proposed Settlement 1.

On April 4, 2022, the Judges received an Emergency Motion from Labels (Emergency Motion) seeking clarification regarding both litigation procedures going forward and any impact of the withdrawal of Proposed Settlement 1 beyond ''participants that are not parties to the [settlement] agreement'' 17 U.S.C. 801(b)(7)(A)(ii). With regard to the impact of withdrawal on various interested parties, the Labels urged that to the extent that the Judges might decline to adopt Proposed Settlement 1 as the basis for statutory terms and rates for anyone other than a participant, any such interpretation would raise a novel question of law that would need to be referred to the Register of Copyrights pursuant to section 802(f)(1)(B). The Labels moved for such a referral.

On April 28, 2022, the Judges referred a series of Novel Material Questions of Substantive Law to the Register of Copyrights pursuant to section 802(f)(1)(B) (Referred Novel Questions of Law).

On May 5, 2022, the Judges received a Motion from Labels seeking to withdraw their April 4, 2022 Emergency Motion (Withdrawal Motion). The Labels urged that in view of the Motion to Adopt Proposed Settlement 2, it was no longer necessary for the Judges to address the matters raised in the Emergency Motion.[1]

On June 1, 2022, the Judges published Proposed Settlement 2 in the **Federal Register** and requested comments from the public. 87 FR 33093 (Jun. 1, 2022). Comments were due by July 1, 2022. The Judges received 18 comments from interested parties.[2] One participant, George Johnson (GEO) filed three comments opposing Proposed Settlement 2.[3]

Statutory Standard and Precedent

Pursuant to section 801(b)(7)(A) of the Copyright Act, the Judges have the authority to adopt settlements between some or all of the participants to a proceeding at any time during a proceeding. This section states that the Judges shall: (1) provide an opportunity to comment on the agreement to non-participants who would be bound by the terms, rates, or other determination set by the agreement; and (2) provide an opportunity to comment and to object to participants in the proceeding who

[1] On May 10, 2022, the Judges transmitted a memo to the Register of Copyrights apprising her of developments relevant to the novel questions referred to the Register on April 28, 2022. The Judges noted that they anticipated the next steps would likely include publishing Proposed Settlement 2 for public comment. The Judges observed that, in light of Proposed Settlement 2, the referred questions may be moot.

[2] Upward Bound Music Company, Inc.; Production Music Association (PMA); Eugene Lambchops Curry; Associated Production Music (dba APM Music); Church Music Publishers Association (CMPA); The Association of Independent Music Publishers (AIMP); The 100 Percenters; Artist Rights Alliance; Songwriters of North America (SONA) and Black Music Action Coalition (BMAC); The Ivors Academy of Music Creators; Abby North, Erin McAnally, Chelsea Crowell, and Rosanne Cash; The American Association of Independent Music (A2IM); The Recording Academy; Christian L. Castle; Helienne Lindvall, David Lowery and Blake Morgan; Gwendolyn Seale; and Music Creators North America (MCNA) (submitted by MCNA, Songwriters Guild of America, Inc. (SGA), Society of Composers & Lyricists (SCL), and by the individuals Rick Carnes and Ashley Irwin (Independent Music Creators) and ''endorsed by the Music Creator Groups Noted on the Appended Listing'' (Alliance for Women Film Composers (AWFC), Alliance of Latin American Composers & Authors (AlcaMusica), Asia-Pacific Music Creators Alliance (APMA), European Composers and Songwriters Alliance (ECSA), Music Answers (M.A.), Pan-African Composers and Songwriters Alliance (PACSA), Screen Composers Guild of Canada (SCGC), Songwriters Association of Canada (SAC); Music Publishers Association of the United States (MPA).

[3] GEO filed an Opposition and Motion to Deny Fraudulent Proposed Settlement 2 . . . on May 27, 2022. On June 12, 2022, GEO filed Comments in Opposition and to Deny the Fraudulent Proposed Settlement 2. . . .'' On June 20, 2022, GEO filed Additional Comments in Opposition and to Deny the Fraudulent Proposed Settlement 2 . . . .''

would be bound by the terms, rates, or other determination set by the agreement. *See* section 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any participant objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.*

Regardless of the comments of interested parties or participants, the Judges are not compelled to adopt a settlement to the extent it includes provisions that are inconsistent with the statutory license. *See* Review of Copyright Royalty Judges Determination, 74 FR 4537, 4540 (Jan. 26, 2009) (error for Judges to adopt settlement without threshold determination of legality); *see also* Review of Copyright Royalty Judges Determination, 73 FR 9143, 9146 (Feb. 19, 2008) (error not to set separate rates as required under sections 112 and 114 when parties' unopposed settlement combined rates in contravention of those statutory sections).[4]

As the Register of Copyrights (Register) observed in the 2009 review of the Judges' decision, nothing in the statute precludes rejection of any portions of a settlement that would be contrary to provisions of the applicable license or otherwise contrary to the statute. 74 FR 4540. In the instance under review by the Register, the settlement agreement purported to alter the date(s) for payment of royalties granting licensees a longer period than section 115 provided. *Id.* at 4542. The Register also noted that nothing in the statute relating to adoption of settlements precludes the Judges from considering comments of non-participants ''which argue that proposed [settlement] provisions are contrary to statutory law.'' *Id.* at 4540.

Summary of Non-Participant Comments

The comments of interested parties in this proceeding overlapped in significant aspects and are summarized as follows.

Comments Generally in Support

The following commenters all express support for adoption of Proposed Settlement 2. Production Music Association (PMA); Associated Production Music (APM Music); Church Music Publishers Association (CMPA); The Association of Independent Music Publishers (AIMP); Artist Rights Alliance; Songwriters of North America (SONA) and Black Music Action Coalition (BMAC); The Ivors Academy of Music Creators; Abby North, Erin McAnally, Chelsea Crowell and Rosanne Cash; The Recording Academy; Music Publishers Association of the United States (MPA). The commenters express positive assessment of a 32% increase in rates under Proposed Settlement 2.

Upward Bound Music Company, Inc. is supportive of the proposed rates for 2023 but indicates a desire for specific adjustments for subsequent years of the rate period, as opposed to the inflation-based adjustments set forth in Proposed Settlement 2. Upward Bound Music Company, Inc. Comment at 1–2.[5]

Comments Generally in Opposition

The American Association of Independent Music (A2IM) asserts that the Judges should reject the new settlement, and withdraw the new proposed rule, for the same reasons that they rejected the initial settlement. A2IM at 1, 4–6. A2IM alleges that ''the new settlement 'freezes' the original 'penny rate' structure.'' A2IM at 1. A2IM states that the Proposed Settlement 2 rates, which are subject to an annual consumer price index (''CPI'') adjustment to the penny rate in subsequent years, were set without considering whether the rate or CPI adjustments are appropriate in light of the current market realities. *Id.* at 1–4. A2IM suggests that the Judges should not only reject the settlement but also ''convene a process to solicit input from all interested stakeholders.'' *Id.* at 6–7. While A2IM acknowledges that it should have filed a petition to participate in the *Phonorecords IV* proceeding, it then goes on to urge a variety of procedural reforms, which appear to require statutory amendments. *Id.* at 7–8.

Gwendolyn Seale asserts that the Proposed Settlement 2 rate of 12 cents for 2023 is too low, based on the totality of the record and the Judges' analyses in their determination not to accept Proposed Settlement 1. Seale at 1. Ms. Seale concludes that Proposed Settlement 2 only partially addresses the inflation issue by limiting the inflation calculation to 2021. She maintains that it would be illogical to base the inaugural rate for this cycle on 2021 inflation calculations. She adds that, if the Judges were only to take into account the inflation issue in determining a reasonable rate for the inaugural 2023 year, such rate should reflect the 9.1 cent rate indexed to as close as possible to 2023, which is currently 13.4 cents. *Id.* at 2–3. Ms. Seale adds that compositions that are subject to controlled composition clauses in private contracts may continue be licensed at a rate of approximately 9 cents in 2023. *Id.* at 3–5.

Songwriters Guild of America, Inc. (SGA), Society of Composers & Lyricists (SCL), and Music Creators North America (MCNA), and the individuals Rick Carnes and Ashley Irwin (Independent Music Creators) comment in opposition, asking the Judges to modify or decline to approve Proposed Settlement 2. Independent Music Creators at 1. Independent Music Creators posit that the 9.1 cent rate, the basis for the adjusted 12 cent rate in Proposed Settlement 2, had already lost much of its initial 2006 value by 2021. They maintain that the 2021 value was already 12 cents by early 2021, and by the time of introduction of Proposed Settlement 2 had further risen almost another 10% to 13.11 cents. They offer that their own calculations do not take into account further discounting of royalty rates by privately entered-into controlled composition clauses. *Id.* at 3. They add that the 12 cent proposal would inadequately account for inflationary increases as measured by the CPI that occurred in 2021 and 2022. *Id.* at 3–4.

Independent Music Creators question whether Proposed Settlement 2 represents the result of an arms-length negotiation amongst the Moving Parties. They then go on to point out what they perceive as inadequate opportunities for non-participants to take part in settlement negotiations. *Id.* at 4–5. Independent Music Creators go on to allege that the MOUs remain murky and that they may be utilized to circumvent the authority, rate determinations and rulings of the CRB. *Id.* at 6. Independent Music Creators include a proposal for an alternative set of adjusted subpart B rates, which they urge the Judges to adopt. *Id.* at 5–6.

Comments That Are Not Clearly in Support or in Opposition to Proposed Settlement 2

Eugene Lambchops Curry does not pointedly address Proposed Settlement 2 or Subpart B activity, but instead

[4] The Register found that a ''paucity of evidence'' in the record to support a determination of separate rates for the separate licenses ''does not dispatch the . . . Judges' statutory obligations.'' Review of Copyright Royalty Judges Determination, 73 FR 9143, 9145 (Feb. 19, 2008). The Register noted that the Judges have subpoena power to compel witnesses to appear and give testimony. *Id.*

[5] Unlike other comments, which did not focus attention on ringtones, Upward Bound Music Company, Inc. also proposed a rate for ringtones of 35 cents per ringtone across the rate period. No explanation for the proposed ringtone rate was provided.

appears to propose a rate of $1.00 to $3.00 per stream. Curry at 1–2.

Christian L. Castle, an attorney commenting on his own behalf, addresses proposed changes to statutory processes for CRB proceedings, which he believes will require Congress to act. He opines on proposals for alternative rate structures for Subpart B configurations put forward by non-participants, and alternatives for administration of the section 115 license. Castle at 1–5. He states that the Subpart B resolution reflected in Proposed Settlement 2 should not be derailed because of these structural issues that lawmakers no doubt will need to resolve. Castle at 2.

Songwriters Helienne Lindvall, David Lowery, and Blake Morgan (Writers) [6] offer ''a few minor repairs'' to Proposed Settlement 2. They propose an alternative rate whereby calculation of the 2023 rate would be based on the 2006 CPI–U through the November 2022 CPI–U applied to the existing 9.1 cent rate, and corresponding adjustment methods for subsequent years of the rate period. Writers at 10–14. The Writers express criticism of the impact of controlled compositions clauses in the context of the section 115 licenses but take no position on the Judges' authority to reform controlled composition clauses or other provisions or practices in private contracts. *Id.* at 15–23.

The Writers express concern that there should be no undisclosed side deals as consideration for Proposed Settlement 2. They observe the Moving Parties' statement that the MOU at issue was executed a year ago, prior to the Moving Parties entering into renewed Proposed Settlement 2 negotiations and so was not consideration for any of the terms set forth in Proposed Settlement 2. They also note that the MOU apparently came into effect for the parties to it upon submission of Proposed Settlement 1 to the CRB, an event which occurred on May 25, 2021. The Writers note that because the MOU and the associated ''late fee waiver'' program has been disclosed to a degree both in and outside of the record for this Proceeding, the most recent MOU might not fall into the ''undisclosed'' category *Id.* at 24–25. The Writers also express concern with current processes for rate proceedings, which in their view exclude many voices that should have been heard in the rate-setting process and hopefully will be heard in future proceedings. *Id.* at 26–30.

[6] Writers' comment was submitted by Christian L. Castle as Counsel.

Mr. Johnson's Opposition to the Settlement

Proceeding participant George Johnson (GEO) filed three documents opposing Proposed Settlement 2.[7] GEO asserts that the totality of the record, self-dealing conflicts of interest, vertical integration, and other MOU problems have not changed in Proposed Settlement 2, and therefore, GEO submits that the Judges should also deny Proposed Settlement 2 for the exact same reasons the Judges declined to adopt Proposed Settlement 1, except for the ''static'' rate issue. *Id.* at 8.

GEO states that he did not think that it was appropriate to accept Proposed Settlement 2 since it would not only be premature, citing open motions regarding Proposed Settlement 1, namely the Emergency Motion and the Withdrawal Motion, and the Referred Novel Questions of Law. *Id.* at 4–5. GEO takes issue with the Moving Parties' unwillingness to address desired terms in Proposed Settlement 2 and characterizes the initial 12 cent rate as a bare-minimum offer, which was made only because Moving Parties were forced to. *Id.* at 6.

GEO maintains that of the three primary reasons for the Judges' refusal to adopt Proposed Settlement 1, the Moving Parties have only addressed the static rate, and that the Moving Parties have not addressed issues with potential conflicts of interest impacting the negotiations for Proposed Settlement 2 or a lack of transparency regarding a memorandum of understanding (MOU) that was contractually related to Proposed Settlement 1. *Id.* at 16–21.

GEO goes on to allege various perceived conflicts of interests by NMPA counsel and executives. *Id.* at 26–31. GEO then asserts that the MOU is unreasonable. *Id.* at 32, 34–35. GEO maintains that the MOU is a *quid pro quo,* representing consideration that was paid to the major publishers by the major labels in return for a static 9.1 cent rate in Proposed Settlement 1. GEO offers that side deals, like the MOU, are not appropriate when everybody does not participate, and especially when these side deal MOU's are not disclosed. GEO also alleges that the MOU was formerly secret. *Id.* at 32. GEO adds his view that NMPA and NSAI do not represent American songwriters, as well as his view that they do not have a significant interest in this proceeding. *Id.* at 36. Finally, GEO takes issue with the role that controlled composition clauses, in private contracts, play in mechanical rates paid to songwriters. *Id.* at 38–39.

GEO's Additional GEO Opposition asserts that the initial 12 cent rate in Proposed Settlement 2 seems to be incorrectly calculated for retroactive inflation from 2006. He offers a calculation method that indicates a proper initial adjusted rate of approximately 14 cents. Additional GEO Opposition at 3–5. GEO then refers to a Clarification Motion that he submitted to the Judges on June 3, 2022, in which he appears to suggest that the proper rate for Subpart B may be arrived upon by retroactively indexing for inflation the rate of 2 cents per phonorecord that was set forth in the statute from 1909 to 1978. *Id.* at 6–8. GEO offers that the salary of the NMPA CEO should be instructive to the Judges' consideration of Proposed Settlement 2. *Id.* at 8–9. Finally, GEO addresses several matters that he advocates for in the proceeding, beyond consideration of Proposed Settlement 2. *Id* at 10–11.

Judges' Analysis and Conclusions

Chapter 8 of the Copyright Act encourages parties to enter into settlement negotiations, ultimately the decision as to whether a contested settlement should be approved on motion is subject to the Judges' discretion, informed by the submissions of the Moving Parties and the commenters, and by the Judges' application of the law to the facts. Section 801(b)(7)(A) is clear that the Judges have the authority to adopt settlements between some or all of the participants to a proceeding at any time during a proceeding, so long the relevant parties are given an opportunity to comment and object. 17 U.S.C. 801(b)(7)(A). The Judges may decline to adopt the agreement as a basis for statutory terms and rates for participants not party to the agreement if any participant objects and the Judges conclude that the agreement does not provide a reasonable basis for setting statutory terms or rates. *Id.* at 801(b)(7)(A).

The Judges provided the requisite opportunity for comment and received GEO's opposition as well as the above-noted comments for and against

[7] On May 27, 2022, before the Judges published the proposed rule for comment, GEO filed an Objection and Motion to Deny Fraudulent Proposed Settlement 2 . . . On June 12, 2022, after the Judges published the proposed rule for comment, GEO filed Comments in Opposition and to Deny the Fraudulent Proposed Settlement 2 . . . (GEO Opposition), which GEO characterized as a re-submission of his prior filing so that his opposition will be considered as a formal response to the proposed rule. GEO represented that the June 12, 2022 GEO Opposition is exactly the same as the May 27, 2022 filing. On June 20, 2022, GEO then filed Additional Comments in Opposition and to Deny the Fraudulent Proposed Settlement . . . (Additional GEO Opposition).

Proposed Settlement 2. Having considered these submissions in their entirety, the Judges find no persuasive legal or economic arguments that convince the Judges to reject the proposed settlement reached voluntarily between the Moving Parties.

Only one *participant* in this proceeding, GEO, objected to the proposed settlement. As shown by the foregoing synopsis, however, GEO's objections did not come to the Judges in a vacuum. The statute requires publication of a settlement proposal and solicitation of comments from interested parties—parties who would be bound by the proposed rates and terms. Interested parties' comments are filed in the record of the proceeding and the Judges analyze those comments even though the Judges do not base rejection of a settlement solely on negative comments from non-participants. Non-participants who commented on Proposed Settlement 2 were not uniform in their views.

The Judges find no reason in the record to depart from their previous finding that Royalties from Subpart B Configurations are not inconsequential to the rightsholders. Subpart B Configurations are qualitatively different from the digital streaming configurations; consequently, the Judges can and do set separate rates for the Subpart B Configurations. Even though the physical and ''permanent'' download products are different in character from streaming uses, the Judges cannot and do not treat them with any less care and attention.[8] Subpart B Configurations, in particular vinyl recordings, are a significant source of income for section 115 rightsholders. The royalties they generate should not be treated as *de minimis,* or as a ''throw away'' negotiating chip to encourage better terms for streaming configurations.

From the perspective of some independent songwriters and copyright owners, the proposed rates might seem inadequate, although even the participant that opposed Proposed Settlement 2, GEO, characterizes the rates as within the bare minimum. The Judges recognize that several comments proposed alternative rates that they prefer, as well as alternative methods for addressing inflation adjustments. The Judges also recognize that some comments take issue with existing procedures for participation in rate proceedings before the Judges. However, Proposed Settlement 2 is what is before the Judges for consideration, not alternative rates or proposals for alternative procedures.[9] The fact is that the proposed rates and terms were negotiated on behalf of the vast majority of parties that historically have participated in Section 115 proceedings before the Judges. Those parties clearly concluded that the rates and terms were acceptable to both sides and, as addressed below, the negotiations occurred absent several of the aspects surrounding the Judges consideration of Proposed Settlement 1.

The Judges' analysis that led them to conclude that Proposed Settlement 1 did not provide a reasonable basis for setting statutory rates and terms—requiring them to withdraw Proposed Settlement 1 as a proposed rule—is distinguishable from their analysis of Proposed Settlement 2. The conclusion on Proposed Settlement 1 rested on a variety of interrelated factors, chiefly that: (1) the subpart B mechanical rates that were first effective in 2006 would have remained unchanged; (2) potential conflicts of interest impacting the negotiations of Proposed Settlement 1; and (3) lack of transparency regarding a memorandum of understanding (MOU) that was contractually related to Proposed Settlement 1.

In the current consideration of Proposed Settlement 2, the subpart B mechanical rates have been raised significantly from those that were first effective in 2006. In other words, the rates do not remain unchanged. They are not frozen, despite the fact that they retain a penny rate *structure.*

In the current consideration of Proposed Settlement 2, the MOU has been more prominently disclosed to the Judges and to the public. This is an important distinction from the Judges' consideration of Proposed Settlement 1, when the Judges found that they lacked complete knowledge of the implications of the MOU.[10]

Furthermore, as accurately noted by Writers' comment, the MOU is not consideration for Proposed Settlement 2. The relationship of the MOU to Proposed Settlement 1 was fundamentally different. In the case of Proposed Settlement 1, the MOU was conditional and was not effective until the parties to the MOU (the Moving Parties, *except* NSAI) submitted a motion to adopt Proposed Settlement 1. In the case of Proposed Settlement 2, the MOU was independently effective, as of May 25, 2021.

In the current consideration of Proposed Settlement 2, the issue of conflicts of interest remains. As stated in the Withdrawal of Proposed Settlement 1, conflicts are inherent if not inevitable in the existing composition of the negotiating parties. No party opposing the present settlement has presented persuasive evidence of misconduct, including any arising from the issue of conflicts of interest. The corporate relationships involving the record labels on the one hand and the publishers on the other alone do not suffice as probative evidence of wrongdoing. As addressed above, the details and effects of the MOU are not undisclosed. The Judges therefore do not find that conflicts present sufficient reason to doubt the reasonableness of the settlement at issue as a basis for setting statutory rates and terms.

The Judges do not conclude that the Proposed Settlement 2 agreement, reached voluntarily between the Moving Parties, fails to provide a reasonable basis for setting statutory terms and rates for licensing nondramatic musical works to manufacture and distribute phonorecords, including permanent digital downloads and ringtones (Subpart B Configurations). The entirety of the record before the Judges, including the arguments GEO and other commenters presented, is insufficient for the Judges to determine that the agreed rates and terms are unreasonable.

[8] The Judges note that subpart B also addresses ''ringtones'' and that no participant offered a substantive objection to the rate for ringtones that is set forth in Proposed Settlement 2. As referenced above, one non-participant, Upward Bound Music Company, Inc. proposed a rate for ringtones of 35 cents per ringtone across the rate period. However, no explanation for the proposed ringtone rate was provided, nor was any substantive critique offered regarding the ringtone rate in Proposed Settlement 2.

[9] The Judges observe that a policy debate regarding procedures for participation in rate proceedings before the Judges remains an ongoing matter, but that any resolutions lie outside of the Judges' consideration of Proposed Settlement 2.

[10] When considering Proposed Settlement 1, the Judges found that they and the public lacked sufficient knowledge of MOU 4, in part because the MOU 4 related to the prior MOUs, by reference. Moving Parties assert that the prior MOUs were available and provided to the Judges through the Moving Parties' Comments in Further Support of the Settlement . . . for Subpart B Configurations at 7 (''Comprehensive information about prior versions of the program, including copies of predecessor MOUs, is available online at *http://nmpalatefeesettlement.com/*.''). In the case of Proposed Settlement 2, the **Federal Register** notice requesting comments from the public, the MOU and its predecessors were more prominently noted to the public. 87 FR 33904 FN 7 (''predecessor agreements to the MOU, some or all of which may be incorporated by reference in the current MOU, are publicly available online at *http://nmpalatefeesettlement.com/*''). Additionally, the Judges have inserted the relevant MOUs into the eCRB files for this proceeding (accessed from *http://nmpalatefeesettlement.com*). MOU4 is already incorporated into the record of this proceeding as Exhibit C to the Moving Parties' Comments in Further Support of the Settlement . . . for Subpart B Configurations (Aug. 10, 2021).

In making this finding, the Judges are not indicating that the particular method of adjusting for inflation in the settlement is superior to methods offered by parties that voiced their opposition to Proposed Settlement 2, or that Proposed Settlement 2 represents an approach to inflation that the Judges would have chosen after a fully contested proceeding. In making this finding, the Judges observe that the Moving Parties clarified that Proposed Settlement 2 was arrived upon in part to avoid costly and uncertain litigation, which would involve a number of disputed issues. Their inflation adjustment is but one of several provisions, and thus is bound-up with the entirety of the parties' negotiated compromises. In this context, the Judges have no reason to find that the inflation adjustment is unreasonable or should otherwise justify a rejection of the settlement.

The Judges also reviewed the proposed settlement with regard to whether any portions of the settlement would be contrary to provisions of the applicable license or otherwise contrary to the statute, pursuant to the Register's prior rulings. *See e.g.,* Review of Copyright Royalty Judges Determination, 74 FR 4537, 4540 (Jan 26, 2009). Upon such review, the Judges see no basis to conclude the settlement is contrary to law. Therefore, the Judges adopt the proposed regulations that codify the partial settlement.[11]

The Judges adopt the proposed rates and terms industry-wide for Subpart B Configurations.

List of Subjects in 37 CFR Part 385

Copyright, Phonorecords, Recordings.

For the reasons set forth in the preamble, the Copyright Royalty Judges amend 37 CFR part 385 as set forth below.

PART 385—RATES AND TERMS FOR USE OF NONDRAMATIC MUSICAL WORKS IN THE MAKING AND DISTRIBUTING OF PHYSICAL AND DIGITAL PHONORECORDS

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 17 U.S.C. 115, 801(b)(1), 804(b)(4).

[11] While the Judges recognize several commenters took issue with controlled composition clauses and other contractual terms that parties have voluntarily entered into, which affect how mechanical royalties are paid and may exacerbate the effect of an unreasonably low statutory rate, no commenter has established that the Judges have authority to affect such privately entered contracts. Furthermore, the Judges find that no pending motion or referred questions (which the Judges consider moot) provide a basis to refrain from adopting the settlement.

■ 2. In § 385.2 revise the introductory text of the definition of ''Eligible Limited Download'', the definition of ''Licensed Activity'', and paragraph (4) in the definition of ''Sound Recording Company'' to read as follows:

§ 385.2 Definitions.

* * * * *

Eligible Limited Download means a transmission of a sound recording embodying a musical work to an End User of a digital phonorecord under 17 U.S.C. 115 that results in a Digital Phonorecord Delivery of that sound recording that is only accessible for listening for—

* * * * *

Licensed Activity, as the term is used in subparts C and D of this part, means delivery of musical works, under voluntary or statutory license, via Digital Phonorecord Deliveries in connection with Interactive Eligible Streams, Eligible Limited Downloads, Limited Offerings, mixed Bundles, and Locker Services.

* * * * *

Sound Recording Company * * *

(4) Performs the functions of marketing and authorizing the distribution of a sound recording of a musical work under its own label, under the authority of a person identified in paragraphs (1) through (3) of this definition.

* * * * *

■ 3. Revise § 385.10 to read as follows:

§ 385.10 Scope.

This subpart establishes rates and terms of royalty payments for making and distributing physical phonorecords, Permanent Downloads, Ringtones, and Music Bundles, in accordance with the provisions of 17 U.S.C. 115.

■ 4. In § 385.11, revise paragraph (a) to read as follows:

§ 385.11 Royalty rates.

(a) *Physical phonorecords and Permanent Downloads*—(1) *2023 rate.* For the year 2023, for every physical phonorecord and Permanent Download the Licensee makes and distributes or authorizes to be made and distributed, the royalty rate payable for each work embodied in the phonorecord or Permanent Download shall be either 12.0 cents or 2.31 cents per minute of playing time or fraction thereof, whichever amount is larger.

(2) *Annual rate adjustment.* The Copyright Royalty Judges shall adjust the royalty rates in paragraph (a)(1) of this section each year to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index for All Urban Consumers (U.S. City Average, all items) (CPI–U) published by the Secretary of Labor before December 1 of the preceding year. The calculation of the rate for each year shall be cumulative based on a calculation of the percentage increase in the CPI–U from the CPI–U published in November, 2022 (the Base Rate) and shall be made according to the following formulas: for the per-work rate, $(1 + (Cy - Base\ Rate)/Base\ Rate) \times 12¢$, rounded to the nearest tenth of a cent; for the per-minute rate, $(1 + (Cy - Base\ Rate)/Base\ Rate) \times 2.31¢$, rounded to the nearest hundredth of a cent; where Cy is the CPI–U published by the Secretary of Labor before December 1 of the preceding year. The Judges shall publish notice of the adjusted fees in the **Federal Register** at least 25 days before January 1. The adjusted fees shall be effective on January 1.

* * * * *

Dated: November 30, 2022.

David P. Shaw,

Chief Copyright Royalty Judge.

David R. Strickler,

Copyright Royalty Judge.

Steve Ruwe,

Copyright Royalty Judge.

Approved by:

Carla D. Hayden,

Librarian of Congress.

[FR Doc. 2022–27237 Filed 12–15–22; 8:45 am]

BILLING CODE 1410–72–P

POSTAL SERVICE

39 CFR Part 20

International Mailing Services: Price Changes and Minor Classification Changes

AGENCY: Postal Service™.

ACTION: Final action.

SUMMARY: On October 7, 2022, the Postal Service published notice of price adjustments and minor classification changes with the Postal Regulatory Commission (PRC). The Postal Regulatory Commission (PRC) concluded that price adjustments and classification changes contained in the Postal Service's notification may go into effect on January 22, 2023. The Postal Service will revise Notice 123, Price List, to reflect the new prices. In addition, the Postal Service will update country names throughout mailing standards of the United States Postal Service, International Mail Manual (IMM®) by changing ''Turkey'' to

''Turkiye,'' which is the official short name for the Republic of Turkiye.

DATES: *Effective* January 22, 2023.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at 202–268–6592 or Kathy Frigo at 202–268–4178.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule and Response

On October 7, 2022, the Postal Service filed a notice with the PRC in Docket No. R2023–1 of mailing services price adjustments to be effective on January 22, 2023. On October 28, 2022, USPS® published a notification of proposed price changes in the **Federal Register** entitled ''International Mailing Services: Proposed Price Changes'' (87 FR 65181). The notification included price changes that the Postal Service would adopt for services covered by *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®) and publish in Notice 123, *Price List,* on Postal Explorer® at *pe.usps.com.* In addition, the notification included an update to country names throughout mailing standards, changing ''Turkey'' to ''Turkiye,'' which is the official short name for Republic of Turkiye. The Postal Service received no comments.

II. Order of the Postal Regulatory Commission

In PRC Order No. 6341 issued on November 28, 2022, in PRC Docket No. R2023–1, the PRC concluded that the prices in the Postal Service's notice in Docket No. R2023–1 may go into effect on January 22, 2023, and favorably reviewed the replacement of the country name of ''Turkey'' with ''Turkiye.'' The new prices will accordingly be posted in Notice 123, *Price List,* on Postal Explorer at *pe.usps.com,* and the changes to the IMM will accordingly be posted in a future update of the IMM on *Postal Explorer* at *pe.usps.com.*

III. Summary of Changes

First-Class Mail International®

The price for a single-piece postal will be $1.45 worldwide. The First-Class Mail International (FCMI) letter nonmachinable surcharge will increase to $0.40. The FCMI single-piece letter and flat prices will be as follows:

LETTERS

Weight not over (oz.)	Price groups			
	1	2	3–5	6–9
1	$1.45	$1.45	$1.45	$1.45
2	1.45	2.19	2.71	2.51
3	2.05	2.90	3.96	3.57
3.5	2.65	3.63	5.22	4.62

FLATS

Weight not over (oz.)	Price groups			
	1	2	3–5	6–9
1	$2.90	$2.90	$2.90	$2.90
2	3.15	3.74	4.06	4.00
3	3.42	4.58	5.23	5.11
4	3.66	5.44	6.43	6.22
5	3.93	6.29	7.60	7.33
6	4.19	7.13	8.78	8.46
7	4.46	8.00	9.96	9.56
8	4.72	8.84	11.13	10.67
12	6.03	10.67	13.50	12.98
15.994	7.33	12.51	15.86	15.27

International Extra Services and Fees

The Postal Service will increase prices for certain market dominant international extra services as noted:

- *Certificate of Mailing service:* Fees for certificate of mailing service for First-Class Mail International will increase as follows:

CERTIFICATE OF MAILING

	Fee
Individual pieces:	
Individual article (PS Form 3817), First-Class Mail International only	$1.85
Duplicate copy of PS Form 3817 or PS Form 3665 (per page), First-Class Mail International only	1.85
Firm mailing sheet (PS Form 3665), per piece (minimum 3), First-Class Mail International only	0.54
Bulk quantities:	
For first 1,000 pieces (or fraction thereof), First-Class Mail International only	10.40
Each additional 1,000 pieces (or fraction thereof), First-Class Mail International only	1.35
Duplicate copy of PS Form 3606, First-Class Mail International only	1.85

- *Registered Mail® service:* The price for international Registered Mail service for First-Class Mail International will increase to $19.05.

- *Return Receipt service:* The price for international return receipt service

for First-Class Mail International will increase to $5.30

• *Customs Clearance and Delivery Fee:* The Customs Clearance and Delivery fee per dutiable item for Inbound Letter Post letters and flats will increase to $7.85.

• *International Business Reply™ service (IBRS):* The price for IBRS cards will increase to $2.00, and the price for IBRS envelopes (up to 2 ounces) will increase to $2.50.

New prices will be listed in the updated Notice 123, *Price List.*

Ruth B. Stevenson

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2022–27322 Filed 12–15–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2016–0688; FRL–9955–02–R6]

Air Plan Approval; Louisiana; Repeal of Excess Emissions Related Provisions

Correction

In rule document 2022–21248 beginning on page 60292 in the issue of Wednesday, October 5, 2022, make the following correction:

Subpart T [CORRECTED]

■ On page 60294, in Subpart T, in the third column, in the ninth through fifth lines from the bottom, amendatory instruction 2.d should read:

■ d. Under ''Chapter 23—Control of Emissions from Specific Industries,'' remove the heading ''Subchapter D. Emission Standards for the Nitric Acid Industry,'' and the entries ''Section 2307.C.1.a,'' and ''Section 2307.C.2.a.''

[FR Doc. C1–2022–21248 Filed 12–15–22; 8:45 am]

BILLING CODE 0099–10–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0568; FRL–10484–01–OCSPP]

Propyzamide; Extension of Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the herbicide propyzamide in or on cranberry at 1 part per million (ppm) for an additional 3-year period. This tolerance will expire and is revoked on December 31, 2025. This action is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cranberry. In addition, the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA.

DATES: This regulation is effective December 16, 2022. Objections and requests for hearings must be received on or before February 14, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0568, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 506–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0568 in the subject line on the first page of your submission. All requests must be in writing and must be received by the Hearing Clerk on or before February 14, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0568, by one of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about

dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of November 12, 2019 (84 FR 60937) (FRL–10000–50), which announced that on its own initiative under FFDCA section 408, 21 U.S.C. 346a, it established a time-limited tolerance for the residues of propyzamide in or on cranberry at 1 ppm, with an expiration date of December 31, 2022. EPA established the tolerance because FFDCA section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of propyzamide on cranberry for this year's growing season due to heavy infestations in cranberry bogs of the parasitic weed, dodder, which is not adequately controlled with available alternatives. Without a suitable pesticide control, dodder infestations were expected to cause serious damage to the cranberry crops resulting in significant economic losses. After having reviewed the submission, EPA concurred that emergency conditions exist and authorized the use of propyzamide on cranberry for control of dodder in Massachusetts under FIFRA section 18.

EPA assessed the potential risks presented by residues of propyzamide in or on cranberry. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2) and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of November 12, 2019 (84 FR 60937) (FRL–10000–50). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of FFDCA section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 3-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2025, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cranberry after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The Codex has not established any MRLs for propyzamide.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance under FFDCA section 408(e) and 408(1)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(1)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 8, 2022.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.317, revise the table in paragraph (b) to read as follows:

§ 180.317 Propyzamide; tolerances for residues.

* * * * *

(b) * * *

TABLE 2 TO PARAGRAPH (b)

Commodity	Parts per million	Expiration/ revocation date
Cranberry	1	12/31/2025

* * * * *

[FR Doc. 2022–27105 Filed 12–15–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0624; FRL–10296–01–OCSPP]

Tetraniliprole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of tetraniliprole in or on the grain, cereal, group 15, except rice; and grain, cereal, forage, fodder and straw, group 16, except field corn, popcorn, and sweet corn. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 16, 2022. Objections and requests for hearings must be received on or before February 14, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0624, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Acting Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Office of the Federal Register's e-CFR site at the *https://www.ecfr.gov/current/title-40*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2021–0624 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before February 14, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2021–0624, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of October 21, 2021 (86 FR 58239) (FRL–8792–04–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP #1F8930) by Bayer CropScience LP, 800 N Lindbergh Blvd., St. Louis, MO 63167. The petition requested to establish tolerances in 40 CFR part 180 for residues of the insecticide, tetraniliprole [1-(3-chloro-2-pyridinyl)-*N*-[4-cyano-2-methyl-6-[(methylamino)carbonyl]phenyl]-3-[[5-(trifluoromethyl)-2*H*-tetrazol-2-yl]methyl]-1*H*-pyrazole-5-carboxamide], in or on Crop Group 15; cereal grains, except rice at 0.01 parts per million (ppm); and Crop Group 16; forage, fodder, and straw of cereal grains group, except field corn, popcorn, and sweet

corn at 0.1 ppm. That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov*. No comments were received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified therein, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for tetraniliprole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with tetraniliprole follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemaking of the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemaking, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

On February 24, 2021, EPA published a tolerance rulemaking for tetraniliprole in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to tetraniliprole and established tolerances for residues of that pesticide chemical. EPA is incorporating previously published sections from the February 24, 2021, rulemaking as described further in this rulemaking, as they remain unchanged.

A. Toxicological Profile

For a discussion of the Toxicological Profile of tetraniliprole, see Unit III.A. of the tetraniliprole tolerance rulemaking published in the **Federal Register** of February 24, 2021 (86 FR 11133) (FRL–10005–77).

B. Toxicological Points of Departure/Levels of Concern

Based on a thorough analysis of the toxicology database of tetraniliprole, the Agency has determined that a qualitative risk assessment is more appropriate for tetraniliprole than a quantitative risk assessment. For more details, please reference Unit III.B. of the February 24, 2021, rulemaking.

C. Exposure Assessment

There is potential for exposure to tetraniliprole via food and feed based on the proposed uses. However, no adverse effects were observed in the submitted toxicological studies for tetraniliprole regardless of the route of exposure. Thus, no quantitative dietary exposure assessments are needed for EPA to conclude with reasonable certainty that dietary exposures to tetraniliprole do not pose a significant human health risk.

Drinking water and non-occupational exposures. There are no residues of toxicological concern expected in drinking water from the use of tetraniliprole. Thus, no drinking water exposure assessments are needed for the Agency to conclude with reasonable certainty that drinking water exposures to tetraniliprole do not pose a significant human health risk.

Tetraniliprole is registered for use on golf course turf and sports fields that could result in residential post-application exposures. However, no adverse effects were observed in the submitted toxicological studies for tetraniliprole regardless of the route of exposure; therefore, a quantitative residential post-application exposure assessment was not conducted. Thus, no residential exposure assessments are needed for the Agency to conclude with reasonable certainty that residential exposures to tetraniliprole do not pose a significant human health risk.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to tetraniliprole and any other substances. Tetraniliprole does not also appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that tetraniliprole has a common mechanism of toxicity with other substances.

D. Safety Factor for Infants and Children

EPA has not identified any toxicological endpoints of concern associated with any threshold effects and conducted a qualitative assessment. That qualitative assessment showed no risk of concern for infants and children and does not use safety factors for assessing risk, and no additional safety factor is needed for assessing risk to infants and children. EPA has also evaluated the available data and concluded that there are no residual uncertainties concerning the potential risks to infants and children that would impact its conclusions about threshold effects.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

No adverse effects were observed in the submitted toxicological studies at doses relevant to human health pesticide risk assessment for tetraniliprole regardless of the route of exposure. Effects observed in the data base (*e.g.,* decreased body weight) were both marginal, and only seen at doses not expected to occur daily or over an extended period.

Based on a lack of toxicity at exposure levels expected from approved application rates and an expectation that aggregate exposures to residues of tetraniliprole will not reach the levels

required to cause any adverse effects, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to tetraniliprole residues. More detailed information on this action can be found in the document titled ''Tetraniliprole: Human Health Risk Assessment for Registration for Uses on Cereal Grains, Except Rice, Crop Group 15; and Forage, Fodder, and Straw of Cereal Grains Group, except Field Corn, Popcorn, and Sweet Corn Crop Group 16'' in docket ID EPA–HQ–OPP–2021–0624.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the February 24, 2021, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

There are no Codex MRLs for tetraniliprole on the commodities covered in this document.

V. Conclusion

Therefore, tolerances are established for residues of tetraniliprole in or on grain, cereal, forage, fodder and straw, group 16, except field corn, popcorn and sweet corn at 0.1 ppm; and grain, cereal, group 15, except rice at 0.01 ppm. In addition, EPA is removing the tolerance for indirect or inadvertent residues of tetraniliprole in or on grain, cereal, forage, fodder and straw, group 16, except field corn, popcorn and sweet corn at 0.1 ppm, which is no longer needed with the changes described above.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides, and pests, Reporting and recordkeeping requirements.

Dated: December 7, 2022.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Amend § 180.709 by:

■ a. In Table 1 to paraph (a) adding in alphabetical order entries for ''Grain, cereal, forage, fodder and straw, group 16, except field corn, popcorn and sweet corn''; and ''Grain, cereal, group 15, except rice''; and

■ b. In Table 2 to paragraph (d) by removing the entry ''Grain, cereal, forage, fodder and straw, group 16, except field corn, popcorn and sweet corn''.

The additions read as follows:

§ 180.709 Tetraniliprole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * * * *	
Grain, cereal, forage, fodder and straw, group 16, except field corn, popcorn and sweet corn	0.1

Commodity	Parts per million
Grain, cereal, group 15, except rice	0.01
* * * * * * *	

* * * * *

[FR Doc. 2022–26994 Filed 12–15–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–195, 11–10, FCC 22–93, FR ID 118659]

Establishing the Digital Opportunity Data Collection, Modernizing the Form 477 Data Collection

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission sunsets the collection of broadband deployment data through Form 477 effective upon publication in the **Federal Register**. The Commission will continue to collect broadband and voice subscription data using Form 477 but filers will submit the data through the Broadband Data Collection (BDC) system. The Commission also delegates authority to various Commission staff to take other actions related to the collection and use of Form 477 data.

DATES: Effective December 16, 2022.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Holloway at *William.Holloway@fcc.gov,* (202) 418–2334, Broadband Policy Task Force.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Order, FCC 22–93, in WC Docket Nos. 19–195, 11–10, released on Dec. 9, 2022. The full text of this document is available for public inspection and can be downloaded at *https://www.fcc.gov/document/fcc-sunsets-form-477-broadband-data-collection.*

People With Disabilities. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Paperwork Reduction Act. This document does not contain new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, as the requirements adopted in this document are statutorily exempted from the requirements of the PRA. As a result, the document will not be submitted to OMB for review under Section 3507(d) of the PRA.

Congressional Review Act. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that these rules are ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this document to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

Synopsis

In this document, the Commission takes another step in its efforts to implement the Broadband Data Collection (BDC) and modernize the FCC Form 477 data program. Consistent with the Broadband Deployment Accuracy and Technological Availability Act (the Broadband DATA Act or the Act) and the *Third Report and Order* (85 FR 18124, April 7, 2021), the Commission sunsets the collection of broadband deployment data through FCC Form 477 effective upon publication of this document in the **Federal Register**.

I. Discussion

1. *Sunsetting the Collection of Broadband Deployment Data through Form 477.* In this document, we sunset the collection of broadband deployment data through Form 477 effective upon publication of this document in the **Federal Register**. The Commission sought comment on sunsetting the Form 477 broadband deployment data collection in 2019 and again in 2020, and indicated that it expected the new broadband data collection being developed would largely displace the Form 477 process, particularly with respect to the collection of more precise deployment data.

2. Since the *2019 Order and Second Further Notice* (84 FR 43705, Sept. 23, 2019) and the *Second Report and Order and Third Further Notice* (85 FR 50886, Aug. 18, 2020), we have made significant efforts to improve the quality of the broadband deployment data it collects. The Broadband DATA Act was enacted in 2020 and required the Commission to take steps to develop more granular broadband maps. The Commission has implemented the Act by adopting orders establishing the BDC and requiring broadband providers to file broadband availability data based on standardized and precise parameters, developing the Fabric as a common dataset of all locations where fixed broadband services can be installed, and establishing processes for the verification of data submitted by filers and for members of the public and other entities to challenge the accuracy of providers' data. To implement these processes, we have designed, developed, and launched the necessary information technology systems to support the BDC, including a new filing interface for BDC data, a BDC help center to provide technical assistance, and online video tutorials and webinars explaining, among other things, the BDC availability data and challenge submission processes. Based on this effort, the first broadband data collection under the BDC was launched on June 30, 2022 and, on September 1, 2022, the first filing window for the BDC closed. The Federal Communications Commission (FCC or Commission) subsequently published the new data on November 18, 2022. At the same time, broadband providers were required to submit Form 477 data as of June 30, 2022 in the Form 477 filing interface which was also due no later than September 1, 2022.

3. We find that it is now appropriate to sunset the collection of broadband deployment data through Form 477. We have made significant progress in implementing the BDC including the completion of the first BDC collection of broadband availability data and resulting publication of updated maps and data. We therefore now have a process in place for collecting more precise location-specific data from fixed broadband service providers and using more uniform standards for mobile broadband providers than the processes and standards used for the Form 477 process. Having to file concurrent Form 477 data in addition to their BDC data imposes significant burdens on providers, and we find it is unnecessary

to have additional rounds of overlapping collections of BDC availability data and Form 477 deployment data. We disagree with those commenters who argue that a longer transition period is necessary to ensure that the BDC is well established and will provide useful data. Congress has provided funding and the Commission has implemented the complex technical systems necessary to support the BDC. In addition, we are confident, based on the detailed standards the Commission has established, and the newly released data, that we can now make available more granular and consistent data through the BDC and the new BDC maps. The BDC also incorporates verification and challenge processes that will help ensure that our broadband maps will improve over time based on input from various consumers, as well as state and Tribal governments and other stakeholders. We find that continuing the parallel collection of broadband deployment data through Form 477 based on parameters that we know lack sufficient detail is no longer necessary to support our objective of developing a more precise picture of broadband availability across the country. Sunsetting the collection of broadband deployment data through Form 477 will reduce burdens on providers by eliminating the need for concurrent filings in both the Form 477 and BDC systems. By removing the need to separately file deployment data in the Form 477 system, sunsetting the collection will also enable providers to devote more resources to the processes established to improve BDC data. In addition, sunsetting the collection of Form 477 deployment data will help ensure efficient use of Commission resources by allowing Commission staff to focus their analysis on the broadband deployment data submitted pursuant to the rules and processes required under the BDC. We also disagree with commenters who expressed support for maintaining the Form 477 census-based broadband deployment data collection. These comments were filed prior to the passage of the Broadband DATA Act, and we find that the standards and processes that we have adopted to implement the requirements of the Act will ensure that we collect and make available to the public more useful broadband availability data than the data previously available through Form 477.

4. Although we sunset the collection of Form 477 broadband deployment data, providers must continue to submit the subscription data required under Form 477. Going forward, however, the BDC system, rather than the Form 477 filing platform, will be used for the submission of both the subscription data collected for Form 477 and the availability data collected for the BDC. Therefore, beginning with data as of December 31, 2022, providers are required to submit the following data using the BDC filing system: fixed and mobile broadband and voice Form 477 subscription data, fixed and mobile BDC broadband availability data, BDC mobile voice availability data. The Form 477 filing system will no longer be used to collect new Form 477 submissions, and will remain open only for filers to make corrections to existing Form 477 filings for data as of June 30, 2022 and earlier. The Form 477 instructions will be updated to reflect the changes we adopt today.

5. *Other Matters.* We recognize that the Commission currently relies upon information from its Form 477 data collection in other contexts, including, among other things, to assess the deployment of broadband services and the state of competition in local telecommunications services. We therefore delegate certain additional responsibilities related to transitioning away from reliance on Form 477 deployment data for other uses and purposes within the Commission. We delegate authority and direct the Wireless Telecommunications Bureau (WTB) and the Office of Economics and Analytics (OEA) to provide instructions to mobile providers that participate in the Alaska Plan on how to submit coverage data after the sunsetting of the Form 477 broadband deployment data collection, including whether to use the BDC filing system for submission of data currently submitted using the Form 477 filing system that are specific to Alaska. We delegate authority and direct the Wireline Competition Bureau (WCB) to provide instructions to providers that participate in either the Bringing Puerto Rico Together Fund or the Connect USVI Fund on how to submit coverage data that are specific to Puerto Rico and the U.S. Virgin Islands to comply with the requirements of those funding mechanisms. For Business Data Services (BDS, also formerly known as Special Access services), we delegate to WCB and OEA the authority to conduct a rulemaking to determine the best way to implement the required competitive market tests using BDC instead of Form 477 data. Consistent with existing delegations, we delegate to WCB authority to develop broadband deployment obligations for Connect America Fund Broadband Loop Support recipients pursuant to § 54.308(a)(2), which currently specifies use of Form 477 data for certain calculations. This rulemaking authority is limited to the modification of existing rules and adoption of new rules as needed to facilitate the transition from the use of Form 477 data to the use of the BDC to conduct the triennial competitive market tests beginning with the 2026 triennial update. We also delegate additional responsibilities to WCB, WTB, the International Bureau (IB), and OEA as may be necessary related to the collection and use of Form 477 deployment data for other similar such uses and purposes within the Commission.

II. Final Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *2019 Order and Second Further Notice* released in August 2019 and the *Second Report and Order and Third Further Notice* released in July 2020 in this proceeding. The Commission sought written public comment on the proposals in the *Second Further Notice* and *Third Further Notice* including comments on the IRFA. No comments were filed addressing the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

7. The document continues the Commission's efforts to implement the Broadband Data Collection (BDC) and modernize the FCC Form 477 (Form 477) data program. Consistent with the Broadband Deployment Accuracy and Technological Availability Act (Broadband DATA Act) and the *Third Report and Order,* the document sunsets the collection of broadband deployment data through Form 477. The document also delegates authority to various Commission staff to take other actions related to the collection and use of Form 477 data involving the Alaska Plan, the Bringing Together Puerto Rico Fund or Connect USVI Fund and for Business Data Services (BDS, formerly known as Special Access services).

8. The sunset of the collection of broadband data through Form 477 follows the Commission's inquiries in this proceeding on the conditions under which it would be appropriate to sunset this data collection and the appropriate timetable to implement the sunset, since the Commission expected the Form 477 process, at least with respect to the collection of granular deployment data to be displaced by the BDC. The Commission sought comment in the

2019 Order and Second Further Notice on discontinuing the broadband deployment data collection that is part of Form 477 at some point after the new collection has been established; the conditions and timetable for discontinuing the collection of broadband deployment data under Form 477 for both the mobile and fixed collections and whether there were other portions of the Form 477 collection that should be sunset.

9. In the *Second Report and Order and Third Further Notice,* the Commission created broadband availability reporting requirements for fixed and mobile broadband service providers and proposed to ''continue the current census-based deployment data collection under Form 477 for at least one reporting cycle after the new granular reporting collection commences.'' The Commission sought comment on ''sunsetting the census-block broadband deployment reporting in the FCC Form 477 and the timing of doing so.'' Thereafter, in the *Third Report and Order,* the Commission deferred the sunsetting of the Form 477 broadband deployment data collection to a later, to-be-determined date after further refining the availability data collection requirements, promulgating a framework for the challenge process requirements set out in the Broadband DATA Act and establishing the requirements for the collection and submission of verified availability data from governmental entities and other third parties.

10. On February 22, 2022, the Commission's Broadband Data Task Force (Task Force) and OEA announced the filing dates for the initial BDC availability data collection (coverage data as of June 30, 2022, must have been submitted no later than September 1, 2022). This notice of the initial filing date for the BDC did not alter the obligation of service providers to file the semiannual Form 477 filing. All service providers were still required to submit these data under Form 477. In light of the significant progress that the Commission has made in implementing the BDC and the conclusion of the first data collection into the BDC system, the Commission determined that it is now appropriate to sunset the collection of broadband deployment data through Form 477.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

11. There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFAs.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

12. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

14. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

15. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

16. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

Broadband internet Access Service Providers

18. *Wired Broadband internet Access Service Providers (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

19. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of

providers that would qualify as small under the SBA's small business size standard. However, in light of the general data on fixed technology service providers in the Commission's *2020 Communications Marketplace Report,* we believe that the majority of wireline internet access service providers can be considered small entities.

20. *Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs).* Providers of wireless broadband internet access service include fixed and mobile wireless providers. The Commission defines a WISP as ''[a] company that provides end-users with wireless access to the internet[.]'' Wireless service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission's rules. Neither the SBA nor the Commission have developed a size standard specifically applicable to Wireless Broadband internet Access Service Providers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees.

21. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 1,209 fixed wireless and 71 mobile wireless providers of connections over 200 kbps in at least one direction. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA's small business size standard. However, based on data in the Commission's *2020 Communications Marketplace Report* on the small number of large mobile wireless nationwide and regional facilities-based providers, the dozens of small regional facilities-based providers and the number of wireless mobile virtual network providers in general, as well as on terrestrial fixed wireless broadband providers in general, we believe that the majority of wireless internet access service providers can be considered small entities.

Wireline Providers

22. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

23. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

24. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

25. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

26. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of

December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

27. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

28. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 32 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 32 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

29. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

30. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (*e.g.,* dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

Wireless Providers—Fixed and Mobile

31. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

32. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

33. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.

34. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers,

unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

35. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

36. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a ''small business'' is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

37. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

38. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with a SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 407 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 333 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

39. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

40. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

41. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

42. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 119 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 119 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.

43. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of

licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

44. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

45. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding $15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

46. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

47. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

48. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

49. *700 MHz Guard Band Licensees.* The 700 MHz Guard Band encompasses spectrum in 746–747/776–777 MHz and 762–764/792–794 MHz frequency bands. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

50. According to Commission data as of December 2021, there were approximately 224 active 700 MHz Guard Band licenses. The Commission's small business size standards with respect to 700 MHz Guard Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Pursuant to these definitions, five winning bidders claiming one of the small business status classifications won 26 licenses, and one winning bidder claiming small business won two licenses. None of the winning bidders claiming a small business status classification in these 700 MHz Guard Band license auctions had an active license as of December 2021.

51. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses

currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

52. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.,* voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

53. The closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

54. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined ''small business'' as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $40 million for the preceding three years, and a ''very small business'' as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding $15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

55. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

56. *Advanced Wireless Services (AWS)—(1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3);* 2000–2020 MHz and 2180–2200 MHz (AWS–4)*).* Spectrum is made available and licensed in these bands for the provision of various wireless communications services. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

57. According to Commission data as December 2021, there were approximately 4,472 active AWS licenses. The Commission's small business size standards with respect to AWS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of AWS licenses, the Commission defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. Pursuant to these definitions, 57 winning bidders claiming status as small or very small businesses won 215 of 1,087 licenses. In the most recent auction of AWS licenses 15 of 37 bidders qualifying for status as small or very small businesses won licenses.

58. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard

59. *3650–3700 MHz Band.* Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700 MHz band fall in the Wireless Telecommunications Carriers (*except* Satellite) industry with a SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

60. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

61. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and

broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (*except* Satellite) is the closest industry with a SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

62. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

63. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

64. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

65. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with a SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (*except* Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

66. According to Commission data as December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed $3 million and did not exceed $15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed $15 million and did not exceed $40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding $3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

67. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than $20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

Satellite Service Providers

68. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $38.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service

Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently using the SBA's small business size standard, a little more than of these providers can be considered small entities.

69. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

Cable Service Providers

70. Because section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

71. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (*e.g.,* limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than $41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than $25 million a year and 44 firms operated with revenue of $25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

72. *Cable Companies and Systems (Rate Regulation*). The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only seven have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

73. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only six cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

74. The document will reduce reporting, recordkeeping, and other compliance requirements on small entities. The document sunsets the collection of broadband deployment data through Form 477. Fixed and mobile broadband service providers who previously filed broadband deployment data through Form 477 will no longer be required to do so. Instead, providers will file their broadband availability data in the BDC system. By sunsetting the collection of broadband deployment data through Form 477 the document reduces the reporting requirements for small providers and does not require small providers to hire professionals to comply or impose any compliance costs. Providers will be required to report broadband deployment data only in the BDC filing system rather than in both the BDC system and through Form 477.

75. Although the documentsunsets the collection of broadband deployment data, small and other providers are still required to submit the subscription data required under Form 477. Additionally, because our decision to sunset the collection of broadband deployment data through Form 477 may impact other areas where the Commission currently uses information from the Form 477 data collection we have directed the Wireline Communications Bureau (WCB), the Wireless Telecommunications Bureau (WTB), the International Bureau, and the Office of Economic Analysis (OEA) to address matters related to the collection and use of Form 477 deployment data for other uses and purposes within the Commission.

76. Small and other mobile providers that participate in the Alaska Plan will be informed by WTB and OEA how to submit coverage data after the sunsetting of the Form 477 broadband deployment data collection, including whether to use the BDC filing system for submission of data currently submitted using the Form 477 filing system that are specific to Alaska. WCB will provide small and other providers that participate in either the Bringing Puerto Rico Together Fund or the Connect USVI Fund instructions on how to submit coverage data that are specific to Puerto Rico and the U.S. Virgin Islands to comply with the requirements of those funding mechanisms.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

77. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities. . .including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.''

78. The Commission considered the comments in the record regarding the sunset of the Form 477 broadband deployment data collection and is mindful of the time and resources that small entities incur to file broadband data with the Commission. The document concludes that sunsetting the Form 477 deployment data collection at this time will reduce burdens on small and other providers, by streamlining broadband reporting requirements so that providers have to file broadband deployment only in the BDC system rather than in both the BDC system and through Form 477.

79. In reaching our decision, we specifically considered sunsetting the collection of broadband deployment data through Form 477, (1) once a new collection was implemented; (2) after a period of transition following a Commission determination that there are sufficient resources to implement a new collection and that the new broadband data collection produced reliable data; (3) one year after the BDC commenced; (4) after one reporting cycle of the BDC; and (5) after the BDC requirements were in place. We also considered comments advocating maintaining the Form 477 census-block broadband deployment data collection going forward. The Commission rejected proposals and alternative approaches suggested by commenters that would have required a longer transition period during which broadband providers would have been subject to the dual collection of deployment data. Limiting the duration of the transition period will reduce the burden and economic impact on small providers that would have been associated with maintaining the dual reporting obligation for a longer period of time.

Report to Congress

80. The Commission will send a copy of the document, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the document, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the document and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

81. Accordingly, *it is ordered* that, pursuant to sections 1–4, 201, 301, 303, 319, 332, 642, and 1702 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151–154, 201, 301, 303, 319, 332, 642, 646, 1302, 1702, this *Order is adopted*.

82. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

83. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Order,* including the Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

84. *It is further ordered* that the *Order shall be* effective upon publication in the **Federal Register**.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–27373 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[CG Docket No. 22–2; FCC 22–86; FR ID 117396]

Empowering Broadband Consumers Through Transparency

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) adopts rules as required by the Infrastructure Investment and Jobs Act (Infrastructure Act) to help consumers comparison shop among broadband services. Specifically, the rules require broadband internet service providers (ISPs) to display, at the point of sale, a broadband consumer label containing critical information about the provider's service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and whether the provider participates in the Affordable Connectivity Program (ACP).

DATES:

Effective date: This final rule is effective January 17, 2023.

Compliance date: Compliance with the amendments to 47 CFR 8.1(a)(1) through (6) of the Commission's rules are delayed indefinitely. The Commission will publish a document in the **Federal Register** announcing the compliance dates.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Erica H. McMahon, *Erica.McMahon@fcc.gov* or (202) 418–0346, of the Consumer and Governmental Affairs Bureau, Consumer Policy Division. For information regarding the Paperwork Reduction Act (PRA) information collection requirements, contact Cathy Williams, Office of Managing Director, at (202) 418–2918, or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 22–86, CG Docket No. 22–2, adopted on November 14, 2022, and released on November 17, 2022. The full text of this document is available online at *https://www.fcc.gov/document/fcc-requires-broadband-providers-display-labels-help-consumers*. To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Final Paperwork Reduction Act of 1995 Analysis

This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might further

reduce the information collection burden for small business concerns with fewer than 25 employees, and the Commission received no comment.

Congressional Review Act

The Commission sent a copy of document FCC 22–86 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Synopsis

1. In this final rule, the Commission adopts a new broadband label to help consumers comparison shop among broadband services, thereby implementing section 60504 of the Infrastructure Act. *See* Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, section 60504(a) (2021). Specifically, the Commission requires ISPs to display, at the point of sale, a broadband consumer label containing critical information about the provider's service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and whether the provider participates in the ACP. The Commission requires that ISPs display the label for each stand-alone broadband internet access service they currently offer for purchase, and that the label link to other important information such as network management practices, privacy policies, and other educational materials.

2. Consistent with the Infrastructure Act, the label the Commission adopts for fixed and mobile broadband internet access service is similar to the two labels the Commission approved in 2016, with certain modifications. As discussed in the *Empowering Broadband Consumers Through Transparency Notice of Proposed Rulemaking (NPRM),* 87 FR 6827 (Feb. 7, 2022) (*NPRM*), access to clear, easy-to-understand, and accurate information about broadband internet access services helps consumers make informed choices and is central to a well-functioning marketplace that encourages competition, innovation, low prices, and high-quality service. Commenters agree that a label associated with stand-alone broadband service will provide important information to consumers when selecting a provider and plan.

3. In addition to label content, the Commission adopts requirements for the label's format and display location to ensure consumers can make side-by-side comparisons of various service offerings from an individual provider or from alternative providers—something essential for making informed decisions. In this way, the label resembles the well-known nutrition labels that consumers have come to rely on when shopping for food products. The Commission also requires that the label be accessible for people with disabilities and for non-English speakers. Finally, the Commission enables third parties to easily analyze information and help consumers with their purchase decisions by requiring providers to make the label content available in a machine-readable format.

4. Below is the label template the Commission requires ISPs to display at the point of sale. This label establishes the formatting and content of all requirements adopted in this final rule. The red text in the label template is explanatory and simply instructs providers as to the content they must provide in the label. The Commission expects that, once the provider completes the required fields, it will post, or otherwise provide, the entire label in black text. Accessible materials, including the label template contained in this final rule, will be available on the Commission's website.

BILLING CODE 6712–01–P

Broadband Facts

Provider Name

Service Plan Name and/or Speed Tier

Fixed or Mobile Broadband Consumer Disclosure

Monthly Price [$]

This Monthly Price [is/is not] an introductory rate. [if introductory rate is applicable, identify length of introductory period and the rate that will apply after introductory period concludes]

This Monthly Price [does not] require[s] a [x year/x month] contract. [only required if applicable; if so, provide link to terms of contract]

Additional Charges & Terms

Provider Monthly Fees [Itemize each fee]	[$]
One-time Fees at the Time of Purchase [Itemize each fee]	[$]
Early Termination Fee	[$]
Government Taxes	Varies by Location

Discounts & Bundles

Click Here for available billing discounts and pricing options for broadband service bundled with other services like video, phone, and wireless service, and use of your own equipment like modems and routers. [Any links to such discounts and pricing options on the provider's website must be provided in this section.]

Affordable Connectivity Program (ACP)

The ACP is a government program to help lower the monthly cost of internet service. To learn more about the ACP, including to find out whether you qualify, visit affordableconnectivity.gov.

Participates in the ACP **[Yes/No]**

Speeds Provided with Plan

Typical Download Speed	[] Mbps
Typical Upload Speed	[] Mbps
Typical Latency	[] ms

Data Included with Monthly Price	[] GB
Charges for Additional Data Usage	[$/GB]

Network Management	**Read our Policy**
Privacy	**Read our Policy**

Customer Support

Contact Us: example.com/support / (555) 555-5555

Learn more about the terms used on this label by visiting the Federal Communications Commission's Consumer Resource Center.

fcc.gov/consumer

[Unique Plan Identifier Ex. F0005937974123ABC456EMC789]

BILLING CODE 6712–01–C

A. Broadband Service Subject to the Label Requirement

5. At the outset, the Commission makes clear that the label requirement applies to ''broadband internet access service plans'' because the Infrastructure Act directs the Commission to require the display of labels that disclose information regarding ''broadband internet access service plans.'' For purposes of section 60504 of the Infrastructure Act, ''broadband internet access service'' is defined as having the meaning specified in § 8.1(b) of the Commission's rules, ''or any successor regulation.'' Broadband internet access service is currently defined in § 8.1(b) of the Commission's rules as ''a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.'' *See* 47 CFR 8.1(b). The definition also ''encompasses any service that the Commission finds to be providing a functional equivalent of the service'' defined in the rules or that is used to evade the protections set forth in the rules. No commenter proposed modifying that definition for purposes of these broadband label rules.

6. The Commission agrees with INCOMPAS that enterprise service offerings or special access services are not ''mass-market retail services,'' and therefore, not covered by the label requirement. INCOMPAS asks the Commission to clarify that ''providers or resellers whose customers are larger businesses or governments—entities that typically negotiate the terms of their service contracts''—should not be required to display the labels. INCOMPAS argues that ''it would be extremely difficult, confusing, and unnecessary for the wholesaler or the reseller to create a label for hundreds of different plans if they are not providing a standardized, mass-market service to residential and business customers.'' INCOMPAS, however, does not point to any specific evidence that it would be difficult for wholesalers and resellers to create labels for their larger customers or that the labels would be confusing for the customers themselves. Nevertheless, in both the *2015 Open Internet Order,* 80 FR 19737 (Apr. 13, 2015) and the *2017 Restoring Internet Freedom Order,* 83 FR 7852 (Feb. 22, 2018), the Commission determined that ''mass-market retail services'' do not include enterprise service offerings or special access services, which are typically offered to larger organizations through customized or individually negotiated arrangements. Nothing has changed to alter the Commission's view regarding service offerings to large customers (or other entities) that are not mass-market retail services; these services are not covered by the disclosure requirements here.

7. The Commission disagrees with INCOMPAS that the Commission should interpret the definition in § 8.1(b) of the Commission's rules to exclude ISPs participating in the E-Rate and Rural Health Care (RHC) programs from the label requirements simply because the labels might be viewed as ''redundant'' to the competitive bidding process, during which time customers define the services that they need and providers put forward bids. Thus, the Commission requires E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC competitive bidding processes, whether or not such provider defines their offered service as an ''enterprise'' service.

8. First, the Commission sees nothing in the text of the Infrastructure Act to suggest Congress intended that the Commission exclude services subject to the E-Rate and RHC bidding processes (or the providers of those services), and the regulatory history suggests the contrary. The Infrastructure Act expressly defines ''broadband internet access service'' by reference to the definition in § 8.1(b) of the Commission's rules, and the Commission previously has interpreted that rule to include E-Rate and RHC services. Indeed, the Infrastructure Act's label requirement drew upon the Commission's broadband label efforts associated with the *2015 Open internet Order,* and that prior broadband label effort relied on a definition of broadband internet access service from the *2015 Open internet Order,* that included E-Rate and RHC services within the universe of mass-market retail services encompassed by that definition. The Commission finds it reasonable to interpret ''broadband internet access service'' as currently defined in § 8.1(b) of the Commission's rules in light of that historical understanding that formed the regulatory backdrop for Congress' action here.

9. Second, as a policy matter, the Commission sees no reason why the bidding process means that the E-Rate and RHC consumers would not benefit from the label. Most relevant to the purposes of the Infrastructure Act, the label might help schools, libraries, and health care providers to compare the offers being made in the competitive bidding process with other alternatives in the marketplace. Further, the labels could provide benefits in terms of enforcing E-Rate or RHC rules, such as requirements to offer rates and terms that are comparable to the best available offer to non-Universal Service Fund (USF) recipients (*See* 47 U.S.C. 254(h)(1)(B)), or for purposes of making comparisons between rural and urban rates, or the like.

10. Finally, the Commission clarifies (as it did in 2017) that, to the extent that coffee shops, bookstores, airlines, private end-user networks such as libraries and universities, and other businesses acquire broadband internet access service from an ISP to enable patrons to access the internet from their establishments, provision of such service by the premises operator is not itself broadband internet access service unless offered to patrons as a mass-market retail service, as the Commission defines it here. The Commission nevertheless has encouraged premises operators to disclose relevant restrictions on broadband service they make available to their patrons. Thus, these businesses need not create and display labels associated with those services.

B. Broadband Consumer Label (Fixed and Mobile)

11. The Commission adopts one label requiring the same information and in the same format for both fixed and mobile broadband service offerings. The content that commenters identify as most important to assist consumers in making informed decisions at the point of sale is the same whether consumers are shopping for fixed or mobile broadband service. Based on the record, the Commission concludes that two distinct labels are unnecessary and may confuse consumers and be more burdensome for providers to implement. Thus, all broadband internet access service providers are required to display the same label format as described below.

1. Content

a. Pricing

12. *Service Plan Name.* As with the 2016 labels (*See NPRM,* Fixed Broadband Consumer Disclosure Label From the 2016 Public Notice and Mobile Broadband Consumer Disclosure Label From the 2016 Public Notice), the Commission requires providers to identify the name of the service plan at

the top of the label. Broadband service providers generally offer many different plans with different rates, contract terms, speeds, and data allowances to meet customers' needs. For labels to be effective, consumers must be able to differentiate each plan a provider offers; only then can a consumer compare plans for that provider and across competing providers. The instruction in the 2016 fixed broadband label directed a provider to identify its plan by speed tier. While providers may continue to identify their plans by speed (*e.g.,* ''300 Mbps,'' ''500 Mbps''), they may also differentiate their plans using terminology of their choice (*e.g.,* ''Gigabit Connection,'' ''Performance Pro,'' or ''Blast internet''). Or, in the case of mobile broadband providers, ''4G'' or ''5G.'' Because the Commission requires providers to display critical information about each plan elsewhere on the label, including speed metrics, the plan itself need not be identified by speed tier. However, if a provider identifies the plan name by speed tier, the speed tier must be accurate and consistent with the speed metrics identified elsewhere in the label. The Commission believes this will minimize confusion by allowing consumers to more easily match the label to the associated advertised plan.

13. *Monthly Price.* Consistent with the 2016 labels, a provider must display on the label, at a minimum, the base monthly price for the stand-alone broadband service offering (*i.e.,* an offering that is not bundled with other services such as multichannel video or voice). We believe consumers are accustomed to seeing base monthly prices, without additional taxes and fees, when shopping for goods and services and thus, the presentation of the base price should enable easy comparison shopping.

14. The Commission disagrees with commenters that recommend ISPs aggregate the monthly price identified on the label with any other discretionary fees and government taxes—creating an ''all-in'' price. Although this approach may have some benefit, the Commission agrees with providers that it may be difficult to implement. For example, government taxes vary according to the consumer's geographic location. And a consumer's election to rent or purchase equipment may increase their upfront or monthly charges. Installation fees may vary according to the consumer's location and dwelling (*e.g.,* apartment, single-family home) as well. Thus, requiring display of a single, ''all-in'' price on a label may be difficult for ISPs and potentially misleading for consumers. Further, the Commission believes requiring that the labels clearly itemize any additional discretionary fees and state that additional government taxes will apply to each plan will better provide consumers with a complete understanding of their bill. A provider that opts to combine all of its monthly discretionary fees with its base monthly price may do so and list that total price. In that case, the provider need not separately itemize those fees in the label.

15. *Introductory Rates.* Based on the record, the Commission concludes that if a provider displays an introductory rate in the label, it must also display the rate that applies following the introductory period. This approach implements the Infrastructure Act's requirement that the label ''include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.'' *See* Infrastructure Act, section 60504(b)(1). As the label template shows, ISPs must prominently indicate whether the monthly price is an introductory offer along with the post-introductory period rate so that consumers can compare both. If the listed monthly price is non-promotional, the provider must simply state that it is a non-introductory rate, and no further disclosures are required on the label. The provider may still include a link to promotional pricing options elsewhere on its website. We agree with those commenters that argue that the label should also clearly disclose either the length of the introductory period or the date on which the introductory period will end.

16. The Commission rejects the assertion that providers should merely link to introductory rates. Relegating the introductory rate or post-introductory rate to a location elsewhere on the provider's website deprives the consumer of immediate access to information critical to the consumer's purchase decision. Providers may give more details about their non-introductory pricing through a link on the label, but the text of the statute indicates that Congress viewed introductory and post-introductory rates to be significant enough to disclose them on the label itself. Further, even if Congress had not provided that the label specify whether the offered price is an introductory rate, the Commission finds that, based on the record, this approach strikes the appropriate balance between ensuring that consumers have the information necessary to select the broadband services that meet their needs and avoiding a label that is unnecessarily complex and unclear for them.

17. *Billing and Other Discounts.* In the interest of simplicity and based on the record, at this time the Commission requires providers to display only the ''retail'' monthly broadband price, by which the Commission means the price a provider offers broadband to consumers before applying any discounts such as those for paperless billing, automatic payment (autopay), or any other discounts. The provider may instead link from the label to a web page explaining such discounts. Providers may also separately inform consumers about discounts as part of their marketing materials. The Commission's conclusion is consistent with most commenters' views that providers must be clear about the conditions for discounts. The Commission believes this approach will make the label a quick reference tool for consumers as they begin their broadband shopping experience.

18. Nevertheless, the Commission recognizes that the price that any one consumer will pay for broadband service is the product of many variables, including bundling, discounts, and location-specific taxes and that a principal goal of the label is to give consumers a reliable idea of what they will pay each month that incorporates these pricing variables, and does so in a way that is uniform among providers thus enabling easy comparison shopping. While the Commission lacks the record at this time on the best way to balance informing consumers about the potentially large number of pricing options available for any one service against overwhelming them with so many labels and pricing information to effectively render comparison shopping impossible, with the accompanying burden on providers of producing those labels, the Commission asks questions in the accompanying *Further Notice of Proposed Rulemaking* (*FNPRM*), published elsewhere in this issue of the **Federal Register**, on how the Commission can address that balance in the future.

19. *Contract Plans.* Similar to the Commission's approach to introductory rates, the Commission concludes that ISPs that offer a discount for consumers who commit to a contract term must display the length of that term on the label. The Commission's determination is consistent with the 2016 fixed broadband label that required providers to ''identify [the] length of available long-term contracts'' and to ''provide . . . [the] price of stand-alone broadband service available under each long-term contract option.''

20. The Commission believes it is critical that consumers know whether the price identified on the label requires the consumer to commit to service for a specified period of time and that if the consumer decides to switch to another provider or terminate service altogether, they may be subject to an early termination fee. No commenter disputes that information about contract terms is important to consumers making decisions about broadband service. As discussed below, the provider must also disclose any applicable early termination fees if the consumer cancels the service before the end of the contract.

21. *Bundled Plans.* In this final rule, the Commission requires providers to display a label for their standalone broadband services. In the E-Rate and RHC context, the label will be for the broadband internet access service submitted pursuant to the bidding process, regardless of whether such service is combined with other services. Consistent with the conclusion above, providers offering broadband internet access service bundled with other services may note that via a link in the ''click here'' section of the label where they describe other discounts. This approach is supported by commenters and will enable apples-to-apples comparisons of broadband internet access services. And providers are free to describe in their marketing materials the value of bundling, including the discounts associated with bundling various services. The Commission seeks comment in the accompanying *FNPRM* whether the Commission should, in the future, require labels for bundles that include broadband service.

22. *Additional Monthly Charges and One-Time Fees.* The label must display recurring monthly charges the provider imposes on top of the base price described above, along with any one-time fees the consumer must pay at the time of purchase.

23. First, under ''Additional Charges & Terms,'' providers must list all recurring monthly fees. These fees include all charges that providers impose at their discretion, *i.e.,* charges not mandated by a government. These discretionary charges include those the provider collects to recoup from consumers its costs associated with government programs but where the government has not mandated such collection, *e.g.,* USF contributions. Providers must give each fee a simple, accurate, easy-to-understand name, thus enabling consumers to understand which charges are part of the provider's rate structure, and which derive from government assessments or programs. Further, the requirement will allow consumers to more meaningfully compare providers' rates and service packages, and to make more informed decisions when purchasing broadband services. Providers must list fees such as monthly charges associated with regulatory programs and fees for the rental or leasing of modem and other network connection equipment. Other monthly charges that must be listed might include network access charges and USF charges. This list is not exhaustive.

24. Next, the ''Additional Charges & Terms'' section of the label must include the name and cost of each one-time fee assessed by the provider when the consumer signs up for service. This section will identify one-time fees such as a charge for purchasing a modem, gateway, or router; an activation fee; a deposit; an installation fee; or a charge for late payment. The provider must also identify any one-time fees the provider will impose if the customer cancels their broadband service before the end of a contract term (*e.g.,* an early termination fee) and provide a link to a full explanation of when such fee is triggered. If the provider's early termination fee is prorated based on the time the consumer cancels service, the provider may note that in the label, along with the maximum early termination fee, and include a link to more details about its early termination policies.

25. Finally, providers must disclose any charges or reductions in service for any data used in excess of the amount included in the plan. They must also identify the increment of additional data, *e.g.,* ''each additional 50GB,'' if applicable, and disclose any additional charges once the consumer exceeds the monthly data allowance. The Commission agrees with commenters that limits on data usage is critical information for consumers, along with any additional charges the provider may assess once a consumer exceeds such a cap. And the Commission has required disclosure of ''any data caps or allowances that are a part of the plan the consumer is purchasing, as well as the consequences of exceeding the cap or allowance (*e.g.,* additional charges, loss of service for the remainder of the billing cycle).'' However, as several commenters note, it is important to keep the label information as simple as possible for consumers and to require providers to comply by including links to their websites for more detailed information about data allowances. This would include providing information about any reductions in service or speeds once the consumer exceeds his data allowance.

26. *Taxes.* Consistent with the 2016 labels, the Commission requires ISPs to state under ''Additional Charges & Terms'' that taxes will apply and that they may vary depending on location. The 2016 labels included information about government taxes and fees. As discussed above, the Commission agrees with those commenters that argue that applicable taxes often vary according to the consumer's geographic location, so either including them in the total monthly price or itemizing them on the label may be difficult and potentially confusing for consumers. As consumers are accustomed to seeing prices without additional tax when shopping, the Commission believes this simple disclosure should be sufficient for consumers to comparison shop among providers and plans.

b. Performance Information

27. *Speed and Latency.* The Commission requires providers to disclose in the labels speed and latency metrics associated with their broadband services. Specifically, the Commission requires providers to display their typical upload and download speeds and typical latency, consistent with their current obligations under the existing transparency rule and the *2011 Advisory Guidance. See FCC Enforcement Bureau and Office of General Counsel Issue Advisory Guidance for Compliance with Open internet Transparency Rule,* DA 11–1148, released on June 30, 2011 (*2011 Advisory Guidance*).

28. The Commission agrees with many commenters that urge the Commission to include the same information in the label about speed and latency as appeared in the 2016 labels. USTelecom, for example, argues that the Commission ''should maintain its existing requirements for disclosing speed and latency'' and ''continue to permit fixed ISPs that participate in the Measuring Broadband America (MBA) program to disclose their speed and latency results as a sufficient barometer for performance customers can expect to experience.'' ACA Connects similarly states that there is no need for the Commission to revisit ''its well-established guidelines'' for reporting speeds and latency by fixed broadband providers. Commenters generally are not opposed to disclosing speed and latency metrics in the label; they do, however, offer a number of alternative ways to measure and display speed and latency information.

29. Download and upload speeds were included in the 2016 labels, and

no commenter argues for eliminating speed metrics from the label entirely. Further, speed has historically been one of the most important agreed-upon metrics for internet performance. As the Commission stated in its Eleventh MBA Report, ''[s]peed (both download and upload) performance continues to be one of the key metrics reported by the MBA,'' and ''remains the network performance metric of greatest interest to the consumer.'' *See Eleventh Measuring Broadband America, Fixed Broadband Report, Federal Communications Commission, Office of Engineering and Technology,* released on December 31, 2021 (Eleventh MBA Report), at *https://data.fcc.gov/download/measuring-broadband-america/2021/2021-Fixed-Measuring-Broadband-America-Report.pdf.*

30. Thus, for purposes of satisfying this requirement, fixed broadband service providers that choose to participate in the MBA program may disclose their results as a sufficient representation of the actual performance their customers can expect to experience for the relevant speed tier. Nothing in this final rule supplants any providers' existing obligations to provide data consistent with prior Commission guidance in complying with the current transparency rule. *See* 47 CFR 8.1 of the Commission's rules.

31. Fixed broadband service providers that do not participate may use the methodology from the MBA program to measure actual performance, or may disclose actual performance based on internal testing, consumer speed test data, or other data regarding network performance, including reliable, relevant data from third-party sources.

32. Mobile broadband service providers that have access to reliable information on network performance may disclose the results of their own or third-party testing. Those mobile broadband service providers that do not have reasonable access to such network performance data may disclose a Typical Speed Range (TSR) representing the range of speeds and latency that most of their consumers can expect, for each technology and service tier offered.

33. The Commission also agrees with those commenters that believe that low delay or latency is important to any application involving users interacting with each other, a device, or an application. Persons who utilize video conferencing—including persons with disabilities—may find latency metric information to be especially useful when selecting a broadband provider and plan. The Commission therefore requires providers to display their typical latency for that particular speed tier, either based on MBA methodology or other relevant testing data.

34. The Commission does not believe the current record supports commenters' proposed deviations from this approach, especially where such changes could mean potentially material changes to how providers track and collect speed and latency data. The Commission does, however, seek additional comment in the *FNPRM,* published elsewhere in this issue of the **Federal Register**, on alternative speed and latency measurements for the label going forward. And providers may give prospective customers more information about their broadband speeds and latency in their advertising materials or elsewhere on their websites.

35. *Peak Usage Data.* The Commission declines to adopt a requirement that providers tie their actual speed reporting to ''peak usage periods,'' as we proposed in the *NPRM* and as the Commission's Consumer Advisory Committee (CAC) recommended for the 2016 labels. First, the Commission agrees with AT&T that ''peak usage'' periods in mobile networks vary substantially from location to location, *e.g.,* downtown areas may have one peak usage time and residential areas another, and all of this may have changed during the COVID–19 pandemic. And, as AT&T has explained, it might be burdensome for mobile providers to determine what the peak usage times are for any given area because providers would have to undertake studies of every geographic area to determine peak usage times for each area, and then perform drive testing to collect sufficient information to develop average speed and latency during those times.

36. Nor does the record reflect that deviating from the current transparency rule requirements to require peak period disclosures for fixed providers outweigh the potential costs of gathering and reporting that data. The Commission nevertheless notes that fixed broadband participants in the MBA program who choose to use MBA results and providers who choose to use the MBA methodology are required to disclose data by speed tier showing mean upload and download speeds in megabits per second during the ''busy hour.'' Nothing here should be construed to alter MBA requirements. Some commenters offer various definitions of peak usage, and others recommend against using peak usage as a metric on the label. The Commission finds there is no consensus on how to define peak at this point and the Commission recognizes that today, with many working from home, peak usage hours may vary for fixed and mobile broadband. The Commission also finds that the use of a single label for both fixed and broadband, without the nuance of peak usage for one and not the other, promotes ease of understanding for consumers.

37. *Packet Loss.* The Commission declines, at this time, to require providers to include information on packet loss in the label. Packet loss is generally defined to mean occurrences when packets of data traveling over the internet fail to reach their intended destination. The 2016 labels instructed ISPs to provide the typical packet loss associated with the offered broadband service. In the *NPRM,* the Commission proposed to include packet loss information as part of the performance disclosures in the new broadband labels, although we also asked whether any information on the proposed label was no longer necessary to serve the goals of the Infrastructure Act. The *NPRM* noted that in 2016, OMB concluded that packet loss would not be a required performance metric for the mobile broadband label.

38. The vast majority of commenters observe that, today, consumers have little understanding of what packet loss involves and argue that such information should not be included in the label as it provides little benefit to the average consumer shopping for broadband service. The Commission agrees that, although this metric may provide useful information to certain consumers, packet loss is less important than upload and download speeds and latency, and may actually lead to more confusion for most consumers. The Commission therefore does not require packet loss measurements in the new label at this time. The Commission does, however, seek additional comment in the *FNPRM* about whether there are other service characteristics, beyond speed and latency, that ISPs should display on the label.

c. Network Management Practices

39. The Commission requires that ISPs include in the label a link to their network management practices. The 2016 labels required providers to disclose their ''application-specific network management practices'' and their ''subscriber-triggered network management practices'' with ''yes'' or ''no'' answers on the label, and to provide links to more details about such practices.

40. The Commission is not persuaded that the label should include detailed information about network management practices, specifically those related to blocking, throttling, and paid prioritization. The Commission agrees

with those commenters that contend such information may be confusing for the average consumer when shopping for broadband service while using a tool like a label, which is designed to enable simple comparisons of key information. The Commission disagrees with those commenters that maintain that the Commission should require more detailed network management disclosures on the label, and therefore declines at this time to add content to the label about network management practices such as tables that identify when a particular practice is triggered and the likely effect of the practice on network performance.

41. After reviewing the record, the Commission concludes that a link to an ISP's network management practices is sufficient and that any more detailed information in the label is unlikely to benefit consumers comparison shopping for broadband internet access service offerings. Including such information on the face of the label may overwhelm consumers during the purchasing process and might impose additional costs on providers. The Commission agrees that, at this time, requiring a link to the broadband service provider's website as a source for more information on its network management practices, rather than expanding the label to address network management practices in detail, best meets the needs of consumers and fulfills Congress' directive in requiring the Commission to mandate display of a label. Providers must, however, either include necessary information on their websites about blocking, throttling, and paid prioritization or transmit such information to the Commission to comply with the current transparency rule requirements. *See 2017 Restoring internet Freedom Order,* 83 FR 7852 (Feb. 22, 2018).

42. The Commission also seeks comment in the *FNPRM* on whether, in the future, the label should include more granular data about a provider's network management practices and additional specifics about how such information should be conveyed to the public in the label or the provider's website.

d. Affordable Connectivity Program

43. The Infrastructure Act recognizes that the Commission and participating providers, among other stakeholders, have an important role in promoting the ACP. For example, the Infrastructure Act requires providers to notify consumers about the existence of the ACP and how to enroll in the program ''when a customer subscribes to, or renews a subscription to, an internet service offering of a participating provider.'' *See* 47 U.S.C. 1752(b)(10)(A). To ensure that the Commission is using every tool available to promote the availability of the ACP, the Commission requires all providers to include a link in their labels to information about the ACP and to indicate whether the provider is participating in the ACP.

44. Many commenters believe the broadband label is an appropriate vehicle for educating potential broadband customers about the existence of, and eligibility for participation in, the ACP. The Commission agrees that including information about the ACP in the label will help increase awareness of the program's existence, further expanding the reach of information about the program to eligible consumers. This expanded outreach about the ACP to eligible consumers, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality can promote advances in diversity, equity, and inclusion. The Commission therefore concludes that, throughout the duration of the ACP, at a minimum, the label should highlight the ACP and provide a link to additional qualification requirements.

45. The Commission is cognizant of concerns raised by some commenters that including too much detail about the ACP in the label could overshadow the key information consumers need to make broadband service purchasing decisions. Yet the Commission also believes strongly that the ACP is a valuable program to help consumers afford the broadband they need for work, school, and healthcare, and that information about the ACP may be a relevant factor in a consumer's decision to purchase a particular broadband service. The Infrastructure Act does not require this information to be included on the label, but the Commission agrees with CTIA-The Wireless Association (CTIA) and other commenters that including a link in the broadband label to more detailed information about the ACP and how to qualify for the program is appropriate and sufficient.

46. Thus, each provider must disclose in its labels whether it participates in the ACP and include the following statement: ''The Affordable Connectivity Program (ACP) is a government program to help lower the monthly cost of internet service. To learn more about the ACP, including to find out whether you qualify, visit *www.affordableconnectivity.gov.*'' The text of the web address *www.affordableconnectivity.gov* must be an active link to the ACP web page, *www.affordableconnectivity.gov.* The Commission emphasizes that the requirements we establish in this final rule do not impact an ACP provider's obligation to comply with the Commission's ACP rules, including any requirements related to advertisement, promotion, and notification to subscribers of the ACP. *See* 47 CFR 54.1804 of the Commission's rules.

47. The Commission also recognizes that because the ACP has not been made permanent by Congress, the ACP may end when the appropriated funding is exhausted. Including language on the labels directing consumers to learn about the ACP in the event that the ACP has ended or is no longer accepting new enrollments could cause customer confusion and frustration. The Commission therefore directs the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau to ensure that any wind-down procedures for the ACP developed as directed by the *ACP Order,* FCC 22–87, adopted on November 15, 2022 and released on November 23, 2022, address the need for providers to remove or modify the ACP-specific language on the broadband label.

e. Privacy Policy

48. Consistent with the 2016 labels, the Commission requires providers to include a link in the label to the service provider's privacy policy on its website. The Commission concludes that a link to such a policy is appropriate and that more detailed information in the label would likely overwhelm consumers and not benefit them at the point of sale. The Commission agrees with those commenters opposed to including expansive privacy disclosures in the label and point to the limitations of a label to adequately disclose privacy information to consumers in a meaningful way. The Commission is persuaded that privacy policies are often complicated and that requiring providers to disclose granular, detailed information on privacy practices on the face of the label would likely make the label unwieldy.

49. The Commission nevertheless recognizes that privacy policies and practices, such as whether a provider discloses data to third parties, whether providers collect and retain data about consumers that may not be essential to providing the consumer with broadband service (*e.g.,* the websites the consumer visits), and whether customers can opt out of each data practice, are important. The Commission therefore requires providers to include a link in the label

to their privacy policies, but determine that such information is more accurately and completely explained elsewhere on the provider's website rather than in the limited space on the label. The Commission also believes that, without going beyond the scope of the charge given to us by Congress in section 60504 of the Infrastructure Act and considering in depth the type of privacy information that is most valuable to consumers at the point of sale for stand-alone broadband service and other services, it is premature to revise the 2016 labels' privacy disclosure.

50. The Commission does, however, seek additional comment on issues related to privacy disclosures in the *FNPRM,* published elsewhere in this issue of the **Federal Register**. A more informed record is essential to determining what, if any, additional privacy information should be included in the label. We also emphasize that providers must continue to comply with the Commission's current directives regarding privacy policy disclosures. *See 2017 Restoring Internet Freedom Order.*

f. Consumer Education/FCC Glossary

51. The Commission requires that providers include at the bottom of all broadband labels a link to the Commission's website, where the Consumer and Governmental Affairs Bureau (CGB) will post a web page with a glossary of terms used on the label. The 2016 labels included a link to the Commission's website with information about specific terms used on the labels and other relevant information about broadband service. No commenter opposed including such a link in the label to a ''glossary'' of relevant terms, and several commenters from both industry and consumer groups agree that it may be beneficial to have a glossary on our website.

52. The Commission agrees that a glossary would be helpful for both consumers and providers and therefore requires that the label include a link to the Commission's website, where such information will be maintained. The Commission directs CGB, in consultation with other relevant FCC bureaus and offices, to add content to the website, to update the page as necessary, and to ensure that the information is accessible and understandable for consumers. The Commission also directs CGB to make available on the website resources to guide the creation of a uniform label, including templates and other examples. The Commission believes such templates will reduce any burdens on providers, particularly smaller providers, of creating labels, and will facilitate their displaying them within the implementation timelines discussed below. CGB should complete work on the initial website no later than thirty days before the label display requirement becomes effective so that providers can include the appropriate FCC link in their labels and use the templates if desired.

53. Some commenters urge the Commission to require providers to explain in the label itself what broadband speeds consumers will need to perform certain tasks. The Commission concludes that requiring providers to display such information in the label is outside the scope of what the Infrastructure Act requires. Nevertheless, the Commission believes some providers currently do so and agrees that such information may be useful to certain consumers. Thus, the Commission will consider, as part of its consumer education materials, providing examples of what speeds of service are normally required for typical activities such as web surfing, streaming, messaging, and video conferencing to assist consumers in understanding broadband service offerings.

g. Additional Content

54. The Commission declines at this time to require providers to include additional content in the label. In the *NPRM,* the Commission asked whether there is additional content to consider, given changes in the broadband marketplace, that providers were not required to include in the 2016 labels. Several commenters suggest that the Commission include information about service reliability in the broadband label. INCOMPAS specifically asks that providers have the option to include in the label information about symmetrical speeds and guarantees of reliability. The City of New York supports including information on an ISP's network resiliency, the ability to substantially withstand disaster conditions, the prevalence and scope of service disruptions, and the time to restore service in areas affected by disruptions. The Commission declines to adopt additional requirements at this time because commenters did not identify a reliability metric that was uniformly applicable across ISPs or that was readily comprehensible for consumers. In the *FNPRM,* however, the Commission seeks comment on whether to include a reliability metric in the label that is uniformly applicable and easily comprehensible, and we seek comment on the details of its implementation.

2. Format of Labels

55. The Commission adopts the proposed format of the 2016 labels so that they resemble the well-known food nutrition label. In adopting the 2016 labels, the Commission consulted with the Consumer Financial Protection Bureau (CFPB) because of its expertise in consumer disclosures in the financial industry (*e.g.,* credit cards, mortgages, prepaid cards). The labels incorporated CFPB recommendations on typeface, font size, and ample white space. As those labels have shown, uniform formats best enable consumers to compare services and products. Commenters support this approach. As many note, requiring providers to display information about their service offerings in a uniform format will best assist consumers in comparing pricing, fees, performance characteristics, and data allowances across different providers.

56. The Commission thus disagrees with commenters that argue providers should be able to customize the label. The Commission believes such customization undermines the central function of the label—to facilitate comparison shopping between providers and services. Nor is the Commission persuaded by arguments that a standard format will be burdensome for providers. Commenters fail to specify the burdens on providers of following a standard format, making bare assertions along the lines that ''rigid design requirements for broadband labels may impede a provider's ability to communicate important information to its customers.''

57. This conclusion does not mean the Commission thinks the labels should be static. Government agencies such as the U.S. Food and Drug Administration (FDA) and U.S. Environmental Protection Agency (EPA) have adjusted their label formats over time to respond to consumer feedback and changing consumer needs. The FDA is seeking information from consumers about the online grocery shopping experience and how food nutrition information is presented online. The EPA has similarly redesigned its fuel economy labels over the years to reflect changes in how vehicles are purchased and changes in consumer driving experiences and preferences. The Commission therefore seeks comment in the *FNPRM* on whether to consider any updates to the label format to ensure that information about broadband service offerings is conveyed effectively.

58. *Machine-Readable Format.* The Commission requires providers to make the information included in the label

available to the public in machine-readable format. By ''machine readable,'' the Commission means providing ''data in a format that can be easily processed by a computer without human intervention while ensuring no semantic meaning is lost.'' *See* 44 U.S.C. 3502(18). Providers should make each label's information available by providing the information separately in a spreadsheet file format such as .csv. These files should be made available on a provider's website via a dedicated uniform resource locator (URL) that contains all of a provider's given labels. The Commission requires providers to publicize the URL with the label data in the transparency disclosures required under 47 CFR 8.1(a) of the Commission's rules. These machine-readable files must provide the same categories of information as those presented in each label, including the unique identifier described below. The Commission directs CGB, in consultation with other relevant bureaus, to make available on the Commission's website resources that may help providers satisfy the machine-readability requirement, such as sample machine-readable spreadsheet files. Further, given the importance of this requirement, the Commission will monitor providers' implementation of machine readability to ensure providers' implementation of this requirement is useful to third parties and the Commission in its data collection efforts.

59. Although section 60504 of the Infrastructure Act does not expressly address the format requirements for broadband labels, implementing broadband labels with a machine-readability requirement advances the statutory objective of providing consumers with sufficient key information needed to evaluate broadband internet access service plans in a manner that is available when they need it and most effective for them. The Commission agrees with commenters that making the label information machine readable will yield a number of benefits to consumers. For example, machine readability will enable third parties to more easily collect and aggregate data for the purpose of creating comparison-shopping tools for consumers. These tools may include browser add-ons or websites that compare plans offered by different providers. Making the information machine readable also helps ensure that the data third parties use is both accurate and up to date. Because providers often ''adjust . . . [their] business offerings,'' we believe it may be simpler for them to ''re-enter the new information and re-upload [their] labels'' in a machine-readable format.

60. Machine readability also promotes both competition as well as transparency and accountability. Consumers may use the data collected in this manner to compare typical speeds reported by subscribers versus those reported on a broadband label. And, as AARP explains, the generation of shopping tools like these helps promote ''digital equity'' for groups lacking the necessary expertise to parse what is often complicated language contained in service agreements. These tools can assist such groups, including older Americans, to more easily obtain the information they need to select the service plan that best meets their needs.

61. Further, requiring ISPs to post machine-readable label information will allow the Commission to more easily collect data about broadband markets. Information collected via machine-readable labels may also make monitoring for compliance with Commission rules and enforcement more efficient as well. A machine-readable label could, for instance, help determine if ''a provider has published [a] properly formatted label . . . online.''

62. While each of the foregoing benefits would be sufficient to persuade the Commission to adopt this requirement, the Commission further observes that a machine-readability requirement will make data more easily available for research as well. As New America's Open Technology Institute (OTI) explains, broadband affordability research that is reliant on manual review of existing provider advertising can be a ''time-consuming and laborious process that many organizations are unable to undertake.'' The Institute for Local Self-Reliance, which itself has ''been forced to abandon research projects because of the industry's information gaps,'' observes that the broadband consumer label provides ''an excellent opportunity to facilitate research efforts'' by ''allow[ing] researchers to aggregate data at a large scale and analyze this data.'' Such research can serve industry, policymakers, consumers, and advocacy groups by providing a clearer picture of the marketplace.

63. The record shows that these benefits can be achieved at a low cost to providers, with no commenters providing cost data to suggest otherwise. The Commission agrees with AARP that making the broadband consumer label data machine readable does not impose a high burden or require special technical expertise. The Commission finds ACA Connect's argument that such a requirement would ''tax the resources of small providers with limited in-house technical resources'' unpersuasive, as they fail to elaborate why or substantiate their claim with any evidence. Further, the Commission does not believe that publishing the label information in a spreadsheet file would impose a high technical burden. And as noted above, the Commission will offer resources to ease compliance with this requirement.

64. The Commission disagrees with commenters that argue that requiring the label to be machine readable creates difficulties for providers because of ''information on the label [that] cannot be boiled down to a binary response.'' First, commenters opposed to machine readability fail to describe what kind of information is lost and how that may impact consumer choice. NCTA-The Internet & Television Association (NCTA) only cites descriptions of one-time fees as an example where oversimplification may be required. However, NCTA does not explain how ''semantic meaning is lost'' or what inaccuracies might be introduced. To the extent that providers request ''flexibility'' to provide additional information in the label not required by the Commission, information that may not be easily reducible to binary responses, we note that this is not the label's purpose. Indeed, to the extent that machine readability promotes ''apples-to-apples'' comparisons that do not reflect every nuance that differentiates plans, the Commission agrees with AARP that this does not necessarily represent a flaw. One of the goals of the broadband consumer label is to simplify the process of comparison shopping and make the most critical information readily available to consumers. Thus, the Commission agrees with AARP that conveying the type of information opponents argue may not be picked up by a program ''is secondary to label data needed to make apples-to-apples comparisons.'' The Commission also agrees with commenters that the benefits outlined above outweigh these concerns over flexibility.

65. NTCA and Wireless internet Service Providers Association's (WISPA) invocation of the nutrition label model, which they argue ''is not designed to serve as [an] on-ramp to electronic comparison shopping,'' to oppose a machine-readability requirement also proves unconvincing. Nothing about a machine-readability requirement undermines the broadband consumer label's ability to provide ''rapid and comprehensible comparison

among products.'' Simultaneously, shopping for broadband is a more involved process than purchasing a food product. It involves selection of a service that normally requires ongoing, periodic payments, that may involve a contract, and that impacts various facets of an individual's life. Such a choice reasonably takes more time and research than that spent in a food aisle, making NTCA and WISPA's comparison in this regard inapt.

66. The Commission also disagrees with AT&T's assertion that machine readability is not ''designed to help the consumer at the point of sale but rather to facilitate third parties' desire to conduct various forms of research or analysis,'' which AT&T claims is ''not the purpose of the labels.'' As described above, machine readability enhances the point-of-sale experience in a variety of ways, including in the form of third-party shopping comparison tools. While AT&T claims that machine readability ''could fatally compromise broadband providers' ability to . . . convey accurate information on the labels,'' AT&T does not elaborate as to how. To the extent that machine readability fails to capture all the benefits of a given plan, the Commission agrees with Consumer Reports that the Commission can expect ''the creativity of ISPs'' will lead to solutions for ''further explain[ing] the details of their service offerings to appeal to a wide range of audiences.''

67. We recognize, however, that the Commission did not include a machine-readability requirement in 2016 and that this will take some additional effort. The Commission therefore delays compliance with this requirement until one year after OMB completes its review of this new information collection.

68. *Unique Plan Identifiers.* The Commission requires ISPs to develop unique identifiers for each of their plans and attach them to the broadband label. The unique identifier should consist of a unique ID for fixed plan or mobile plan (''F'' for fixed plans and ''M'' for mobile plans), followed by the broadband provider's FCC Registration Number, and ending with a provider-chosen string of precisely 15 alphanumeric characters uniquely identifying the specific plan within the broadband provider's offerings. Providers must use the FCC Registration Number that is used when submitting data to the Broadband Data Collection. The Unique Plan Identifier shall not include special characters such as, &, *, and %. For example, AT&T could specify a fixed broadband offering as F + 0005937974 + 123ABC456DEF789. This would appear on the label as F0005937974123ABC456DEF789. Unique identifiers should be sufficiently distinctive so that third parties and the Commission can identify the specific plan identified by the unique identifier. ISPs might consider use of other indicators, such as ZIP Code of where the plan is offered, to set their identifiers apparat. Additionally, reuse of identifiers must not occur; even if a given plan is no longer offered, its string should not be repurposed for a new or different plan.

69. Unique identifiers are useful for a variety of purposes. For example, use of a unique identifier would enable ISPs, which often change their plan offerings, to reuse a given plan's name without creating confusion. While NCTA argues that unique identifiers are unnecessary for this purpose, they do not describe the ''significant burdens'' they claim would be imposed. USTelecom notes that requiring provider-created unique identifiers would not ''creat[e] undue burden on providers or increas[e] administrative costs.''

70. Additionally, unique identifiers may be helpful in reducing ambiguity in other contexts as well. Third-party shopping tools might benefit from ISPs' use of unique identifiers. And researchers may find it helpful having a shared, consistent means of identifying ISPs' plans as opposed to use of descriptive language that could result in confusion about which plan is being discussed.

71. *Accessibility for People with Disabilities.* The Commission requires that the label be accessible to people with disabilities at all points of sale. In so doing, we emphasize our continued commitment to ensuring that broadband networks are accessible to and usable by individuals with disabilities. As the Commission noted in the *NPRM,* in proposing the 2016 labels, the CAC determined that ISPs could best ensure accessibility to printed and online broadband information by relying on well-established legal requirements included in the Americans with Disabilities Act (ADA) and by following the guidance developed by the Web Accessibility Initiative.

72. Based on the record, the Commission strongly encourages ISPs to comply with the well-established legal requirements included in the ADA and the Web Content Accessibility Guidelines (WCAG). The WCAG are routinely updated; therefore, providers' websites would be modified over time consistent with such updates. When providing the labels, ISPs must follow the ADA and associated guidance provided by the Department of Justice, including giving primary consideration to the individual's choice of alternate format, including ''qualified readers, taped texts, audio recordings, braille materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments.'' *See* 28 CFR 36.303, *https://www.ada.gov/reg3a.html.* The American Printing House for the Blind's (APH) print guidelines are the most concise and relevant set of recommendations for readable design: *https://www.aph.org/research/design-guidelines.* The APH Guidelines cover the effective usage of whitespace, heading elements, tables, and more.

73. The Commission agrees with the CAC and the American Council of the Blind (ACB) that relying on current accessibility technologies provides an ISP the best likelihood of ensuring that consumers with disabilities have equivalent access to information about, and the opportunity to compare, broadband services.

74. Some commenters advocate for additional requirements. In the *FNPRM,* the Commission seeks comment on ACB's proposal that direct video assistance be provided for broadband labelling. The City of New York proposes to require Braille or a Quick Response (QR) code with a tactile indicator for blind or visually impaired consumers at the point of sale. The Commission also seeks comment on the WCAG 2.1 standard that suggests providing text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, Braille, speech, symbols, or more simple language.

75. *Display in Languages Other Than English.* The Commission requires that providers display online and printed labels in English. The Commission also requires providers to make labels available in any other languages in which the ISP markets its services in the United States. For example, if the ISP's marketing materials on its website are available in Spanish, the Spanish version of the website must display the associated broadband labels in Spanish as well. This requirement does not apply to the provider's machine-readable spreadsheet files, which should also be displayed in English. The Commission notes that AT&T provides internet materials in English and Spanish because those are the languages in which it advertises. Under the labeling requirements, AT&T, and any other provider advertising in Spanish, must include a Spanish version of the broadband label. The Commission agrees with commenters that believe it is critical that the broadband label be

accessible to all consumers, including those whose primary language is not English, and applauds those providers who currently make information available on their websites in multiple languages. The Commission also encourages providers to reach out to trade associations and other organizations for assistance in translating the label into other languages if doing so would assist certain consumers in shopping for broadband service.

76. The Commission agrees with the many commenters that argue that this requirement promotes digital equity. Some Members of Congress observe that, out of the 53 million Hispanic people living in the United States, or 17% of the population, more than 38 million people speak Spanish as a primary language at home, and that Asian Americans are among the fastest-growing ethnic population in the United States, estimated to reach 46 million by 2060. They point out that the nearly 22 million Asian Americans represent over 48 different subethnicities that include a diverse and rich spectrum of spoken languages and dialects. They explain that it is therefore important to ensure that consumer-friendly labels ''leave no one feeling lost or uninformed because of a language barrier.'' The Commission also notes OTI's point that translations are particularly important for historically marginalized communities that already face higher barriers to internet adoption and may be more proficient in other languages.

77. The Commission recognizes that the need for multi-language accessibility goes beyond translating labels directly from English. The Commission therefore encourages providers to review their translations for context and vernacular language by native-level speakers who work directly with community members to ensure the language is not only accurate, but also easily accessible and understandable to target audiences.

78. At the same time, the Commission does not have a sufficient record on which to require providers to display labels in languages in which they do not market their services. In this regard, the Commission notes that some commenters oppose such requirements, asserting that it would be extremely cumbersome and expensive for ISPs to do so. The Commission therefore seeks comment to build a more detailed record on additional language requirements in the accompanying *FNPRM,* published elsewhere in this issue of the **Federal Register**.

3. Point of Sale and Label Display Location

79. The Commission requires ISPs to display the label at the ''point of sale,'' which is defined in the revised rule both in terms of time and location. As for time, the Commission defines point of sale as the moment a consumer begins to investigate and compare broadband service plans available to them at their location. As for location, the Commission defines ''point of sale'' as both ISP websites and any other channels through which their service is sold, including ISP-owned retail locations, third-party owned retail locations, and over the phone.

80. The rule the Commission adopts builds on the CAC's point of sale recommendation; however, the Commission refines the CAC's definition of point of sale to make clear that the time the consumer seeks to determine the best broadband internet access service product for their needs is the time at which the consumer views specific broadband plans available to them at their service location (often after the consumer enters address information on the provider's website or conveys it to a sales representative). Broadband labels do not need to be included on mass marketing channels or prior to customers specifying their service location. The Commission believes this approach avoids saddling ISPs with the burden of displaying a potentially unwieldy number of labels, most of which would not be of value to the consumer if they cannot receive the particular service at their location.

81. *Websites.* The Commission agrees with the majority of commenters that support requiring ISPs to display labels on their websites. As discussed above, providers must display the labels after the consumer enters any required location information. Once the consumer has done so, the label must appear on the provider's primary advertising web page that identifies the plans available to the consumer. Location information may be necessary to determine if the service or particular plan is offered in the consumer's location. Other than providing location information, the labels must be readily available to all consumers without requiring them to create an account or log into an existing account. We consider such primary web page to be the point of sale—where consumers begin to shop for and compare broadband service offerings available at their location. In addition to this requirement to display the label at the time the consumer views the specific plans available to them, providers may also display the label on their website's homepage or elsewhere on the website during the shopping period.

82. Providers must display the actual label—not simply an icon or a link to the label—in close proximity to the associated plan advertisement. By requiring providers to place the label close to their advertising, the Commission expects consumers will more easily be able to make a side-by-side comparison of the advertised plan's cost and features with the information required in the label.

83. This approach contrasts with allowing providers to merely display an icon or link to the label from their main website in that it connects the consumer to the relevant label and better meets Congress' goal of ensuring that consumers have easy access to vital information about the advertised plan. The Commission agrees with OTI that ''[p]roviders must be required to prominently display the label . . . [t]his means it has to be more than just a hyperlink to a separate page or pop-up window.'' Consumers should not be forced to further navigate a provider's website to find the label or toggle back and forth to compare the advertisement with the label. The Commission believes all the information a consumer needs to make a purchase decision should be visible to the consumer when they are interacting with the provider's marketing materials. Such information should be presented in one location to simplify the comparison shopping process and should be readily available. As with the FDA's nutrition label, consumers should have access to broadband label information at the same time the product is offered for sale. For similar reasons, the Commission concludes that displaying the label via an icon that must be opened or expanded does not afford consumers the opportunity to easily view the label alongside the provider's advertisement. While some commenters assert that displaying the actual label may lead to a crowded web page, the Commission believes that providers can design their websites in ways that permit them to display their marketing information in close proximity to the label information.

84. The Commission nevertheless aims to give providers flexibility in how they display labels, *e.g.,* the Commission does not require any particular font size for the label information at this time; however, providers should ensure that the labels are prominently displayed on any device on which the consumer accesses and views the labels, including mobile devices. In the accompanying *FNPRM,* published elsewhere in this issue of the

Federal Register, the Commission seeks comment on whether compliance tools such as style guides might be useful to providers in creating their labels and ensuring they are prominently displayed and easily accessible to consumers at all points of sale.

85. The Commission thus disagrees with commenters that advocate for a web link to the label and find that such commenters do not articulate any particular challenges in displaying the actual label alongside a provider's marketing materials. The Commission concludes that the benefits of a label displayed prominently and immediately when the consumer accesses the provider's broadband offerings available to them outweigh any potential additional costs to providers.

86. *Alternate Sales Channels.* Based on the record, the Commission also requires ISPs that use alternate sales channels (*e.g.,* company retail locations, third-party owned retail locations, or over the phone) to make the label available to consumers at each point of sale. In such situations, the Commission agrees with those commenters that contend that providers should not necessarily be required to provide a hard copy of the label. The Commission finds that requiring providers to make the label available in hard copy may be unnecessarily burdensome to some providers. If, however, the provider cannot ensure the consumer will be able to access the label either with an internet connection at home or in the retail location, it must make the label available in hard copy. Thus, in the case of alternate sales channels, while a provider may satisfy the label requirement by providing a hard copy of the label, we find it may do so through other means. This could include directing the consumer to the specific web page on which the label appears by, for example, providing internet access in the retail location or giving the customer a card with the printed URL or a QR code. If, however, the consumer does not have internet access at home or elsewhere, the ISP must ensure that the consumer can use the printed URL or QR code in its retail location. Or this could include orally providing information from the label to the consumer over the phone. In such circumstances, the provider must read the entire label to the consumer over the phone. Providers shall document each instance when it directs a consumer to a label at an alternate sales channel and retain such documentation for two years.

87. *E-Rate and Rural Health Care Providers.* The Commission finds that ''point of sale'' for purposes of the E-Rate and RHC programs is the time when a service provider submits its bid to a program participant. Thus, the Commission requires E-Rate and RHC providers to provide a label along with any competitive bids submitted pursuant to the E-Rate or RHC Program competitive bidding process. In the limited instances in which a service provider provides services without submitting a bid and has not yet provided a label to the E-Rate or RHC applicant, it must provide the label with the first invoice it submits to the applicant.

88. *Label Display on Customer Online Accounts.* The Commission requires ISPs that offer online account portals to their customers to make each customer's label easily accessible to the customer in such portals, and conclude that doing so will benefit consumers following the conclusion of their initial shopping experience. After purchasing broadband service, consumers should be able to easily access and review the terms of their existing plans to ensure they are receiving the services and price they agreed to at the time of purchase. By being accessible at the consumer's online account page, the label also assists consumers in identifying billing inaccuracies and unexpected fees. Additionally, this requirement furthers the goal of assisting consumers with comparison shopping by allowing consumers to more easily compare their current plans to alternative plans when shopping for broadband service in the future. Finally, the Commission believes that associating a label that is already displayed on a provider's primary advertising web page with a customer's online account should not be overly burdensome, and that the benefits to consumers far outweigh any costs to providers. In order to allow ISPs sufficient time to make any necessary system changes, the Commission sets compliance with this requirement at one year after the Office of Management and Budget completes its review of this new information collection.

89. The Commission declines, however, to require ISPs to display the label on a consumer's monthly bill. The Commission is cognizant of providers' concerns that adding a graphic, or photo file such as a jpeg, of the label to printed bills or enclosing an insert of the label with billing statements may be costly and potentially burdensome. Providers also assert that any necessary changes to billing systems could take months for ISPs to complete. The Commission believes that adopting a requirement that the broadband label be made easily accessible to consumers in their online account portal best balances the consumer transparency goals while minimizing the burden to providers. The Commission therefore concludes that, at this time, the burdens on ISPs of a requirement to display the label on a consumer's monthly bill outweigh the benefits to consumers who can access the labels in alternative ways.

90. The Commission emphasizes that consumers have multiple avenues with which to access and review the label information associated with their existing plans after purchasing service. As discussed in detail above, labels for current offerings must be prominently displayed and readily available on ISP websites, at alternate sales channels, and in customers' online account pages. In addition, as discussed below, providers will be required to archive all labels for two years once a plan is no longer available for purchase by new customers. They must also provide the archived labels to existing customers, upon request, within 30 days. Thus, the Commission finds that the rules adopted provide consumers with accessible means of obtaining the broadband label after purchase. While the Commission concludes at this time that the burdens associated with displaying or enclosing the broadband label on monthly billing statements outweigh the associated benefit to consumers, the Commission will continue to monitor the effectiveness of the current display requirements.

C. Grandfathered Plans and Archive of Labels

91. The Commission requires that ISPs display labels for plans currently offered to new customers, but ISPs are not required to create and display labels for services used by current customers that are no longer available to new customers. The Commission also requires ISPs to archive all labels for two years, as discussed below. The Commission notes that providers participating in the Affordable Connectivity Program may be subject to different reporting and retention requirements for plans where subscribers are receiving the ACP benefit.

92. The Commission is persuaded that the broadband labels displayed at the point of sale should be only for services that are currently offered to new customers. A principal goal of the label is to allow consumers to comparison shop among services. Requiring such labeling for services no longer available to new customers has a substantially diminished benefit for purposes of comparison shopping. And such labels may even confuse consumers if those plans are not actually available to them.

Further, ISPs persuade the Commission that the burden of creating labels for grandfathered plans is substantial. For example, AT&T notes that ''approximately half of [the company's] hundreds of grandfathered fixed broadband plans have ten or fewer customers.'' In addition, ''AT&T has thousands of mobile broadband plans that have been grandfathered for years, and of those old plans, there are more than 5,000 plans that have a combined total of approximately 19,000 customers remaining (*i.e.,* approximately four customers per plan).'' The Commission thus sees a potential significant burden to displaying labels for such plans without a countervailing benefit. Therefore, in balancing these disadvantages against any potential consumer benefit, we decline to require labels for grandfathered plans.

93. While the Commission rejects requiring ISPs to create labels for older plans or to continue to display labels for plans no longer available to new customers, the Commission is persuaded that they should maintain an archive of all labels that have been removed from their websites or alternate sales channels. The Commission requires ISPs to archive labels for at least two years after the service plan is no longer offered to new customers and the label is no longer displayed at the point of sale. The provider must provide any archived label to the Commission, upon request, within thirty days. It must similarly provide any archived label to an existing customer whose service plan is associated with the particular label, upon request and within thirty days. In other contexts, the Commission similarly requires regulated entities to retain documentation for a two-year period and to provide such information upon request. This requirement will aid enforcement of labeling requirements, which might arise if consumers file informal complaints or if the Commission or any state public service commission requires access to the archived labels to investigate potential inaccuracies in the labels. The archive would include each label for no less than two years from the time the label is removed from the provider's website or alternate sales channel and, thus, no longer displayed at the point of sale.

94. ISPs must therefore archive all labels required by this final rule. This includes evidence sufficient to support the accuracy of the labels' content, such as the data that supported the performance information that appeared on the label, along with any links to relevant network management practices and privacy policies. Such information will assist the Commission in any enforcement action. The Commission expects that providers already keep such information in the event they are asked to support their marketing and transparency rule disclosures, and that this will therefore not represent a significant incremental burden.

95. Providers are not required to make the archived labels available to the general public, but as discussed above, they must provide any archived label to the Commission or a current customer upon request. As an alternative to providing the actual label, the ISP could provide a URL or QR code if that was how the customer accessed the label at the time of purchase. Specifically, a provider must allow an existing customer to request and obtain a copy of the archived label for the plan to which they currently subscribe once the label is no longer displayed at the point of sale. This will assist consumers in determining whether they are getting the service expected based on the price and quality that was offered. It will also give consumers the information they need to complain to the provider or to cancel service or switch to another provider if necessary. Further, the Commission concludes that, without such an archive of older labels, the Commission would be unable to fully investigate consumer complaints alleging, for example, that a service provider failed to comply with the broadband label requirements or that a particular label was inaccurate.

D. Direct Notification of Changes to Terms

96. The Commission declines to adopt a requirement that ISPs directly notify consumers about changes to the terms and conditions in the displayed labels. Most commenters that addressed the issue urge the Commission not to adopt such a requirement, arguing that such notification is unnecessary. After considering all the record evidence, the Commission concludes that requiring providers to notify enrolled consumers each time a service offering displayed in a label changes could be burdensome for providers with minimal benefits for consumers. Consumers who already are notified about rate changes or speed upgrades through their bills or other mailings will likely be overwhelmed or even confused by additional notices about changes in label information. And while the record is unclear as to how many providers routinely notify their customers of changes to rates and other terms, the Commission believes the labels are primarily intended to educate consumers at the time of purchase. Further, the Infrastructure Act does not seem to contemplate such notifications, and therefore the Commission declines to adopt them at this time. This finding, however, does not relieve an ISP from any other related consumer notification requirement agreed to in its terms of service, or compliance with other rules or regulations.

E. Interplay of New Label Requirement With Transparency Rule

97. The Commission emphasizes that where this final rule does not modify or eliminate a transparency rule requirement which was previously established, that requirement is still in place. *See generally 2017 Restoring internet Freedom Order.* While the new label requirement and the existing broadband transparency rule are interrelated, an ISP's display of the label alone will not satisfy its transparency rule obligations under 47 CFR 8.1(a) of the Commission's rules to publicly disclose certain information on its website or through transmittal to the Commission. Although there is overlap between the purpose of broadband labels and that of the transparency rule, those purposes are not identical. The fact that the two requirements are not coextensive should come as no surprise given the different—albeit overlapping—purposes served by the two requirements. For example, helping consumers make informed choices regarding broadband internet access service plans is a goal of both broadband labels and the transparency rule. Broadband labels, however, are designed to play a unique role in that regard by providing a quick reference tool enabling easy comparisons among different service plans at the time of purchase. By contrast, the transparency rule seeks to enable a deeper dive into details of broadband internet service offerings, which could be relevant not only for consumers as a whole, but also for consumers with particularized interests or needs, as well as a broader range of participants in the internet community—notably including the Commission itself.

98. ISPs argue that the Commission should eliminate the requirements in § 8.1(a), maintaining that the problems of a potentially burdensome broadband label would be compounded if the Commission also retained the requirements in the current transparency rule. They contend that it would be duplicative and unnecessary to require, going forward, that providers maintain transparency disclosures that include information reported separately in broadband labels.

99. The Commission concludes that compliance with the transparency rule does not satisfy the label's content,

format, and display location requirements. For example, the transparency rule does not require disclosures about the ACP; the label, on the other hand, must identify whether the provider participates in the ACP and display a link to information about the ACP. Similarly, the transparency rule does not require specific information about introductory and post-introductory rates and introductory periods. The Commission notes, however, that compliance with the broadband label requirements may satisfy a provider's obligations under § 8.1 of the Commission's rules with respect to specific sections of the transparency rule that are also incorporated into the label.

100. The Commission also concludes that displaying a compliant label cannot by itself satisfy the transparency rule. For example, the link in the label to certain information about a provider's network management practices alone may not satisfy the transparency rule requirement. The provider's transparency rule disclosures via its website or transmittal to the Commission must still disclose all information required by the rule. Similarly, the label does not include the transparency rule's requirement to disclose packet loss information. Providers must therefore take steps to comply with the labeling and transparency rules independently to the extent that the details of the requirements diverge. Accordingly, compliance with the labeling requirements is not a safe harbor from compliance with the transparency rule.

F. Enforcement Issues and Consumer Complaints

101. Aside from the issues discussed below, the Commission declines to adopt new rules, practices, or procedures specifically for enforcement of the label adopted in this final rule. Based on the record, the Commission finds that its existing enforcement mechanisms should enable the Commission to enforce the new label requirements, including the accuracy of the label's content and the sufficiency of its format and display location. The Commission thus will use the identical procedures to enforce the broadband label requirements adopted here.

102. The Commission is persuaded that the Commission's current transparency enforcement procedures are appropriate, and that the Commission's existing forfeiture authority and other remedies are sufficient to deter noncompliance and to hold accountable those providers that do not comply with the label requirements. In addition, as discussed above, the Commission requires providers to archive all labels that they display, which will allow the Commission to obtain labels and investigate the accuracy of the labels faster and more efficiently.

103. Finally, the Commission rejects calls for a type of ''education'' period during which it puts on hold any enforcement related to the label. The Commission believes providers will have sufficient time during the implementation periods discussed below to create and display complete and accurate labels for all of their offered plans. In addition, the Commission intends to develop resources for providers and consumers about the new disclosure requirements, including education on broadband terminology, compliance guides, and label templates.

104. The Commission thus disagrees with commenters that advocate for unique enforcement of the broadband label and dedicating specific agency resources toward enforcing the label requirements, rather than relying on the Commission's existing enforcement procedures. The Commission intends to process and serve informal consumer complaints regarding broadband labels as vigorously as we do other informal complaints, and we are confident that the existing processes are sufficient for that purpose.

G. Implementation Timelines

105. The Commission requires that all ISPs comply with the rules adopted within six-month and one-year compliance periods (following publication in the **Federal Register** of notification that OMB has completed review of the adopted rules). In the *NPRM,* the Commission sought comment on the best ways for providers to implement the proposed labels, including the timelines within which they should implement them. The Commission proposed to make the rules effective six months following publication in the **Federal Register** of OMB's approval of the adopted rules, asking whether this would allow sufficient time for providers to comply with the new requirements. The Commission asked whether it should consider a different implementation timeline or temporary exemption for smaller providers to allow them more time to come into compliance with the label requirements.

106. Based on the record, the Commission declines to adopt an exemption from the label requirements for smaller providers. The Commission agrees with OTI that we must ensure that *every* consumer benefits from the labels, not just those who are served by the largest providers. Rural Americans, who often receive their broadband service from smaller ISPs, also deserve transparency about broadband services and to be given access to information necessary to shop for such services. Moreover, as some commenters point out, the Infrastructure Act directs the Commission to adopt labels for all ISPs and does not distinguish between larger and smaller providers. The Commission also believes it is critical that labels across all providers be uniform in content and format and that they be accurate. Thus, the Commission declines to limit the amount of information smaller providers must display on the labels or to, for example, exclude such providers from the Commission's informal complaint processes.

107. The Commission nevertheless recognizes that implementing the label requirements may require some additional time, and therefore establishes a six-month period for most providers to come into compliance before the new requirements take effect. The Commission agrees with those commenters that argue that allowing providers an additional six months following announcement in the **Federal Register** that OMB has completed its review of the rules will ensure that most ISPs can implement necessary changes in a cost-effective way that makes sense for their individual business models and potential customers. Commenters that advocate for a longer implementation period do not specify why an additional three or six months beyond the proposed six-month period is necessary for most providers to create and display the required labels. And the Commission believes consumers should not have to wait for as long as a year before they enjoy the benefits the labels will provide. The Commission therefore finds that six months represents a reasonable timeframe for most providers to take steps to ensure that labels are adequately displayed on websites, that links to additional information are effective, and that the required information is provided in accessible formats.

108. The Commission, however, adopts a one-year implementation period for providers with 100,000 or fewer subscriber lines. Some commenters contend that affording smaller providers at least one year to comply allows them to budget for any additional expenses associated with the labels. The Commission is persuaded that implementing broadband labels may require providers to complete

certain tasks, including compiling the information that must be presented in the label; incorporating the information into the label format; posting labels on their websites; developing and implementing procedures for making any necessary changes to the labels, including website updates; and training customer service representatives, sales agents, and other personnel. Such tasks may require more time for providers that are less likely to have in-house attorneys and compliance departments to assist in preparing their broadband labels, and thus will need to engage outside legal resources to implement several proposed requirements. Commenters generally did not challenge allowing some additional time for such providers to come into compliance.

109. The record provided little information on how best to define which providers should benefit from any longer implementation period. In similar contexts, the Commission has defined the relevant entities in various ways. For instance, in its *2013 Rural Call Completion Order,* 78 FR 76218 (Dec. 17, 2013), the Commission excepted providers with 100,000 or fewer subscriber lines, aggregated across all affiliates, from certain recordkeeping, retention, and reporting rules. The Commission subsequently adopted this definition for purposes of the temporary exemption from the enhanced transparency rule. Accordingly, the Commission similarly adopts an implementation period of one year (from the announcement that OMB has completed its review of the new rules) for those providers of broadband internet access service (whether fixed or mobile) with 100,000 or fewer broadband subscribers as per their most recent Form 477, aggregated over all the provider's affiliates. The Commission believes the additional six months will allow these providers the necessary time to comply with the label requirements. These providers must still comply with the requirement to make the contents of the labels machine readable within one year of OMB's completion of review of the new information collection.

H. Legal Authority

110. As the Commission explained in the *NPRM,* we believe the Infrastructure Act grants us authority to adopt the label requirements for ISPs. No commenter disagrees with this conclusion. In addition, the Commission also explains above how displaying the required broadband label enables providers to satisfy aspects of their disclosure obligations under the transparency rule. The Commission thus also finds that the authority the Commission historically has invoked in support of a transparency rule for broadband internet access service providers—in particular, sections 13 and 257 of the Act and the Commission's Title III licensing authority in the case of mobile broadband providers—provides additional authority for our broadband label requirements. In the *2017 Restoring Internet Freedom Order,* the Commission relied on section 257 of the Act as authority for the transparency rule. Although section 257 subsequently was amended to shift aspects of that provision to the new reporting requirement enacted in section 13 of the Act, ''it was not altered in any material respect for purposes of the Commission's authority in this regard.'' In addition, the *2015 Open Internet Order,* 80 FR 19737 (Apr. 13, 2015), relied on Title III licensing authority over mobile broadband providers for authority for its rules in that respect, including the transparency rule. Although the *2017 Restoring Internet Freedom Order* explained that the Commission chose not to rely on that Title III authority for conduct rules governing mobile providers insofar as it did not find sufficient authority for conduct rules governing other providers, that Order did not provide reasons not to rely on Title III authority for the transparency rule adopted there (or for disclosure requirements like the broadband label requirements adopted here). Since the broadband label requirements will apply to all ISPs, the Commission thus finds no reason to forgo relying on Title III authority for the broadband label requirement for mobile broadband providers here.

111. Further, the required broadband labels will serve as a source of information required to be collected under the ACP program. The Commission thus finds the broadband label requirements further supported by our ACP authority. Similarly, insofar as the broadband labels will be tools to advance the E-Rate and Rural Health Care universal service programs, authority for the broadband label requirements comes from section 254 as well.

112. Similarly, the majority of commenters either do not raise any First Amendment concerns or argue that mandatory broadband labels similar to those approved in 2016 would not violate providers' First Amendment rights. Some commenters, however, argue that the proposed label requirements could raise First Amendment concerns, and we address those arguments.

113. The Commission concludes that the rules adopted are disclosure rules implicating commercial speech, and that they do not unconstitutionally burden broadband internet service provider speech. As shown below, the Commission believes that the more lenient *Zauderer* (*Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626 (1985)) standard, rather than the intermediate *Central Hudson* (*Cent. Hudson Gas & Elec. Corp.* v. *Pub. Serv. Comm'n of New York,* 447 U.S. 557 (1980)) standard, applies to the rules adopted herein. However, even assuming *arguendo* that the *Central Hudson* standard applied, the Commission concludes the rules would satisfy that standard as well.

114. The Supreme Court has long recognized that the government ''has substantial leeway in determining appropriate information disclosure requirements for business corporations.'' *See Pac. Gas & Elec. Co.* v. *Pub. Util. Comm'n of Calif.,* 475 U.S. 1, 15 n.12 (1986). Thus, ''regulations that compel 'purely factual and uncontroversial' commercial speech are subject to more lenient review than regulations that restrict accurate commercial speech.'' *See, e.g., New York State Rest. Ass'n.* v. *New York City Bd. of Health,* 556 F.3d 114, 132 (2nd Cir. 2009) (*NY State Rest. Ass'n.*); *Nat'l. Elec. Mfrs. Ass'n* v. *Sorrell,* 272 F.3d 104, 113 (2d Cir. 2001) (*Nat'l Elec*). That latitude stems from the ''material differences between disclosure requirements and outright prohibitions on speech.'' *See Zauderer,* 471 U.S at 650. *See Int'l Dairy Foods Ass'n* v. *Boggs,* 622 F.3d 628, 641 (6th Cir. 2010).

115. Disclosure requirements, unlike speech bans, are not designed to prevent anyone from ''conveying information.'' *See Zauderer,* 471 U.S at 650. Instead, those requirements ''only require [persons] to provide somewhat more information than they might otherwise be inclined to present.'' Where the required disclosure involves ''only factual and uncontroversial information,'' the required disclosure ''does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests.'' *See Nat'l Elec.,* 272 F.3d at 113. *NY State Rest. Ass'n.,* 556 F.3d at 132.

116. To the contrary, because ''the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides,'' a person's ''constitutionally protected interest in *not* providing any particular [noncontroversial] factual information

. . . is minimal.'' *Zauderer,* 471 U.S. at 651 (emphasis in original). *See Milavetz, Gallop, & Milavetz* v. *U.S.,* 130 S.Ct. 1324, 1339–40 (2010) (*Milavetz*). The Supreme Court thus has held that the *Zauderer* standard, and not the intermediate *Central Hudson* standard, applies to the required disclosure of purely factual, non-controversial information that does not suppress speech.

117. A few commenters suggest that label requirements might not satisfy the *Zauderer* standard if they ''forc[e] providers to publish specified information in pre-determined formats.'' We disagree. The new rules requiring ISPs to display, at the point of sale, labels containing factual information about their service options are, on their face, a disclosure requirement. Although there is a specific format for the label, the purpose and effect of rules requiring providers to identify their prices, performance metrics, data allowances, and links to their privacy policies amount to the disclosure of broadband service offerings. All the disclosures compelled by the rules involve ''only factual and uncontroversial information.'' *Zauderer,* 471 U.S. at 650.

118. The Commission finds that the rules adopted easily satisfy the *Zauderer* standard. The purpose of the rules is to ensure that consumers have the information necessary to understand the broadband services offered by providers, to easily determine the prices for those services, and to comparison shop among different providers. As explained elsewhere in this final rule, the means directed by Congress to achieve that objective, *i.e.,* labels at the point of sale, simply enhances consumers' ability to purchase services that meet their needs and budgets. By giving consumers an easier way to shop for and purchase the broadband services they need, the rules are ''reasonably related to the [governmental] interest'' in making sure consumers have the information they need to make informed choices in the broadband marketplace. The First Amendment is satisfied, therefore, because there is a ''rational connection'' between the purpose of these commercial disclosure requirements and ''the means employed to realize that purpose.'' *See Nat'l Elec.,* 272 F.3d at 114–15; *Zauderer,* 471 U.S. at 651.

119. Even if the intermediate three-part *Central Hudson* standard applies, however, the Commission finds that the rules pass constitutional muster. *Central Hudson* sets forth an intermediate scrutiny standard that provides that a regulation of commercial speech will be found compatible with the First Amendment if: (1) there is a substantial Government interest; (2) the regulation directly advances the substantial Government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest. *See Central Hudson,* 447 U.S. at 566. Commercial speech that is potentially misleading has less First Amendment protection, and misleading commercial speech is not protected at all and may be prohibited. As the Commission previously concluded in the *Truth-in-Billing First Report and Order,* 64 FR 34488 (June 25, 1999), the Government has a substantial interest in ensuring that consumers are able to make intelligent and well-informed commercial decisions. The *2017 Restoring Internet Freedom Order* similarly identified a substantial government interest in ''encouraging competition and innovation.''

120. The Infrastructure Act directs the Commission to promulgate rules to require the display of broadband consumer labels tailored in a manner designed to effectively provide consumers information they need to evaluate broadband internet access service plans through the tool of broadband labels. And the Commission's other statutory obligations include promoting the justness, reasonableness, and affordability for consumers of service charges and practices and promoting marketplace competition. The Commission believes the regulations adopted are designed to directly advance the government's substantial interest by providing consumers with the basic tools necessary to understand the broadband services they are purchasing and the prices for those services through broadband labels carefully calibrated to include certain essential information presented in a manner that makes it most likely to be usable and useful. In addition, they are designed to protect consumers from contracting for service where the terms of service are either unexplained or presented in a confusing manner.

121. Under the first part of the *Central Hudson* test, the Commission finds that we have a substantial interest in assisting consumers in making informed decisions when purchasing broadband service, and in encouraging competition and innovation. The record is clear that point-of-sale labels support the objective of helping consumers make informed choices based on accurate disclosures about broadband internet service offerings tailored to focus on the information likely to be key to comparisons using those labels. Commenters overwhelmingly support a label that provides key information in an accessible and understandable format, with flexibility to provide additional information, such as links to other resources. In an effort to increase accessibility to broadband service for Americans, Congress also concluded that consumers needed better access to information about available services, *i.e.,* simpler and easy to understand.

122. The Commission finds that the rules adopted also satisfy *Central Hudson's* second prong by advancing the government's substantial interest. The Commission, through the Truth-in-Billing regulations, has a longstanding practice of regulating the format and organization of carrier invoices in order to ''aid customers in understanding their telecommunications bills.'' *See* 47 CFR 64.2400(a). As discussed above, the record persuades us that these new rules, *i.e.,* requiring ISPs to disclose information about their services in a consistent format at the point of sale, are needed to advance our interest in assisting consumers in fully understanding the available broadband offerings and to make informed decisions about what services to purchase. If consumers can readily identify and understand key information about the specific services offered by each provider, they can take action using those broadband labels to compare different offerings and avoid purchasing services that do not serve their needs. Similarly, labels that include the same information in a conspicuous location and that are presented in the same format across providers will enable consumers to hold those providers accountable by making inquiries and filing complaints should the services they receive or the prices they pay not match what ISPs display in the labels. Tailored disclosures promise to provide a metric against which these customers can judge whether their broadband services satisfy the speeds, data usage, and other terms advertised by broadband providers. That these new rules advance our stated interest is further confirmed by information in the record that consumers have difficulty understanding the broadband services available to them, what those services will allow them to do, and the prices they will ultimately pay. And given the interplay between the broadband label requirements and the transparency rule, it also advances the governmental interest in encouraging competition and innovation consistent with the analysis of the *2017 Restoring Internet Freedom Order.*

123. With *respect* to the third prong of *Central Hudson,* the rules adopted are no broader than necessary to serve our substantial interests. To satisfy this

prong of the test, the *Commission* does not have to demonstrate that it has adopted the least restrictive means of achieving our objective, that the rules perfectly fit our stated interest, or that the Commission has adopted the best of all conceivable means for achieving our objective. *See Bd. of Trs. of State Univ. of New York* v. *Fox,* 492 U.S. 469, 477 (1989); *Nat'l Cable & Telecomms. Ass'n* v. *FCC,* 555 F.3d 996, 1002 (DC Cir. 2009) (*Nat'l Cable*). Instead, this prong of the *Central Hudson* test requires only that the rules be proportionate to the substantial interest we intend to advance. Given the magnitude of the problem reflected in the record, the rules adopted represent an incremental, moderate approach to giving consumers critical information about broadband services. For example, the requirement to identify the monthly price, performance information, and terms and conditions for broadband services in a format that consumers are familiar with—a nutrition-like label—is less intrusive than the alternative of, for example, requiring that all the information be listed in a consumer's bill for service or prohibiting the use of any line items that describe the fees that make up the monthly price. And the rules still permit providers to advertise their services independent of the information they must present in the labels. The rules are narrowly crafted so that they are no more extensive than necessary to further our objective of enhancing the ability of consumers to make informed decisions when purchasing broadband service, and thus they satisfy the third prong of *Central Hudson.*

Final Regulatory Flexibility Analysis

124. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *NPRM* released in January 2022 in this proceeding. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. Comments filed addressing the IRFA are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Rules

125. The Report and Order adopts rules to implement section 60504 of the Infrastructure Act), to ensure that consumers have an easy way to understand broadband internet access service providers' (ISPs' or providers') prices, data allowances, and performance in a simple-to-understand format that does not overwhelm consumers with too much information. The ability to make side-by-side comparisons of various broadband service offerings of an individual provider or the service offerings of alternative providers is essential for consumers to make informed decisions.

126. The Infrastructure Act directs the Commission ''to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.'' Further, the Infrastructure Act requires that any broadband consumer label adopted by the Commission ''shall include information regarding whether the offered price is an introductory rate and, if so, the price the consumer will be required to pay following the introductory period.''

127. In the Report and Order, the Commission adopts rules to meet its statutory obligations under section 60504 of the Infrastructure Act. Specifically, the Report and Order requires ISPs to display, at the point of sale, broadband consumer labels with critical information about their service offerings, including about pricing, introductory rates, data allowances, performance metrics, and the ACP). For each of their current broadband service offerings, ISPs must display at the point of sale a label disclosing the charges and terms for the service and the broadband speeds associated with each plan, along with links to information about the ACP, network management practices, privacy policies, and other educational materials.

128. The Report and Order approves the overall format of the Commission's 2016 voluntary labels. The labels must be provided in a clear and simple-to-read uniform format—much like a nutrition label required on food products—that will enable consumers to easily compare the services of alternative providers. In addition, the information contained in the labels must be provided in a machine-readable format, and the labels must include unique plan identifiers and must be accessible to all consumers, including people with disabilities. The labels are designed to assist consumers specifically during the shopping period—the time when consumers are comparing different service offerings and selecting a provider and plan that best meet their needs. Thus, ISPs must display the labels at the point of sale, both online and through alternate sales channels (*e.g.,* company retail locations, retail seller locations, or over the phone). On the provider's website, the label must be displayed in close proximity to the advertised service plan that is available to the consumer at their location. In addition, ISPs that offer online account portals to their customers must make each customer's label easily accessible to the customer in such portals. Finally, ISPs must archive labels that have been removed from their websites and alternate sales channels for a period of two years and must provide such labels to the Commission or to an existing customer, upon request. In taking these actions, the Report and Order implements the requirements of the Infrastructure Act and, at the same time, minimizes any compliance burdens for both small and large entities.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

129. In the *NPRM,* the Commission solicited comments on how to minimize the economic impact of the new rules on small businesses. One commenter specifically addressed the RFA requirements, arguing that ''government agencies must consider the effects of their regulatory actions on small entities and mitigate them where possible.'' To minimize the burdens and economic impact of the proposed broadband labels on smaller providers, NTCA urges the Commission to exempt small broadband providers from the Commission's formal complaint process. NTCA says that complying with onerous and time-consuming complaint, discovery and hearing processes will seriously disrupt a small provider's ability to serve its customers, maintain its network, and expand to new service areas.

130. Several other commenters argued that smaller entities would face similar challenges in complying with the proposed label requirements given their small staffs and limited resources. They propose certain measures such as an exemption for smaller providers from the label requirements or, in the alternative, granting smaller providers an extended implementation timeframe, *e.g.,* one additional year, to achieve compliance with the label requirements. They assert the additional time will allow smaller providers to compile the information that must be presented in the label; incorporate the information into the label format; post the labels on their websites; and train customer service representatives, sales agents, and other personnel.

131. In addition, some commenters urged the Commission to assist smaller providers by developing and making

available to them broadband label templates in the form of ''fillable PDFs.'' Others argue that the Commission should not require providers to develop and maintain labels that are ''machine readable,'' asserting that such a requirement will tax the resources of smaller providers with limited in-house technical resources. They also state that the Commission should not require providers to submit broadband labels ''via an application programming interface (API)'' and should instead provide alternative submission options that are less complicated to implement.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

132. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

133. The Report and Order adopts rules requiring all ISPs to display, at the point of sale, labels that disclose to consumers certain information about their broadband service offerings including pricing, introductory rates, data allowances, and broadband speeds, and include links to other information on their websites about network management practices, privacy policies, the ACP, and other educational materials.

134. To meet the label requirements, ISPs must create a label for each of their stand-alone broadband service offerings in the format described and displayed in the Report and Order—one resembling the format adopted by the FDA for nutrition labels on food products. Most of the required information that ISPs must compile and display (price, performance, speed and latency, and data allowances) should already be included as part of any ISP's advertising materials or readily available to them from the broadband data they maintain internally. In addition, ISPs must take steps to ensure that the information contained in the labels is publicly available via a dedicated URL in a machine-readable format, and that the labels include a unique identification code to assist third parties and researchers in compiling broadband data to help consumers compare service offerings amongst providers.

135. ISPs are required to display the labels at each point of sale. For purposes of displaying the required broadband labels, ''point of sale'' is defined as the time a consumer begins investigating and comparing broadband service offerings available at their location. Thus, the rules require ISPs to display the labels both online and through alternate sales channels (*e.g.,* company retail locations, retail seller locations, or over the phone) and to make the labels available to consumers at each point of sale. On the provider's website, providers must display the actual label in close proximity to the associated advertised service plan.

136. The provider must also make the label available at alternate sales channels. This could include directing the consumer to the specific website on which the label appears by, for example, providing internet access in the retail location or giving the customer a card with the printed URL or a QR code, or orally providing information from the label to the consumer over the phone. If the consumer is shopping for broadband service on the phone, the provider must read the label in its entirety to the consumer on the phone. If the consumer does not have internet access at home or elsewhere, the provider must provide a hard copy of the label. The provider shall document each instance when it directs a consumer to a label at an alternate sales channel and retain such documentation for two years. ISPs must also ensure that the required labels are accessible to all consumers, including people with disabilities. In addition, ISPs that offer online account portals to their customers must make each customer's label easily accessible to the customer in such portals.

137. The rules also require ISPs to maintain an archive for a period of two years of all labels in the event consumers file complaints related to the information displayed in the labels or if the Commission or other state/local regulatory authority needs to access the archived labels for other enforcement purposes. This archive must include all labels that are no longer available on the provider's website and alternate sales channels. The archive must also include any information that evidences the accuracy of the labels' content, such as pricing and performance data. Providers are not required to make the archived labels available to the public, but they must provide any label to the Commission or to a current customer upon request, within thirty days.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

138. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

139. The Commission considered feedback from commenters about how to minimize burdens on smaller ISPs when implementing the Infrastructure Act. Some commenters recommended that ISPs be required to aggregate the monthly cost identified on the label with any other discretionary fees and government taxes—creating an ''all-in'' price. The Commission considered this option and determined that providing an ''all-in'' cost may be difficult for ISPs because applicable government taxes often vary according to the consumer's geographic location, and equipment rentals and installation charges may also vary. Thus, the Commission rejected an all-in cost requirement, stating that permitting ISPs to display the monthly price without taxes and other fees may lessen their administrative burdens.

140. In addition, the Commission evaluated all of the content displayed on the 2016 voluntary labels and determined that certain information either did not benefit consumers at the point of sale or could be burdensome for providers to include in the labels. The 2016 fixed broadband labels, for instance, required providers to disclose speed, latency and packet loss metrics. In the Report and Order, the Commission determined alternatively to eliminate the requirement to display packet loss measurements.

141. Several commenters supported requiring providers to disclose in the labels specific information related to blocking, throttling, and paid prioritization. Some argued that the network management disclosures in the 2016 labels were inadequate and urged the Commission to add content related to blocking, throttling, and paid prioritization. The Commission concluded alternatively that requiring a link to the broadband service provider's website as a source for more information

on its practices, rather than expanding the labels to address network management practices in detail, is the best approach. Similarly, some commenters asserted that the labels should include more detailed information about ISPs' privacy practices than the 2016 labels did. The Commission determined instead that it was appropriate to adopt the 2016 label language regarding privacy and to simply require a link on the label to the service provider's privacy policy.

142. In the Report and Order, the Commission considered whether the labels should be available in languages other than English. Several commenters opposed requiring providers to make labels available in multiple languages, asserting that it would be extremely cumbersome and expensive, particularly for smaller providers. While emphasizing the importance that the labels be accessible to all consumers, the Commission recognized the potential burdens on providers of translating labels into multiple languages at this time. Thus, it required providers to alternatively post the labels on websites and in any printed materials in English, as well as in any other languages in which they market their services.

143. Some commenters asked that the Commission make ''fillable'' PDF templates of the label available to providers to minimize the burdens on smaller providers in particular. The Commission determined to make label templates available to providers on its website and directed the Consumer and Governmental Affairs Bureau to complete work on the initial website no later than thirty days before the new label requirement becomes effective. Other commenters asked that small providers not be subject to any requirement that the label be machine readable. The record showed that the benefits of requiring that the label content be machine readable can be achieved at a low cost to providers, with no commenters providing cost data to suggest otherwise. Nevertheless, to address such concerns, the Commission determined that allowing providers to use spreadsheets to make the information available in a machine-readable format greatly minimizes any burden that a small provider might have to bear, and will be lessened even further by the fact that the Commission will provide a template of the label. The Commission also determined that the machine-readable requirement should not become effective until one year after OMB completes its review of the new information collection requirements.

144. In addition, the Commission considered whether to require ISPs to display the labels on their customers' monthly bills. It declined to do so, however, noting that the burdens on ISPs of doing so appear to outweigh the benefits to consumers. Instead, the Commission determined to require ISPs to display labels on customers' online account portals, finding that associating a label that is already displayed on the provider's primary advertising web page would not be overly burdensome. The Commission nevertheless determined that in order to allow ISPs sufficient time to make any necessary system changes, the customer online account requirement should not become effective for all providers until one year after OMB completes its review of the new information collection.

145. Finally, the Commission considered whether to exempt smaller providers from the label requirements. While it rejected such an exemption, stating that it was important to ensure that *every* consumer benefits from the labels, not just those who are served by the largest providers, it did adopt a different implementation period for providers with 100,000 or fewer subscriber lines, which will likely include substantially all small entities. Specifically, the Commission determined that these providers should have a longer time within which to come into compliance with the new label requirements and adopted a one-year implementation period for these providers. The Commission was persuaded that implementing broadband labels may require providers to complete certain tasks such as compiling the information that must be presented in the label and posting labels on their websites. Thus, the Commission concluded that additional time was warranted for these providers that are less likely to have in-house attorneys and compliance departments to assist in preparing their broadband labels and will need to engage outside legal resources to implement several proposed requirements. Finally, one commenter asked that the Commission exempt small broadband providers from the Commission's formal complaint process. The Commission stated that the formal complaint process does not apply in this context given the current classification of broadband internet access service.

List of Subjects in 47 CFR Part 8

Cable television, Common carriers, Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 8 as follows:

PART 8—INTERNET FREEDOM

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

Authority: 47 U.S.C. 154, 201(b), 257, 303(r), and 1753.

■ 2. Section 8.1 is amended by adding paragraphs (a)(1) through (7) to read as follows:

§ 8.1 Transparency.

(a) * * *

(1) Any person providing broadband internet access service shall create and display an accurate broadband consumer label for each stand-alone broadband internet access service it currently offers for purchase. The label must be prominently displayed, publicly available, and easily accessible to consumers, including consumers with disabilities, at the point of sale with the content and in the format prescribed by the Federal Communications Commission (Commission) in figure 1 to this paragraph (a)(1).

BILLING CODE 6712–01–P

Figure 1 to Paragraph (a)(1)—[Fixed or Mobile] Broadband Consumer Disclosure Label

Broadband Facts

Provider Name

Service Plan Name and/or Speed Tier

Fixed or Mobile Broadband Consumer Disclosure

Monthly Price [$]

This Monthly Price [is/is not] an introductory rate. [if introductory rate is applicable, identify length of introductory period and the rate that will apply after introductory period concludes]

This Monthly Price [does not] require[s] a [x year/x month] contract. [only required if applicable; if so, provide link to terms of contract]

Additional Charges & Terms

Provider Monthly Fees [Itemize each fee]	[$]
One-time Fees at the Time of Purchase [Itemize each fee]	[$]
Early Termination Fee	[$]
Government Taxes	Varies by Location

Discounts & Bundles

Click Here for available billing discounts and pricing options for broadband service bundled with other services like video, phone, and wireless service, and use of your own equipment like modems and routers. [Any links to such discounts and pricing options on the provider's website must be provided in this section.]

Affordable Connectivity Program (ACP)

The ACP is a government program to help lower the monthly cost of internet service. To learn more about the ACP, including to find out whether you qualify, visit affordableconnectivity.gov.

Participates in the ACP [Yes/No]

Speeds Provided with Plan

Typical Download Speed	[] Mbps
Typical Upload Speed	[] Mbps
Typical Latency	[] ms

Data Included with Monthly Price	[] GB
Charges for Additional Data Usage	[$/GB]

Network Management	**Read our Policy**
Privacy	**Read our Policy**

Customer Support

Contact Us: example.com/support / (555) 555-5555

Learn more about the terms used on this label by visiting the Federal Communications Commission's Consumer Resource Center.

fcc.gov/consumer

[Unique Plan Identifier Ex. F0005937974123ABC456EMC789]

BILLING CODE 6712–01–C

(2) Broadband internet access service providers shall display the label required under paragraph (a)(1) of this section at each point of sale. ''Point of

sale'' is defined to mean a provider's website and any alternate sales channels through which the provider's broadband internet access service is sold, including a provider-owned retail location, third-party retail location, and over the phone. For labels displayed on provider websites, the label must be displayed in close proximity to the associated advertised service plan. ''Point of sale'' also means the time a consumer begins investigating and comparing broadband service offerings available to them at their location. ''Point of sale'' for purposes of the E-Rate and Rural Health Care programs is defined as the time a service provider submits its bid to a program participant. Providers participating in the E-Rate and Rural Health Care programs must provide their labels to program participants when they submit their bids to participants. Broadband internet access service providers that offer online account portals to their customers shall also make each customer's label easily accessible to the customer in such portals.

(3) The content of the label required under paragraph (a)(1) of this section must be displayed on the broadband internet access service provider's website in a machine-readable format. Broadband internet access service providers must provide the information in any label separately in a spreadsheet file format on their websites via a dedicated uniform resource locator (URL) that contains all of their labels. Providers must publicize the URL with the label data in the transparency disclosures required under this paragraph (a).

(4) The label required under paragraph (a)(1) of this section must be provided in English and in any other languages in which the broadband internet access service provider markets its services in the United States.

(5) Broadband internet access service providers shall maintain an archive of all labels required under paragraph (a)(1) of this section for a period of no less than two years from the time the service plan reflected in the label is no longer available for purchase by a new subscriber and the provider has removed the label from its website or alternate sales channels. Providers must provide any archived label to the Commission, upon request, within thirty days. Providers must provide an archived label, upon request and within thirty days, to an existing customer whose service plan is associated with the particular label. A provider is not required to display a label once the associated service plan is no longer offered to new subscribers.

(6) Broadband consumer label requirements and the transparency rule in paragraph (a) of this section are subject to enforcement using the same processes and procedures. The label required under paragraph (a)(1) of this section is not a safe harbor from the transparency rule or any other requirements established by the Commission.

(7) Paragraphs (a)(1) through (6) of this section may contain an information-collection and/or recordkeeping requirement. Compliance with paragraphs (a)(1) through (6) of this section will not be required until this paragraph (a)(7) is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or until after the Consumer and Governmental Affairs Bureau determines that such review is not required. The compliance date will be one year after the removal or amendment of this paragraph (a)(7) for providers with 100,000 or fewer subscriber lines and six months after the removal or amendment of this paragraph (a)(7) for all other providers, except that the compliance date for paragraph (a)(3) of this section will be one year after the removal or amendment of this paragraph (a)(7) for all providers. The compliance date for the requirement in paragraph (a)(2) of this section to make labels accessible in online account portals will be one year after the removal or amendment of this paragraph (a)(7) for all providers. The Commission directs the Consumer and Governmental Affairs Bureau to announce compliance dates for paragraphs (a)(1) through (6) of this section by subsequent Public Notice and notification in the **Federal Register** and to cause this section to be revised accordingly.

* * * * *

[FR Doc. 2022–26854 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2022–0032]

RIN 0750–AL59

Defense Federal Acquisition Regulation Supplement: Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region (DFARS Case 2022–D008)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act of Fiscal Year 2022 that prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region.

DATES:

Effective date: December 30, 2022.

Comment due date: Comments on the interim rule should be submitted in writing to the address shown below on or before February 14, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2022–D008, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2022–D008.'' Select ''Comment'' and follow the instructions to submit a comment. Please include your name, company name (if any), and ''DFARS Case 2022–D008'' on any attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2022–D008 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule revises the DFARS to implement section 848 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81). Section 848 prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region of the People's Republic of China (XUAR) and requires a certification from offerors for contracts with DoD stating the offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract.

II. Discussion and Analysis

This interim rule makes the following changes to the DFARS to implement section 848 of the NDAA for FY 2022:

A. Definitions

The interim rule adds a new section for definitions in DFARS 225.7022–2. ''Forced labor'' is defined as all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer themselves voluntarily.

In addition, the rule defines ''person'' as—

a. A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group; or

b. Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in item a.

Lastly, ''XUAR'' is added and is defined as the Xinjiang Uyghur Autonomous Region of the People's Republic of China.

B. Prohibition

At DFARS 225.7022–3, the statutory prohibition is added that DoD shall not award a contract utilizing funds appropriated or otherwise made available for fiscal year 2022 to an entity that uses forced labor from XUAR.

C. Certification

The statute requires a certification from offerors for all DoD contracts stating the offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of such contract. A solicitation provision is created to facilitate receipt of the good faith certification from offerors. A contract clause is created to provide the associated terms and conditions for compliance, as they will apply to the contract. The solicitation provision and contract clause are added to the list at DFARS 212.301 of clauses and provisions that apply to the acquisition of commercial items.

D. Solicitation Provision and Contract Clause

A new solicitation provision at 252.225–7059, Prohibition on Certain Procurements From the Xinjiang Uyghur Autonomous Region–Certification, is added for use in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial services, commercial products, or commercially available off-the-shelf (COTS) items. The provision is used in solicitations that contain the clause at 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region. This provision will be used to determine whether the offeror is subject to the statutory prohibition and therefore is prohibited from consideration for contract award. If the offeror responds that it does not certify that it has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract resulting from the solicitation, then the offeror is ineligible for contract award.

A new contract clause at 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, is added for use in solicitations and contracts, utilizing funds appropriated or otherwise made available for fiscal year 2022, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial services, commercial products, or COTS items. The new clause prohibits contractors from providing, throughout the period of performance of the contract, any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs.

E. Exceptions

The section 848 prohibition will not apply to—

- Purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card; or
- Purchases using the SF 44, Purchase Order-Invoice-Voucher, in accordance with 213.306.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This DFARS rule implements section 848 of the NDAA for FY 2022. Section 848 prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR and requires a certification from offerors for DoD contracts.

This rule creates a new solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Certification, and a new contract clause at DFARS 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region. The clause at DFARS 252.225–7060 is prescribed for use in solicitations and contracts utilizing funds appropriated or otherwise made available for fiscal year 2022, including solicitations using FAR part 12 procedures for the acquisition of commercial services and commercial products including COTS items. DoD has made the determination to apply the rule to contracts valued at or below the simplified acquisition threshold (SAT) and to the acquisition of commercial services and commercial products, including COTS items, as defined at FAR 2.101.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

The statute at 41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. The statute at 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Services and Commercial Products, Including COTS Items

The statute at 10 U.S.C. 2375 (redesignated 10 U.S.C. 3452) exempts

contracts and subcontracts for the acquisition of commercial services and commercial products (including COTS items) from provisions of law enacted after October 13, 1994, that, as determined by the Under Secretary of Defense for Acquisition and Sustainment (USD (A&S)), set forth policies, procedures, requirements, or restrictions for the acquisition of property or services unless—

The provision of law—

—Provides for criminal or civil penalties;

—Requires that certain articles be bought from American sources pursuant to 10 U.S.C. 2533a or that strategic materials critical to national security be bought from American sources pursuant to 10 U.S.C. 2533b; or

—Specifically refers to 10 U.S.C. 2375 (now 10 U.S.C. 3452) and states that it shall apply to contracts and subcontracts for the acquisition of commercial services and commercial products (including COTS items); or USD (A&S) determines in writing that it would not be in the best interest of the Government to exempt contracts or subcontracts for the acquisition of commercial products and services from the applicability of the provision. This authority has been delegated to the Principal Director, Defense Pricing and Contracting.

C. Determinations

Section 848 is silent on applicability to contracts and subcontracts in amounts at or below the SAT or for the acquisition of commercial products and commercial services. Also, the statute does not provide for civil or criminal penalties. Therefore, it does not apply to the acquisition of contracts or subcontracts in amounts not greater than the SAT or the acquisition of commercial services and commercial products (including COTS items), unless the Principal Director, Defense Pricing and Contracting, makes a written determination as provided for in 41 U.S.C. 1905 and 10 U.S.C. 2375 (redesignated 10 U.S.C. 3452).

The solicitation provision and contract clause provided are necessary to implement the statutory restrictions and to protect the contracting officer from violating the prohibition on the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of a forced labor program.

If the solicitation provision and contract clause are not included in solicitations and contracts valued at or below the SAT and for the acquisition of commercial services and commercial products (including COTS items) it becomes more likely that a contracting officer could procure a prohibited product, thereby undermining the overarching public policy purpose of the law. Subjecting FAR part 13 simplified acquisitions to section 848 will not impact simplified acquisitions conducted without issuance of a purchase order through the use of the Governmentwide commercial purchase card or the SF 44, as these acquisitions are excepted from section 848.

An exception for contracts for the acquisition of commercial services and commercial products, including COTS items, would exclude some high dollar value contracts, thereby undermining the overarching public policy purpose of the law. However, the prohibition in section 848 covers only ''knowingly'' procuring covered items. It would be unreasonable to expect the parties to a procurement through the use of the Governmentwide commercial purchase card or the SF 44 to know whether the commercial products or commercial services being procured are mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of a forced labor program.

Based on the findings above, it would not be in the best interest of the United States to exempt acquisitions not greater than the SAT (except for purchases made regardless of dollar value through the use of the Governmentwide commercial purchase card or the SF 44) and acquisitions of commercial services or commercial products, including COTS items, from the applicability of section 848 of the NDAA for FY 2022.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq*. An initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is amending the DFARS to implement section 848 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81). Section 848 prohibits the use of funds to knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from the Xinjiang Uyghur Autonomous Region in the People's Republic of China (XUAR) or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs. In addition, section 848 requires a certification from offerors for DoD contracts stating the offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract.

The objective of the rule is to implement the prohibition and certification requirement of section 848. The rule includes a new solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification, which includes a certification requirement, and a new contract clause at DFARS 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, which prohibits contractors from providing any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs. The legal basis for this rule is section 848 of the NDAA for FY 2022.

DoD reviewed data obtained from the Federal Procurement Data System (FPDS) for FY 2020, 2021, and 2022, for DoD purchases of supplies or end products valued above the micro-purchase threshold, including commercial products and COTS items. DoD made an average of 374,735 awards to 16,122 unique entities, of which 154,515 awards were made to 12,187 unique small entities. In addition to the small entities that received awards, DoD estimates there were approximately 621,718 unsuccessful offerors. Note that the unsuccessful offerors are not unique entities; in other words, a single entity may have been counted more than once as an unsuccessful offeror. The rule will apply to successful offerors that receive awards and unsuccessful offerors.

The solicitation provision at DFARS 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification, requires offerors to certify that the offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract resulting from the solicitation containing the provision. Small entities that sell products to DoD will be subject to this requirement when they submit offers for DoD contracts. The rule does not require any other reporting or recordkeeping.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The section 848 prohibition will not apply to purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card or to purchases using the SF 44, Purchase Order-Invoice-Voucher (see DFARS 213.306). DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2022–D008), in correspondence.

VII. Paperwork Reduction Act

This rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement has been assigned OMB Control Number 0750–0007, entitled Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment (41 U.S.C. 1707(d)). This action is necessary because section 848 of the NDAA for FY 2022 adds the prohibition that requires the offeror to provide a certification that it made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract. DoD recognizes that Congress considers this an important public policy to avoid further genocide (see the Joint Explanatory Statement to Accompany the National Defense Authorization Act for Fiscal Year 2022).

Consequently, this interim rule is necessary to ensure implementation of the new statutory certification requirements in section 848. The law containing section 848 was enacted in December 2021, and section 848 is currently in effect.

However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Amend section 212.301 by adding paragraphs (f)(x)(KK) and (LL) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(x) * * *

(KK) Use the provision at 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification, as prescribed in 225.7022–5(a), to comply with section 848 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81).

(LL) Use the clause at 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, as prescribed in 225.7022–5(b), to comply with section 848 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81).

* * * * *

PART 225–FOREIGN ACQUISITION

■ 3. Add sections 225.7022, 225.7022–1, 225.7022–2, 225.7022–3, 225.7022–4, and 225.7022–5 to subpart 225.70 to read as follows:

* * * * *

Sec.

* * * * *

225.7022 Prohibition on certain procurements from the Xinjiang Uyghur Autonomous Region.

225.7022–1 Scope.

This section implements section 848 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81).

225.7022–2 Definitions.

As used in this section—

Forced labor means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer themselves voluntarily.

Person means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group; or

(2) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) of this definition.

XUAR means the Xinjiang Uyghur Autonomous Region of the People's Republic of China.

225.7022–3 Prohibition.

Contracting officers shall not award a contract utilizing funds appropriated or otherwise made available for fiscal year

2022 for any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, unless an exception applies.

225.7022–4 Exceptions.

The prohibition at 225.7022–3 does not apply to—

(a) Purchases under the micro-purchase threshold made using the Governmentwide commercial purchase card; or

(b) Purchases using the SF 44 in accordance with 213.306.

225.7022–5 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7059, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region—Certification, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items and COTS items, that contain the clause at 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

(b) Use the clause at 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, in solicitations, contracts, and orders for products utilizing funds appropriated or otherwise made available for fiscal year 2022, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items and COTS items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add sections 252.225–7059 and 252.225–7060 to read as follows:

252.225–7059 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region–Certification.

As prescribed in 225.7022–5(a), use the following provision:

Prohibition on Certain Procurements From The Xinjiang Uyghur Autonomous Region—Certification (DEC 2022)

(a) *Definitions. Forced labor, person,* and *XUAR,* as used in this provision, have the meaning given in the 252.225–7060, Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region, clause of this solicitation.

(b) *Prohibition.* DoD may not knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, as specified in paragraph (b) of the 252.225–7060, Prohibition on certain procurements from the Xinjiang Uyghur Autonomous Region, clause of this solicitation.

(c) *Certification.*

(1) The Offeror does [ ] does not [ ] certify that the Offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract resulting from this solicitation.

(2) Offerors who do not certify having made a good faith effort will not be eligible for award.

(End of provision)

252.225–7060 Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region.

As prescribed in 225.7022–5(b), use the following clause:

Prohibition on Certain Procurements From The Xinjiang Uyghur Autonomous Region (DEC 2022)

(a) *Definitions.* As used in this clause—

Forced Labor means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer themselves voluntarily.

Person means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group; or

(2) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) of this definition.

XUAR means the Xinjiang Uyghur Autonomous Region of the People's Republic of China.

(b) *Prohibition.* The Contractor shall not provide any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs throughout the entire period of performance of the contract.

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts including subcontracts for commercial items and commercially available off-the-shelf items.

(End of clause)

[FR Doc. 2022–26727 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2022–0003]

RIN 0750–AL18

Defense Federal Acquisition Regulation Supplement: United States-Mexico-Canada Agreement (DFARS Case 2020–D032)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Mexico-Canada Agreement Implementation Act.

DATES: Effective December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 703–717–3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 87 FR 11002 on February 28, 2022, to implement the United States-Mexico-Canada Agreement Implementation Act. A correction notification was published in the **Federal Register** at 87 FR 12923 on March 8, 2022, to correct the comment period due date from May 27, 2022, to April 29, 2022. There were no public comments received in response to the proposed rule.

II. Discussion and Analysis

A. Summary of Significant Changes

No changes are made to the final rule as a result of public comments.

B. Other Changes

The proposed rule reflected redesignation of the paragraph numbering structure for several definitions in paragraph (a) for DFARS clauses 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements. Those paragraph redesignations are no longer required in this final rule, since those redesignations were accomplished with the publication of the final rule for DFARS Case 2019–D045, Maximizing the Use of American-Made Goods,

Products, and Materials, in the **Federal Register** at 87 FR 37440 on June 23, 2022. In addition, minor editorial changes are made to this rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends the contract clauses at DFARS 252.225–7013, Duty-Free Entry; DFARS 252.225–7017, Photovoltaic Devices; DFARS 252.225–7021, Trade Agreements (Basic and Alternate II); DFARS 252.225–7036, Buy American—Free Trade Agreements—Balance of Payments Program (Basic and Alternates I (with the prescription), II, III (with the prescription), IV, and V); DFARS 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements (Basic and Alternates I, II, and III); and the solicitation provisions at DFARS 252.225–7018, Photovoltaic Devices—Certificate; DFARS 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate (Basic and Alternate I, II, III (with the prescription)). This rule does not impose any new requirements on contracts at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

IV. Expected Impact of the Rule

The rule implements the United States-Mexico-Canada Agreement Implementation Act. The United States-Mexico-Canada Agreement (USMCA) supersedes the North American Free Trade Agreement (NAFTA). Canada is still a designated country under the World Trade Organization Government Procurement Agreement; however, Canada is no longer a Free Trade Agreement country, because chapter 13 (Government Procurement) of the USMCA applies only to the United States and Mexico. References to Canada as a Free Trade Agreement country in the DFARS are deleted, including the $25,000 threshold. Canadian end products will still receive nondiscriminatory treatment with respect to the Buy American statute but starting at $183,000 rather than $25,000. Impacts are anticipated to be negligible, since Canada remains a World Trade Organization Government Procurement Agreement (WTO GPA) designated country, and a qualifying country, with a threshold of $183,000. The Mexico thresholds remain unchanged.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary to revise the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the United States-Mexico-Canada Agreement Implementation Act (Pub. L. 116–113). On November 30, 2018, the Governments of the United States, Mexico, and Canada (the parties) signed the protocol replacing NAFTA with the United States-Mexico-Canada Agreement (USMCA). On December 10, 2019, the parties signed the protocol of amendment to the USMCA. On January 29, 2020, the President signed into law the United States-Mexico-Canada Agreement Implementation Act, through which Congress approved the USMCA. On July 1, 2020, the USMCA entered into effect.

The objective of this rule is to implement the USMCA Implementation Act. The rule includes changes in the DFARS to conform to chapter 13 of the USMCA, which sets forth certain obligations between the United States and Mexico with respect to government procurement of goods and services, as specified in Annex 13–A of the USMCA. Chapter 13 of the USMCA applies only to Mexico and the United States and does not cover Canada.

Although Canada is still a designated country under the WTO GPA, Canada is no longer a Free Trade Agreement country, because chapter 13 of the USMCA applies only to the United States and Mexico. Therefore, references to Canada as a Free Trade Agreement country in the DFARS are deleted, including the $25,000 threshold. Canadian end products will still receive nondiscriminatory treatment with respect to the Buy American statute but starting at $183,000 rather than the threshold of $25,000. Mexico thresholds remain unchanged.

The rule removes all references to the NAFTA, replacing them with the new USMCA language, including statutory references. All references to Canadian end products or Canadian photovoltaic devices also are removed.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected to have a significant economic impact on small entities. Although the rule removes Canada as a Free Trade Agreement designated country and deletes the associated $25,000 threshold, replacing it with the free trade agreement minimum threshold of $92,319, Canada remains a WTO GPA designated country, and a qualifying country, with a threshold of $183,000. The Mexico thresholds remain unchanged. Contracting officers will be required to use the revised provisions and clauses as prescribed that reflect the USMCA requirements.

Based on fiscal year 2021 data from the Federal Procurement Data System, 24,808 unique small entities were awarded DoD contracts. Impacts to small businesses are anticipated to be negligible, since Canada remains a WTO GPA designated country, and a qualifying country, with a threshold of $183,000, and the Mexico thresholds remain unchanged.

This final rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. The rule does not impose any additional information collection requirements.

There are no known significant alternative approaches to the rule that would meet the requirements of the USMCA Implementation Act.

VIII. Paperwork Reduction Act

The rule affects information collection requirements in the provisions at DFARS 252.225–7018, Photovoltaic Devices—Certificate, and 252.225–7035, Buy American—Free Trade Agreements—Balance of Payments Program Certificate; and the clauses at DFARS 252.225–7013, Duty-Free Entry, and 252.225–7021, Alternate II, Trade Agreements, currently approved under OMB Control Number 0704–0229 in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0229, DFARS Part 225, Foreign Acquisition, and Related Clauses at 252.225; DD Form 2139.

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 2. Amend section 212.301 in paragraphs (f)(x)(M) introductory text, (f)(x)(N) introductory text, (f)(x)(V) introductory text, and (f)(x)(W) introductory text by removing ''3301 note'' and adding ''4501–4732''.

PART 225—FOREIGN ACQUISITION

225.1101 [Amended]

■ 3. Amend section 225.1101 in paragraphs (10)(i) introductory text and (10)(i)(B) and (D) by removing ''equals or exceeds $25,000, but''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.225–7013 by—
■ a. Revising the date of the clause; and
■ b. In paragraph (a), revising the definition of ''Eligible product''.

The revisions read as follows:

252.225–7013 Duty-Free Entry.

* * * * *

Duty-Free Entry (DEC 2022)

(a) * * *

Eligible product means—

(1) *Designated country end product,* as defined in the Trade Agreements (either basic or alternate) clause of this contract;

(2) *Free Trade Agreement country end product,* other than a *Bahrainian end product,* a *Moroccan end product,* a *Panamanian end product,* or a *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either basic or alternate II) clause of this contract; or

(3) *Free Trade Agreement country end product* other than a *Bahrainian end product, Korean end product, Moroccan end product, Panamanian end product,* or *Peruvian end product,* as defined in the Buy American—Free Trade Agreements—Balance of Payments Program (either alternate IV or alternate V) clause of this contract.

* * * * *

■ 5. Amend section 252.225–7017 by—
■ a. Revising the date of the clause;
■ b. In paragraph (a)—
■ i. Removing the definition of ''Canadian photovoltaic device''; and
■ ii. In the definitions of ''Designated country'', paragraph (2), and ''Free Trade Agreement country'' removing ''Canada,'';
■ c. In paragraph (c)(1), removing ''$25,000'' and adding ''$92,319'' in its place;
■ d. Removing paragraph (c)(2); and
■ e. Redesignating paragraphs (c)(3), (4), and (5) as paragraphs (c)(2), (3), and (4).

The revision reads as follows:

252.225–7017 Photovoltaic Devices.

* * * * *

Photovoltaic Devices (DEC 2022)

* * * * *

252.225–7018 [Amended]

■ 6. Amend section 252.225–7018 by—
■ a. Revising the date of the provision;
■ b. In paragraph (a), removing '' ''Canadian photovoltaic device,'' '';
■ c. In paragraph (c), removing ''$25,000'' and adding ''$92,319'' in its place;
■ d. In paragraph (d)(2) introductory text, removing ''$25,000'' and adding ''$92,319'' in its place; and
■ e. Revising paragraph (d)(3).

The revisions read as follows:

252.225–7018 Photovoltaic Devices—Certificate.

Photovoltaic Devices—Certificate (DEC 2022)

(d) * * *

(3) If less than $92,319—

____(i) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a domestic photovoltaic device;

____(ii) The offeror certifies that each photovoltaic device to be utilized in performance of the contract is a qualifying country photovoltaic device *[Offeror to specify country of origin*

____]; or

____(iii) The foreign photovoltaic devices to be utilized in performance of the contract are the product of____. *[Offeror to specify country of origin, if known, and provide documentation that the cost of a domestic photovoltaic device would be unreasonable in comparison to the cost of the proposed foreign photovoltaic device, i.e. that the price of the foreign photovoltaic device plus 50 percent is less than the price of a comparable domestic photovoltaic device.]*

* * * * *

■ 7. Amend section 252.225–7021 by—
■ a. Revising the section heading and date of the clause;
■ b. In paragraph (a)—
■ i. In the definition of ''Caribbean Basin country end product'' redesignating paragraphs (i) introductory text, (i)(A) and (B), (ii) introductory text, and (ii)(A), (B), and (C) as paragraphs (1) introductory text, (1)(i) and (ii), (2) introductory text, and (2)(i), (ii), and (iii), respectively;
■ ii. In the definition of ''Commercially available off-the-shelf (COTS) item'', redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;
■ iii. In the definition of ''Designated country'':
■ A. Redesignating paragraphs (i) through (iv) as paragraphs (1) through (4), respectively; and
■ B. In the newly redesignated paragraph (2), removing ''Canada,'';
■ iv. In the definitions of ''Free Trade Agreement country end product'' and ''Least developed country end product'', redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
■ v. In the definition of ''Qualifying country end product'', redesignating paragraphs (i), (ii) introductory text, (ii)(A) introductory text, (ii)(A)(*1*), (*2*), and (*3*), and (ii)(B) as paragraphs (1), (2) introductory text, (2)(i) introductory text, (2)(i)(A), (B), and (C), and (2)(ii), respectively; and
■ vi. In the definitions of ''U.S.-made end product'' and ''WTO GPA country end product'', redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
■ c. In paragraph (e) introductory text, removing ''on the internet''; and
■ d. In Alternate II—
■ i. Revising the date of the clause;
■ ii. In paragraph (a)—
■ A. In the definition of ''Caribbean Basin country end product'', redesignating paragraphs (i) introductory text, (i)(A) and (B), (ii) introductory text, and (ii)(A), (B), and

(C) as paragraphs (1) introductory text, (1)(i) and (ii), (2) introductory text, and (2)(i), (ii), and (iii), respectively;
■ B. In the definition of ''Commercially available off-the-shelf (COTS) item'', redesignating paragraphs (i) introductory text, (i)(A), (B), and (C), and (ii) as paragraphs (1) introductory text, (1)(i), (ii), and (iii), and (2), respectively;
■ C. In the definition of ''Designated country'':
■ 1. Redesignating paragraphs (i) through (iv) as paragraphs (1) through (4), respectively; and
■ 2. In the newly redesignated paragraph (2), removing ''Canada,'';
■ D. In the definitions of ''Free Trade Agreement country end product'' and ''Least developed country end product'', redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively;
■ E. In the definition of ''Qualifying country end product'', redesignating paragraphs (i), (ii) introductory text, (ii)(A) introductory text, (ii)(A)(*1*), (*2*), and (*3*), and (ii)(B) as paragraphs (1), (2) introductory text, (2)(i) introductory text, (2)(i)(A), (B), and (C), and (2)(ii), respectively; and
■ F. In the definitions of ''South Caucasus/Central and South Asian (SC/CASA) state end product'', ''U.S.-made end product'', and ''WTO GPA country end product'', redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively; and
■ iii. In paragraph (f) introductory text, removing ''on the internet''.

The revisions read as follows:

252.225–7021 Trade Agreements.

* * * * *

Trade Agreements—Basic (DEC 2022)

* * * * *

Trade Agreements—Alternate II (DEC 2022)

* * * * *

■ 8. Amend section 252.225–7035 by—
■ a. Revising the provision date;
■ b. In paragraph (b)(1), removing ''Part'' and adding ''part'' in its place;
■ c. In paragraph (c)(2)(i) introductory text, removing ''or Canadian'';
■ d. In paragraph (c)(2)(iii) introductory text, removing ''paragraph (ii)'' and adding ''paragraph (1)(ii)'' in its place;
■ e. In Alternate I—
■ i. Revising the introductory text and the provision date;
■ ii. In paragraph (a)—
■ A. Removing ''Canadian end product,''; and
■ B. Removing ''commercially available off-the-shelf (COTS) item'' and adding ''Commercially available off-the-shelf (COTS) item'' in its place;
■ iii. In paragraph (b)(2), removing ''or Canadian end products''; and
■ iv. Revising paragraph (c)(2);
■ f. In Alternate II—
■ i. Revising the provision date;
■ ii. In paragraph (c)(2)(i) introductory text, removing ''or Canadian''; and
■ iii. In paragraph (c)(2)(iii) introductory text, removing ''paragraph (ii)'' and adding ''paragraph (1)(ii)'' in its place;
■ g. In Alternate III—
■ i. Revising the provision date;
■ ii. In paragraph (a)—
■ A. Removing ''Canadian end product,''; and
■ B. Removing ''commercially available off-the-shelf (COTS) item'' and adding ''Commercially available off-the-shelf (COTS) item'' in its place;
■ iii. In paragraph (b)(2), removing ''products, SC/CASA state end products, or Canadian end products'' and adding ''products or SC/CASA state end products'' in its place; and
■ iv. In paragraph (c)(2)(i) introductory text, removing ''(except Canadian)'';
■ h. In Alternate IV—
■ i. Revising the provision date;
■ ii. In paragraph (c)(2)(i) introductory text, removing ''or Canadian''; and
■ iii. In paragraph (c)(2)(iii) introductory text, removing ''paragraph (ii)'' and adding ''paragraph (1)(ii)'' in its place; and
■ i. In Alternate V—
■ i. Revising the provision date;
■ ii. In paragraph (c)(2)(i) introductory text, removing ''or Canadian''; and
■ iii. In paragraph (c)(2)(iii) introductory text, removing ''paragraph (ii)'' and adding ''paragraph (1)(ii)'' in its place.

The revisions read as follows:

252.225–7035 Buy American-Free Trade Agreements-Balance of Payments Program Certificate.

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Basic (DEC 2022)

* * * * *

Alternate I. As prescribed in 225.1101(9) and (9)(ii), use the following provision, which does not use the phrases *Bahrainian end product, Free Trade Agreement country, Free Trade Agreement country end product, Moroccan end product, Panamanian end product,* and *Peruvian end products* in paragraph (a); does not use ''Free Trade Agreement country end products other than Bahrainian end products, Moroccan end products, Panamanian end products, or Peruvian end products'' in paragraphs (b)(2) and (c)(2)(ii); and does not use ''Australian or'' in paragraph (c)(2)(i):

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate I (DEC 2022)

* * * * *

(c) * * *

(2) The offeror shall identify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies are qualifying country end products:

(*Line Item Number*) (*Country of Origin*)

(ii) The following supplies are other foreign end products, including end products manufactured in the United States that do not qualify as domestic end products, *i.e.,* an end product that is not a COTS item and does not meet the component test in paragraph (1)(ii) of the definition of ''domestic end product'':

(*Line Item Number*) (*Country of Origin (If known)*)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate II (DEC 2022)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III (DEC 2022)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate IV (DEC 2022)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate V (DEC 2022)

* * * * *

■ 9. Amend section 252.225–7036 by—
■ a. Revising the clause date;
■ b. In paragraph (a), in the definition of ''Free Trade Agreement country'', removing ''Canada,'';
■ c. In Alternate I—
■ i. Revising the introductory text and the clause date;
■ ii. In paragraph (a)—
■ A. Removing the definition of ''Canadian end product''; and
■ B. In the definition of ''Free Trade Agreement country'', removing ''Canada,''; and
■ iii. In paragraph (c), removing '', Canadian'', ''or a Canadian end product'', and '', a Canadian end product,'';
■ d. In Alternate II—
■ i. Revising the clause date; and
■ ii. In paragraph (a) definition of ''Free Trade Agreement country'', removing ''Canada,'';
■ e. In Alternate III—
■ i. Revising the introductory text and the clause date;
■ ii. In paragraph (a)—
■ A. Removing the definition of ''Canadian end product''; and
■ B. In the definition of ''Free Trade Agreement country'', removing ''Canada,''; and
■ iii. Revising paragraph (c);
■ f. In Alternate IV—
■ i. Revising the clause date; and

■ ii. In paragraph (a), in the definition of ''Free Trade Agreement country'', removing ''Canada,''; and

■ g. In Alternate V—

■ i. Revising the clause date; and

■ ii. In paragraph (a), in the definition of ''Free Trade Agreement country'', removing ''Canada,''.

The revisions read as follows:

252.225–7036 Buy American—Free Trade Agreements—Balance of Payments Program.

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Basic (DEC 2022)

* * * * *

Alternate I. As prescribed in 225.1101(10)(i) and (10)(i)(B), use the following clause, which uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate I (DEC 2022)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate II (DEC 2022)

* * * * *

Alternate III. As prescribed in 225.1101(10)(i) and (10)(i)(D), use the following clause, which adds *South Caucasus/Central and South Asian (SC/CASA) state* and *South Caucasus/Central and South Asian (SC/CASA) state end product* to paragraph (a) and uses a different paragraph (c) than the basic clause:

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate III (DEC 2022)

* * * * *

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, or other foreign end products in the Buy American—Free Trade Agreements—Balance of Payments Program Certificate—Alternate III provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or SC/CASA state end products, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate IV (DEC 2022)

* * * * *

Buy American—Free Trade Agreements—Balance of Payments Program—Alternate V (DEC 2022)

* * * * *

■ 10. Amend section 252.225–7045 by—

■ a. Revising the clause date;

■ b. In paragraph (a), in the definition of ''Designated country'', paragraph (2), removing ''Canada,'';

■ c. In Alternate I—

■ i. Revising the clause date;

■ ii. In paragraph (a), in the definition of ''Designated country'', paragraph (2), removing ''Canada,''; and

■ iii. In paragraph (b), removing ''NAFTA'' and adding ''United States-Mexico-Canada Agreement'' in its place;

■ d. In Alternate II—

■ i. Revising the clause date; and

■ ii. In paragraph (a), in the definition of ''Designated country'', paragraph (2), removing ''Canada,''; and

■ e. In Alternate III—

■ i. In the introductory text, removing ''(SC/CASA state'' and adding ''(SC/CASA) state'' in its place;

■ ii. Revising the clause date;

■ iii. In paragraph (a), in the definition of ''Designated country'', in paragraph (2), removing ''Canada,''; and

■ iv. In paragraph (b) removing ''NAFTA'' and adding ''United States-Mexico-Canada Agreement'' in its place.

The revisions read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Basic (DEC 2022)

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate I (DEC 2022)

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate II (DEC 2022)

* * * * *

Balance of Payments Program—Construction Material Under Trade Agreements—Alternate III (DEC 2022)

* * * * *

[FR Doc. 2022–26690 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

[Docket DARS–2022–0031]

RIN 0750–AL72

Defense Federal Acquisition Regulation Supplement: Reorganization of Defense Acquisition Statutes (DFARS Case 2022–D018)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Act for Fiscal Year 2021 and sections of the National Defense Authorization Act for Fiscal Year 2022 related to the transfer and reorganization of the defense acquisition statutes.

DATES: Effective December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Ziegler, telephone 703–901–3176.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement Title XVIII of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283), Transfer and Reorganization of Defense Acquisition Statutes, which revised numerous statutory references used throughout the DFARS. The rule also implements Title XVII of the NDAA for FY 2022 (Pub. L. 117–81), Technical Amendments Related to the Transfer and Reorganization of Defense Acquisition Statutes, which provided technical, conforming, and clerical amendments related to Title XVIII of the NDAA for FY 2021. The rule also provides the new location of notes that were moved by the Office of the Law Revision Counsel of the United States House of Representatives as a result of the reorganization.

The rule makes several minor corrections to the DFARS apart from the changes related to the reorganization. These corrections include updates to organizational office names, statutory titles, the addition of codification citations for authorization acts, and the removal of citations for statutes that have been repealed.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing new regulation; rather, this rule only updates statutory references in the existing regulations and has no significant cost or administrative impact on contractors or offerors.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf Items

This rule does not create any new solicitation provisions or contract clauses. It does not change the applicability of any existing provisions or clauses included in solicitations or contracts valued at or below the simplified acquisition threshold or for commercial services or commercial products, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule, because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, the changes to these DFARS clauses do not impose additional information collection requirements to the paperwork burden previously approved under the following OMB Control Numbers:

- 0704–0187, Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements).
- 0704–0332, Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I.
- 0704–0369, DFARS Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.
- 0704–0397, Defense Federal Acquisition Regulation Supplement (DFARS) Part 243, Contract Modifications and Related Clause at DFARS 252.243–7002.
- 0704–0533, Defense Federal Acquisition Regulation Supplement (DFARS) Part 249, Termination of Contracts, and a Related Clause at DFARS 252.249–7002, Notification of Anticipated Contract Termination or Reduction.
- 0704–0574, Defense Federal Acquisition Regulation Supplement (DFARS) Part 215: Only One Offer and Related Clauses at 252.215.

List of Subjects in 48 CFR Parts 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 234, 235, 236, 237, 239, 242, 243, 244, 250, 252, and Appendix I to Chapter 2

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 234, 235, 236, 237, 239, 242, 243, 244, 250, 252, and Appendix I to Chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 201, 202, 203, 204, 205, 206, 207, 208, 209, 212, 213, 215, 216, 217, 219, 222, 223, 225, 226, 227, 231, 232, 233, 234, 235, 236, 237, 239, 242, 243, 244, 250, 252, and Appendix I to Chapter 2 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 201—FEDERAL ACQUISITION REGULATIONS SYSTEM

201.101 [Amended]

■ 2. Amend section 201.101 in paragraph (1) by removing ''10 U.S.C. 2545'' and adding ''10 U.S.C. 3001(a)'' in its place.

PART 202—DEFINITIONS OF WORDS AND TERMS

202.101 [Amended]

■ 3. Amend section 202.101—

■ a. In the definition of ''Major defense acquisition program'' by removing ''10.U.S.C. 2430(a)'' and adding ''10 U.S.C. 4201'' in its place;

■ b. In the definition of ''Milestone decision authority'' by removing ''10 U.S.C. 2431a'' and adding ''10 U.S.C. 4211'' in its place; and

■ c. In the definition of ''Nontraditional defense contractor'' by removing ''10 U.S.C. 2302(9)'' and adding ''10 U.S.C. 3014'' in its place.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 4. Revise section 203.570–1 to read as follows:

203.570–1 Scope.

This subpart implements 10 U.S.C. 4656. For information on 10 U.S.C. 4656, see PGI 203.570–1.

203.900 [Amended]

■ 5. Amend section 203.900 in the introductory text and paragraph (a)(i) and paragraph (a)(ii) introductory text by removing ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

203.903 [Amended]

■ 6. Amend section 203.903 in paragraph (1) by removing ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

203.906 [Amended]

■ 7. Amend section 203.906—
■ a. In paragraph (2)(ii) by removing ''10 U.S.C. 2409'' and ''two'' and adding ''10 U.S.C. 4701'' and ''2'' in their places, respectively;
■ b. In paragraph (3) by removing ''10 U.S.C. 2409(c)'' and adding ''10 U.S.C. 4701(c)'' in its place;
■ c. In paragraph (4) by removing ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place; and
■ d. In paragraph (5) by removing ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

204.1700 [Amended]

■ 8. Amend section 204.1700 by removing ''10 U.S.C. 2330a'' and adding ''10 U.S.C. 4505'' in its place.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.301 [Amended]

■ 9. Amend section 205.301 in paragraph (a)(S–70)(i) introductory text by removing ''10 U.S.C. 2533a(k)'' and adding ''10 U.S.C. 4862(k)'' in its place.

205.470 [Amended]

■ 10. Amend section 205.470 by removing ''10 U.S.C. 2416'' and adding ''10 U.S.C. 4957'' in its place.

PART 206—COMPETITION REQUIREMENTS

206.001–70 [Amended]

■ 11. Amend section 206.001–70—
■ a. In paragraph (a) introductory text by removing ''10 U.S.C. 2371b'' and adding ''10 U.S.C. 4022'' in its place; and
■ b. In paragraph (a)(2) by removing ''10 U.S.C. 2371b'' and ''section (a)(2),'' and adding ''10 U.S.C. 4022'' and ''section (a)(2)'' in their places, respectively.

206.102 [Amended]

■ 12. Amend section 206.102 in paragraph (d)(2) by removing ''10 U.S.C. 2302(2)(B)'' and adding ''10 U.S.C. 3012(2)'' in its place.

206.302–4 [Amended]

■ 13. Amend section 206.302–4 in paragraph (c) by removing ''10 U.S.C. 2304(f)(2)(E)'' and adding ''10 U.S.C. 3204(e)(4)(E)'' in its place.

206.302–5 [Amended]

■ 14. Amend section 206.302–5—
■ a. In paragraph (c)(i) introductory text by removing ''10 U.S.C. 2361'' and adding ''10 U.S.C. 4141'' in its place;
■ b. In paragraph (c)(i)(A)(*1*) by removing ''10 U.S.C. 2361,'' and adding ''10 U.S.C. 4141;'' in its place;
■ c. In paragraph (c)(i)(A)(*2*) by removing ''involved,'' and adding ''involved;'' in its place; and
■ d. In paragraph (c)(i)(A)(*3*) by removing ''10 U.S.C. 2361(a)'' and adding ''10 U.S.C. 4141(a)'' in its place.

PART 207—ACQUISITION PLANNING

207.103 [Amended]

■ 15. Amend section 207.103 in paragraph (h) introductory text by removing ''10 U.S.C. 2304(c)(3)'' and ''Section'' and adding ''10 U.S.C. 3204(a)(3)'' and ''section'' in their places, respectively.

207.106 [Amended]

■ 16. Amend section 207.106—
■ a. In paragraph (b)(1)(A) introductory text by removing ''10 U.S.C. 2305(d)(4)(A)'' and adding ''10 U.S.C. 3208(d)(1)'' in its place;
■ b. In paragraph (b)(1)(B) by removing ''10 U.S.C. 2305(d)(4)(B)'' and adding and ''10 U.S.C. 3208(d)(2)'' in its place;
■ c. In paragraph (S–70)(1) introductory text by removing ''section 802(a) of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364)'' and adding ''10 U.S.C. 3774(a)'' in its place;
■ d. In paragraph (S–70)(2)(ii) by removing ''10 U.S.C. 2443'' and adding ''10 U.S.C. 4328'' in its place;
■ e. In paragraph (S–72)(1) introductory text by removing ''10 U.S.C. 2430'' and adding ''10 U.S.C. 4201'' in its place; and
■ f. In paragraph (S–72)(5) by removing ''10 U.S.C. 2443'' and ''10 U.S.C. 2302 and 2302d'' and adding ''10 U.S.C. 4328'' and ''10 U.S.C. 3041(a) and 4202'' in their places, respectively.

207.470 [Amended]

■ 17. Amend section 207.470—
■ a. In paragraph (a) introductory text by removing ''10 U.S.C. 2401'' and adding ''10 U.S.C. 3671–3677'' in its place;
■ b. In paragraph (a)(1) by removing ''10 U.S.C. 2401(d)(1)'' and adding ''10 U.S.C. 3674(a)(1)'' in its place;
■ c. In paragraph (a)(2) by removing ''10 U.S.C. 2401(d)(2)'' and adding ''10 U.S.C. 3674(b)'' in its place;
■ d. In paragraph (b) introductory text by removing ''10 U.S.C. 2401a'' and adding ''10 U.S.C. 3678'' in its place; and
■ e. In paragraph (c) by removing ''10 US.C. 2401a'' and adding ''10 U.S.C. 3681'' in its place.

207.500 [Amended]

■ 18. Amend section 207.500 by removing ''10 U.S.C. 2383'' and adding ''10 U.S.C. 4508'' in its place.

207.503 [Amended]

■ 19. Amend section 207.503 in paragraph (S–70)(1) introductory text by removing ''10 U.S.C. 2383'' and adding ''10 U.S.C. 4508'' in its place.

207.7002 [Amended]

■ 20. Amend section 207.7002 in the introductory text by removing ''10 U.S.C. 2308'' and adding ''10 U.S.C. 3069'' in its place.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 21. Amend section 208.602–70 by revising paragraph (a) to read as follows:

208.602–70 Acquisition of items for which FPI has a significant market share.

(a) *Scope.* This section implements 10 U.S.C. 3905.

* * * * *

208.7002 [Amended]

■ 22. Amend section 208.7002 in paragraph (a)(4) introductory text by removing ''10 U.S.C. 2311'' and adding ''10 U.S.C. 3065'' in its place.

PART 209—CONTRACTOR QUALIFICATIONS

■ 23. Amend section 209.104–1—
■ a. In paragraph (g)(ii)(A) by removing ''10 U.S.C. 2536(a)'' and adding ''10 U.S.C. 4874(a)'' in its place;
■ b. By revising paragraph (g)(ii)(C) introductory text; and
■ c. In paragraph (g)(ii)(D) introductory text by removing ''10 U.S.C. 2536(b)(1)(B)'' and ''subsection'' and adding ''10 U.S.C. 4874(b)(1)(B)'' and ''section'' in their places, respectively.

The revision reads as follows:

209.104–1 General standards.

(g) * * *

(ii) * * *

(C) In accordance with 10 U.S.C. 4874(b)(1)(A), the Secretary of Defense may waive the prohibition in paragraph (g)(ii)(A) of this section upon determining that the waiver is essential to the national security interests of the United States. The Secretary has delegated authority to grant this waiver

to the Under Secretary of Defense for Intelligence. Waiver requests, prepared by the requiring activity in coordination with the contracting officer, shall be processed through the Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense (Acquisition and Sustainment), and shall include a proposed national interest determination. The proposed national interest determination, prepared by the requiring activity in coordination with the contracting officer, shall include—

* * * * *

209.405 [Amended]

■ 24. Amend section 209.405 in paragraph (a) introductory text by removing ''10 U.S.C. 2393(b)'' and adding ''10 U.S.C. 4654(b)'' in its place.

209.406–2 [Amended]

■ 25. Amend section 209.406–2 in paragraph (1) introductory text by removing ''10 U.S.C. 2410f'' and adding ''10 U.S.C. 4658'' in its place.

209.570–2 [Amended]

■ 26. Amend section 209.570–2—
■ a. In paragraph (a) by removing ''subsection, 10 U.S.C. 2410p'' and adding ''section, 10 U.S.C. 4292'' in its place; and
■ b. In paragraph (c) introductory text by removing ''Section'' and ''(Pub. L. 110–181),'' and adding ''section'' and ''(Pub. L. 110–181; 10 U.S.C. 4292 note),'' in their places, respectively.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.102 [Amended]

■ 27. Amend section 212.102—
■ a. In paragraph (a)(i)(B)(*2*) by removing ''10 U.S.C. 2380a'' and adding ''10 U.S.C. 3457'' in its place;
■ b. In paragraph (a)(ii)(A) by removing ''10 U.S.C. 2380(c)'' and adding ''10 U.S.C. 3456(c)'' in its place;
■ c. In paragraph (a)(ii)(B)(*2*) introductory text by removing ''10 U.S.C. 2306a(b)(4)(A)'' and ''10 U.S.C. 2306a(b)(4) and 10 U.S.C. 2380(c)'' and adding ''10 U.S.C. 3703(d)(1)'' and ''10 U.S.C. 3703(d) and 10 U.S.C. 3456(c)'' in their places, respectively; and
■ d. In paragraph (a)(iv) introductory text by removing ''10 U.S.C. 2380a'' and adding ''10 U.S.C. 3457'' in its place.

212.209 [Amended]

■ 28. Amend section 212.209—
■ a. In paragraph (a) introductory text by removing ''10 U.S.C. 2377(d)'' and adding ''10 U.S.C. 3453(d)'' in its place; and
■ b. In paragraph (b) by removing ''10 U.S.C. 2306a(b)'' and adding ''10 U.S.C. 3703(e)'' in its place.

212.272 [Amended]

■ 29. Amend section 212.272 in paragraph (b)(1) by removing ''section 10 U.S.C. 2377(c)(2)'' and adding ''10 U.S.C. 3453(c)(2)'' in its place.

212.301 [Amended]

■ 30. Amend section 212.301—
■ a. In paragraph (f)(i)(A) by removing ''10 U.S.C. 2207'' and adding ''10 U.S.C. 4651'' in its place;
■ b. In paragraph (f)(i)(C) by removing ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place;
■ c. In paragraph (f)(ii)(N) introductory text by removing ''10 U.S.C. 2330a'' and adding ''10 U.S.C. 4505'' in its place;
■ d. In paragraph (f)(iii) by removing ''10 U.S.C. 2416'' and adding ''10 U.S.C. 4957'' in its place;
■ e. In paragraph (f)(viii)(C) by removing ''10 U.S.C. 2419'' and adding ''10 U.S.C. 4959'' in its place;
■ f. In paragraphs (f)(x)(E), (F), and (G) by removing ''10 U.S.C. 2533b'' and adding ''10 U.S.C. 4863'' in their places;
■ g. In paragraphs (f)(x)(H) and (I) by removing ''10 U.S.C. 2533a'' and adding ''10 U.S.C. 4862'' in their places;
■ h. In paragraph (f)(x)(U) by removing ''10 U.S.C. 2410i'' and adding ''10 U.S.C. 4659'' in its place;
■ i. In paragraphs (f)(x)(X) and (Y) by removing ''10 U.S.C. 2534(a)(3)'' and adding ''10 U.S.C. 4864(a)(3)'' in their places;
■ j. In paragraph (f)(x)(DD) by removing ''10 U.S.C. 2327(b)'' and adding ''10 U.S.C. 4871(b)'' in its place;
■ k. In paragraph (f)(x)(FF) by removing ''10 U.S.C. 2533c'' and adding ''10 U.S.C. 4872'' in its place;
■ l. In paragraph (f)(xii)(B) by removing ''10 U.S.C. 2320'' and adding ''10 U.S.C. 3772(a)'' in its place;
■ m. In paragraph (f)(xiv)(A) by removing ''10 U.S.C. 2227'' and adding ''10 U.S.C. 4601'' in its place;
■ n. In paragraph (f)(xiv)(G) by removing ''10 U.S.C. 2307(a)'' and adding ''10 U.S.C. 3801'' in its place;
■ o. In paragraph (f)(xvi)(C) and (D) by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in their places; and
■ p. In paragraph (f)(xvii) by removing ''10 U.S.C. 2410'' and adding ''10 U.S.C. 3862'' in its place.

■ 31. Amend section 212.503—
■ a. By revising paragraphs (a)(i), (ii), and (iii);
■ b. By removing paragraphs (a)(iv), (v), and (vi);
■ c. By redesignating paragraphs (a)(vii) through (xi) as paragraphs (a)(iv) through (viii);
■ d. By revising newly redesignated paragraphs (a)(iv) and (v); and
■ e. By revising paragraphs (c)(i) and (ii).

The revisions read as follows:

212.503 Applicability of certain laws to executive agency contracts for the acquisition of commercial items.

(a) * * *

(i) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 3741–3750, Allowable Costs Under Defense Contracts.

(iii) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.

(iv) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.

(v) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards (see 252.242–7004).

* * * * *

(c) * * *

(i) 10 U.S.C. 4655, Prohibition on Limiting Subcontractor Direct Sales to the United States (see FAR 3.503 and 52.203–6).

(ii) 10 U.S.C. 3703, Truthful Cost or Pricing Data (see FAR 15.403–1(b)(3)).

■ 32. Amend section 212.504—
■ a. By revising paragraphs (a)(i) through (v) and (vii);
■ b. By removing paragraphs (a)(viii) through (x);
■ c. By redesignating paragraphs (a)(xi) through (xviii) as paragraphs (a)(viii) through (xv);
■ d. By revising newly redesignated paragraphs (a)(viii) through (xi);
■ e. In paragraph (b)(i) by removing ''10 U.S.C. 2393'' and adding ''10 U.S.C. 4654'' in its place; and
■ f. In paragraph (b)(ii) by removing ''10 U.S.C. 2402'' and adding ''10 U.S.C. 4655'' in its place.

The revisions read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(i) 10 U.S.C. 3321(b), Prohibition on Contingent Fees.

(ii) 10 U.S.C. 3841(d), Examination of Records of a Contractor.

(iii) 10 U.S.C. 3741–3750, Allowable Costs Under Defense Contracts.

(iv) 10 U.S.C. 4871, Reporting Requirement Regarding Dealings with Terrorist Countries.

(v) 10 U.S.C. 4753(b), Requirement to Identify Suppliers.

* * * * *

(vii) 10 U.S.C. 4654, Prohibition Against Doing Business with Certain Offerors or Contractors.

(viii) 10 U.S.C. 4656(a), Prohibition on Persons Convicted of Defense Related Felonies.

(ix) 10 U.S.C. 3845, Contractor Inventory Accounting System Standards.

(x) 10 U.S.C. 4801 note prec., Notification of Proposed Program Termination.

(xi) 10 U.S.C. 4864, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

* * * * *

212.505 [Amended]

■ 33. Amend section 212.505—

■ a. In paragraph (a) by removing ''10 U.S.C. 2533b'' and adding ''10 U.S.C. 4863'' in its place; and

■ b. In paragraph (b) by removing ''10 U.S.C. 2533c'' and adding ''10 U.S.C. 4872'' in its place.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

213.270 [Amended]

■ 34. Amend section 213.270 in paragraph (c)(3) by removing ''10 U.S.C. 2302(8)'' and adding ''10 U.S.C. 3015(2)'' in its place.

213.301 [Amended]

■ 35. Amend section 213.301 in paragraph (3) introductory text by removing ''10 U.S.C. 2302(8)'' and adding ''10 U.S.C. 3015(2)'' in its place.

213.305–3 [Amended]

■ 36. Amend section 213.305–3 in paragraph (d)(iii)(A) by removing ''10 U.S.C. 2302(8)'' and adding ''10 U.S.C. 3015(2)'' in its place.

213.306 [Amended]

■ 37. Amend section 213.306 in paragraph (a)(1)(B) by removing ''10 U.S.C. 2302(8)'' and adding ''10 U.S.C. 3015(2)'' in its place.

PART 215—CONTRACTING BY NEGOTIATION

215.101–2–70 [Amended]

■ 38. Amend section 215.101–2–70—

■ a. In paragraphs (a)(1) introductory text and (a)(2) introductory text by removing ''10 U.S.C. 2305 note'' and adding ''10 U.S.C. 3241 note prec.'' in their places;

■ b. In paragraph (b)(1) by removing ''2017'' and ''2018 (see 10 U.S.C. 2302 note)'' and adding ''2017 (Pub. L. 114–328)'' and ''2018 (Pub. L. 115–91) in their places, respectively;

■ c. In paragraph (b)(2) by removing ''10 U.S.C. 2442 note'' and adding ''10 U.S.C. 4232'' in its place; and

■ d. In paragraph (b)(3) by removing ''10 U.S.C. 254b'' and adding ''10 U.S.C. 240f'' in its place.

215.304 [Amended]

■ 39. Amend section 215.304—

■ a. In paragraph (c)(ii) by removing ''10 U.S.C. 2436'' and ''10 U.S.C. 2430'' and adding ''10 U.S.C. 4293'' and ''10 U.S.C. 4201'' in their places, respectively; and

■ b. In paragraphs (c)(vi)(B) and (C) by removing ''10 U.S.C. 2443'' and adding ''10 U.S.C. 4328'' in their places.

■ 40. Revise the heading of section 215.403–1 to read as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).

* * * * *

215.404–1 [Amended]

■ 41. Amend section 215.404–1 in paragraph (b)(ii) by removing ''10 U.S.C. 2306a(b)(5)'' and adding ''10 U.S.C. 3703(e)'' in its place.

215.503 [Amended]

■ 42. Amend section 215.503 by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in its place.

215.506 [Amended]

■ 43. Amend section 215.506 in paragraph (e) by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in its place.

PART 216—TYPES OF CONTRACTS

216.301–3 [Amended]

■ 44. Amend section 216.301–3 by removing ''10 U.S.C. 2306(c)'' and adding ''10 U.S.C. 3323'' in its place.

216.402–2 [Amended]

■ 45. Amend section 216.402–2 in paragraph (2)(ii) by removing ''10 U.S.C. 2443'' and adding ''10 U.S.C. 4328'' in its place.

216.501–2–70 [Amended]

■ 46. Amend section 216.501–2–70 in paragraph (b) by removing ''10 U.S.C. 2304a'' and adding ''10 U.S.C. 3403'' in its place.

216.504 [Amended]

■ 47. Amend section 216.504—

■ a. In paragraph (c)(1)(ii)(D)(*1*)(*i*) by removing ''section 816 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)'' and adding ''10 U.S.C. 3403(d)(3)'' in its place; and

■ b. In paragraph (c)(1)(ii)(D)(*3*)(*i*) by removing ''section 816 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116–92)'' and adding ''10 U.S.C. 3403(d)(3)'' in its place.

216.603–2 [Amended]

■ 48. Amend section 216.603–2 in paragraph (c)(3) by removing ''10 U.S.C. 2326'' and adding ''10 U.S.C. 3372'' in its place.

PART 217—SPECIAL CONTRACTING METHODS

■ 49. Amend section 217.170—

■ a. In paragraph (a) by removing ''10 U.S.C. 2306b(l)(7)'' and adding ''10 U.S.C. 3501(l)(7)'' in its place;

■ b. In paragraph (d)(1)(i) by removing ''10 U.S.C. 2306b(l)(1)(B)(i)(II)'' and ''10 U.S.C. 2306c(d)(1)'' and adding ''10 U.S.C. 3501(l)(1)'' and ''10 U.S.C. 3531(d)(1)'' in their places, respectively;

■ c. In paragraph (d)(1)(ii) by removing ''10 U.S.C. 2306b(l)(1)(B)(i)(I)'' and adding ''10 U.S.C. 3501(l)(1)'' in its place;

■ d. In paragraph (d)(1)(iii) by removing ''10 U.S.C. 2306b(l)(1)(B)(ii)'' and adding ''10 U.S.C. 3501(l)(1)'' in its place;

■ e. In paragraph (d)(1)(iv) by removing ''10 U.S.C. 2306c(d)(4)'' and ''10 U.S.C. 2306b(g)(1)'' and adding ''10 U.S.C. 3531(d)(4)'' and ''10 U.S.C. 3501(g)(1)'' in their places, respectively;

■ f By revising paragraph (d)(4); and

■ g. In paragraph (d)(5)(i)(C) by removing ''10 U.S.C. 2306b(g) and 10 U.S.C. 2306c(d)'' and adding ''10 U.S.C. 3501(g) and 10 U.S.C. 3531(d)'' in its place.

The revision reads as follows:

217.170 General.

* * * * *

(d) * * *

(4) Agencies must establish reporting procedures to meet the congressional notification requirements of paragraph (d)(1) of this section. The head of the agency must submit a copy of each notice to the Principal Director, Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense (Acquisition and Sustainment) (OUSD(A&S)), and to the Deputy Under Secretary of Defense (Comptroller) (Program/Budget) (OUSD(C)(P/B)).

* * * * *

217.171 [Amended]

■ 50. Amend section 217.171—

■ a. In the paragraph (a) introductory text by removing ''10 U.S.C. 2306c(a)'' and adding ''10 U.S.C. 3531(a)'' in its place;

■ b. In paragraph (a)(5)(iii) by removing ''10 U.S.C. 2306c(b)'' and adding ''10 U.S.C. 3531(b)'' in its place;

■ c. In paragraph (b)(3) by removing ''10 U.S.C. 2306c(c)'' and adding ''10 U.S.C. 3531(c)'' in its place;

■ d. In paragraph (c)(3) by removing ''10 U.S.C. 2306c(a)'' and adding ''10 U.S.C. 3531(a)'' in its place; and
■ e. In paragraph (d) by removing ''10 U.S.C. 2306c(d)(2))()'' and adding ''10 U.S.C. 3531(d)(2))'' in its place.

217.172 [Amended]

■ 51. Amend section 217.172—
■ a. In paragraph (a) by removing ''10 U.S.C. 2306b'' and adding ''10 U.S.C. 3501'' in its place;
■ b. In paragraph (b) by removing ''10 U.S.C. 2306b(a)(6)'' and adding ''10 U.S.C. 3501(a)(6)'' in its place;
■ c. In paragraph (c) by removing ''10 U.S.C. 2306b(i)(1)'' and adding ''10 U.S.C. 3501(i)(1)'' in its place;
■ d. In paragraph (d) by removing ''10 U.S.C. 2306b(l)(3)'' and adding ''10 U.S.C. 3501(l)(3)'' in its place;
■ e. In paragraph (f)(1) by removing ''10 U.S.C. 2306b(l)(5)'' and adding ''10 U.S.C. 3501(l)(5)'' in its place;
■ f. In paragraph (g)(1) by removing ''10 U.S.C. 2306b(h)(1)'' and adding ''10 U.S.C. 3501(h)(1)'' in its place;
■ g. In paragraph (g)(2) by removing ''10 U.S.C. 2306b(h)(2)'' and adding ''10 U.S.C. 3501(h)(2)'' in its place;
■ h. In paragraph (h)(2) introductory text by removing ''(10 U.S.C. 2306b(i)(3)'' and adding ''(10 U.S.C. 3501(i)(3))'' in its place;
■ i. In paragraph (h)(2)(i) by removing ''10 U.S.C. 2306b(i)(3)(A)'' and adding ''10 U.S.C. 3501(i)(3)(A)'' in its place;
■ j. In paragraph (h)(2)(ii) by removing ''10 U.S.C. 2306b(i)(3)(B)'' and adding ''10 U.S.C. 3501(i)(3)(B)'' in its place;
■ k. In paragraph (h)(2)(iii) by removing ''10 U.S.C. 2433(d)'' and ''10 U.S.C. 2306b(i)(3)(C)'' and adding ''10 U.S.C. 4371(a)(3)'' and ''10 U.S.C. 3501(i)(3)(C)'' in their places, respectively;
■ l. In paragraph (h)(2)(iv) by removing ''10 U.S.C. 2306b(i)(3)(D)'' and adding ''10 U.S.C. 3501(i)(3)(D)'' in its place;
■ m. In paragraph (h)(2)(v) by removing ''10 U.S.C. 2306b(i)(3)(E)'' and adding ''10 U.S.C. 3501(i)(3)(E)'' in its place;
■ n. In paragraph (h)(2)(vi) by removing ''10 U.S.C. 2306b(i)(3)(F)'' and adding ''10 U.S.C. 3501(i)(3)(F)'' in its place;
■ o. In paragraph (h)(2)(vii) by removing ''10 U.S.C. 2306b(i)(3)(G)'' and adding ''10 U.S.C. 3501(i)(3)(G)'' in its place;
■ p. In paragraph (h)(2)(viii)(A)(*3*) by removing ''10 U.S.C. 2306b(g)'' and adding ''10 U.S.C. 3501(g)'' in its place;
■ q. In paragraph (h)(3) by removing ''10 U.S.C. 2306b(i)(5)(A)'' and adding ''10 U.S.C. 3501(i)(5)(A)'' in its place;
■ r. In paragraph (h)(4) by removing ''10 U.S.C. 2306b(i)(5)(B)'' and adding ''10 U.S.C. 3501(i)(5)(B)'' in its place;
■ s. In paragraph (h)(5) by removing ''10 U.S.C. 2306b(i)(6)'' and adding ''10 U.S.C. 3501(i)(6)'' in its place;
■ t. In paragraph (h)(6) by removing ''Acquisition, Technology, and Logistics (10 U.S.C. 2306b(i)(7))'' and adding ''Acquisition and Sustainment (10 U.S.C. 3501(i)(7))'' in its place;
■ u. In paragraph (h)(7) introductory text by removing ''10 U.S.C. 2306b(i)(4)'' and adding ''10 U.S.C. 3501(i)(4)'' in its place;
■ v. In paragraph (h)(7)(iv) by removing ''OUSD(AT&L)DPAP'' and adding ''OUSD(A&S)(DPC)'' in its place;
■ w. In paragraph (i) by removing ''10 U.S.C. 2306b(j)'' and adding ''10 U.S.C. 3501(j)'' in its place; and
■ x. In paragraph (j) by removing ''10 U.S.C. 2306b(m)'' and adding ''10 U.S.C. 3501(m)'' in its place.

217.204 [Amended]

■ 52. Amend section 217.204—
■ a. In paragraph (e)(i) introductory text by removing ''10 U.S.C. 2304a'' and adding ''10 U.S.C. 3403'' in its place; and
■ b. In paragraph (e)(ii)(B) by removing ''10 U.S.C. 2304b'' and adding and ''10 U.S.C. 3405'' in its place.

217.208 [Amended]

■ 53. Amend section 217.208 by removing ''10 U.S.C. 2305(a)(5)'' and adding ''10 U.S.C. 3206(e)'' in its place.

217.7300 [Amended]

■ 54. Amend section 217.7300 by removing ''10 U.S.C. 2384'' and adding ''10 U.S.C. 4753'' in its place.

217.7400 [Amended]

■ 55. Amend section 217.7400 by removing ''10 U.S.C. 2326'' and adding ''10 U.S.C. 3371, *et seq.*'' in its place.

217.7801 [Amended]

■ 56. Amend section 217.7801 by removing ''(see 10 U.S.C. 2302 note)''.

PART 219—SMALL BUSINESS PROGRAMS

219.703 [Amended]

■ 57. Amend section 219.703 in paragraph (a) by removing ''10 U.S.C. 2410d and section 9077 of Pub. L.'' and adding ''10 U.S.C. 3903 and section 9077 of Public Law'' in its place.

219.7100 [Amended]

■ 58. Amend section 219.7100 by removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4901 note prec.'' in its place.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

222.1310 [Amended]

■ 59. Amend section 222.1310 in paragraph (a)(1) by removing ''10 U.S.C. 2410k'' and adding ''10 U.S.C. 4704'' in its place.

PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

223.802 [Amended]

■ 60. Amend section 223.802 by removing ''Section'' and ''10 U.S.C. 2301 (repealed) note'' and adding ''section'' and ''10 U.S.C. 3201 note prec.'' in their places, respectively.

PART 225—FOREIGN ACQUISITION

225.103 [Amended]

■ 61. Amend section 225.103 in paragraphs (a)(ii)(A) introductory text and (a)(ii)(B) introductory text by removing ''10 U.S.C. 2533'' and adding ''10 U.S.C. 4861'' in their places.

225.771–0 [Amended]

■ 62. Amend section 225.771–0 by removing ''10 U.S.C. 2327(b)'' and adding ''10 U.S.C. 4871(b)'' in its place.

225.771–4 [Amended]

■ 63. Amend section 225.771–4 by removing ''10 U.S.C. 2327(c)'' and adding ''10 U.S.C. 4871(c)'' in its place.

225.772–1 [Amended]

■ 64. Amend section 225.772–1 in the definition of ''State sponsor of terrorism'' by removing ''10 U.S.C. 2327'' and adding ''10 U.S.C. 4871'' in its place.

225.871–4 [Amended]

■ 65. Amend section 225.871–4 in paragraph (b)(2) by removing ''10 U.S.C. 2304'' and adding ''10 U.S.C. 3201–3205'' in its place.

225.7001 [Amended]

■ 66. Amend section 225.7001 in the definition of ''End item'' by removing ''10 U.S.C. 2533b(m)'' and adding ''10 U.S.C. 4863(m)'' in its place.

225.7002–1 [Amended]

■ 67. Amend section 225.7002–1—
■ a. In paragraph (a) introductory text:
■ i. By removing ''10 U.S.C. 2533a'' and adding ''10 U.S.C. 4862'' in its place; and
■ ii. By removing ''subsection''; and

■ b. In paragraph (b) by removing ''10 U.S.C. 2533a'' and ''end-items'' and adding ''10 U.S.C. 4862'' and ''end items'' in their places, respectively.

225.7002–2 [Amended]

■ 68. Amend section 225.7002–2—
■ a. In paragraph (a) by removing ''(section 817 of the National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328))'' and adding ''(37 U.S.C. 418(b)(4))'' in its place; and
■ b. In paragraph (o) by removing ''chapter 148 of title 10, United States Code (including 10 U.S.C. 2533a)'' and adding ''subchapter II of chapter 385 (including 10 U.S.C. 4862)'' in its place.

225.7003–2 [Amended]

■ 69. Amend section 225.7003–2 in paragraph (a) introductory text by removing ''10 U.S.C. 2533b'' and adding ''10 U.S.C. 4863'' in its place.

225.7003–3 [Amended]

■ 70. Amend section 225.7003–3 in paragraph (b)(5) introductory text by removing ''10 U.S.C. 2533b(m)(4)'' and adding ''10 U.S.C. 4863(m)(4)'' in its place.

225.7004–1 [Amended]

■ 71. Amend section 225.7004–1 by removing ''10 U.S.C. 2534'' and adding ''10 U.S.C. 4864'' in its place.

225.7006–1 [Amended]

■ 72. Amend section 225.7006–1 by removing ''10 U.S.C. 2534'' and adding ''10 U.S.C. 4864'' in its place.

225.7007–1 [Amended]

■ 73. Amend section 225.7007–1 in paragraph (b) by removing ''10 U.S.C. 2534'' wherever it appears and ''subsection'' and adding ''10 U.S.C. 4864'' and ''section'' in their places, respectively.

225.7008 [Amended]

■ 74. Amend section 225.7008—
■ a. In the section heading by removing ''10 U.S.C. 2534'' and adding ''10 U.S.C. 4864'' in its place; and
■ b. In the introductory text by removing ''10 U.S.C. 2534(a)'' and adding ''10 U.S.C. 4864(a)'' in its place.

225.7010–1 [Amended]

■ 75. Amend section 225.7010–1 in the introductory text by removing ''10 U.S.C. 2534'' and adding ''10 U.S.C. 4864'' in its place.

225.7010–4 [Amended]

■ 76. Amend section 225.7010–4 in paragraph (a) by removing ''10 U.S.C. 2534(h)'' and adding ''10 U.S.C. 4864(h)'' in its place.

225.7013 [Amended]

■ 77. Amend section 225.7013 in the introductory text by removing ''10 U.S.C. 7309 and 7310'' and adding ''10 U.S.C. 8679 and 8680'' in its place.

225.7018–2 [Amended]

■ 78. Amend section 225.7018–2 in paragraph (a) by removing ''10 U.S.C. 2533c'' and adding ''10 U.S.C. 4872'' in its place.

225.7201 [Amended]

■ 79. Amend section 225.7201 in the introductory text by removing ''10 U.S.C. 2410g'' and adding ''10 U.S.C. 4603'' in its place.

225.7601 [Amended]

■ 80. Amend section 225.7601 by removing ''10 U.S.C. 2410i'' and adding ''10 U.S.C. 4659'' in its place.

225.7702–1 [Amended]

■ 81. Amend section 225.7702–1 in paragraph (a)(1) by removing ''10 U.S.C. 2304'' and adding ''10 U.S.C. 3201'' in its place.

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.7200 [Amended]

■ 82. Amend section 226.7200 by removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 3901 note prec.'' in its place.

226.7202 [Amended]

■ 83. Amend section 226.7202 in paragraph (a)(2) by removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 3901 note prec.'' in its place.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7002 [Amended]

■ 84. Amend section 227.7002 by removing ''10 U.S.C. 2386'' and adding ''10 U.S.C. 3793'' in its place.

■ 85. Amend section 227.7100 by revising paragraphs (a)(1) through (5) to read as follows:

227.7100 Scope of subpart.

* * * * *

(a) * * *
(1) 10 U.S.C. 3013.
(2) 10 U.S.C. 3208(d).
(3) 10 U.S.C. 3771–3775.
(4) 10 U.S.C. 3781–3786.
(5) 10 U.S.C. 3761.

* * * * *

227.7103–1 [Amended]

■ 86. Amend section 227.7103–1 in paragraph (e) introductory text by removing ''10 U.S.C. 2305'' and adding ''10 U.S.C. 3208'' in its place.

227.7103–3 [Amended]

■ 87. Amend section 227.7103–3—
■ a. In the section heading by removing ''reproduction'' and adding ''reproduction,'' in its place; and
■ b. In paragraph (a) by removing ''10 U.S.C. 2320'' and adding ''10 U.S.C. 3772(a)'' in its place.

227.7103–13 [Amended]

■ 88. Amend section 227.7103–13—
■ a. In paragraphs (a) and (b) by removing ''10 U.S.C. 2321'' and adding ''10 U.S.C. 3782'' in their places; and
■ b. In paragraph (c)(2) by removing ''10 U.S.C. 2320(b)(1) and 2321(f)'' and adding ''10 U.S.C. 3772(a)(1) and 3784'' in its place.

227.7103–14 [Amended]

■ 89. Amend section 227.7103–14 in paragraph (a) introductory text by removing ''10 U.S.C. 2320'' and adding ''10 U.S.C. 3772'' in its place.

227.7103–15 [Amended]

■ 90. Amend section 227.7103–15—
■ a. In paragraph (a) by removing ''10 U.S.C. 2320'' and adding ''10 U.S.C. 3771'' in its place; and
■ b. In paragraph (b) by removing ''10 U.S.C. 2321'' and adding ''10 U.S.C. 3782'' in its place.

■ 91. Amend section 227.7200 by revising paragraphs (a)(1) through (5) to read as follows:

227.7200 Scope of subpart.

* * * * *

(a) * * *
(1) 10 U.S.C. 3013.
(2) 10 U.S.C. 3208(d).
(3) 10 U.S.C. 3771–3775.
(4) 10 U.S.C. 3781–3786.
(5) 10 U.S.C. 3761.

* * * * *

227.7203–6 [Amended]

■ 92. Amend section 227.7203–6 in paragraph (f) by removing ''10 U.S.C. 2321'' and adding ''10 U.S.C. 3781–3786'' in its place.

227.7203–13 [Amended]

■ 93. Amend section 227.7203–13 in paragraph (d)(2) by removing ''10 U.S.C. 2321'' and adding ''10 U.S.C. 3781–3786'' in its place.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

231.205–18 [Amended]

■ 94. Amend section 231.205–18 in paragraph (c)(iii)(B)(*5*) by removing ''10 U.S.C. 2522'' and adding ''10 U.S.C. 4845'' in its place.

231.205–22 [Amended]

■ 95. Amend section 231.205–22 in paragraph (a) by removing ''10 U.S.C. 2249'' and adding ''10 U.S.C. 4652'' in its place.

231.205–70 [Amended]

■ 96. Amend section 231.205–70—

■ a. In paragraph (a)(2) by removing ''10 U.S.C. 2325'' and adding ''10 U.S.C. 3761'' in its place; and

■ b. In paragraph (b) introductory text by removing ''subsection'' and adding ''section'' in its place.

231.303 [Amended]

■ 97. Amend section 231.303 in paragraph (3) by removing ''10 U.S.C. 2249'' and adding ''10 U.S.C. 4652'' in its place.

231.603 [Amended]

■ 98. Amend section 231.603 by removing ''10 U.S.C. 2249'' and adding ''10 U.S.C. 4652'' in its place.

231.703 [Amended]

■ 99. Amend section 231.703 by removing ''10 U.S.C. 2249'' and adding ''10 U.S.C. 4652'' in its place.

PART 232—CONTRACT FINANCING

232.703–3 [Amended]

■ 100. Amend section 232.703–3 in paragraph (b) by removing ''10 U.S.C. 2410a'' and adding ''10 U.S.C. 3133'' in its place.

232.903 [Amended]

■ 101. Amend section 232.903 by removing ''section 852 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232)'' and adding ''10 U.S.C. 3801(b)'' in its place.

232.1001 [Amended]

■ 102. Amend section 232.1001 in paragraph (a) by removing ''10 U.S.C. 2307(b)(2)'' and adding ''10 U.S.C. 3802(a)(2)'' in its place.

232.1003–70 [Amended]

■ 103. Amend section 232.1003–70 by removing ''10 U.S.C. 2307(b)(4)(A)'' and ''10 U.S.C. 2307(b)(4)(B)'' and adding ''10 U.S.C. 3802(c)(1)'' and ''10 U.S.C. 3802(c)(2)'' in their places, respectively.

232.7000 [Amended]

■ 104. Amend section 232.7000 by removing ''10 U.S.C. 2227'' and adding ''10 U.S.C. 4601'' in its place.

PART 233—PROTESTS, DISPUTES, AND APPEALS

233.104 [Amended]

■ 105. Amend section 233.104 in paragraph (c)(1)(B) by removing ''10 U.S.C. 2304c(e)'' and adding ''10 U.S.C. 3406(f)'' in its place.

233.204–70 [Amended]

■ 106. Amend section 233.204–70 by removing ''10 U.S.C. 2410(b)'' and ''relied under Pub. L.'' and adding ''10 U.S.C. 3862'' and ''relief under Public Law'' in their places, respectively.

PART 234—MAJOR SYSTEM ACQUISITION

234.004 [Amended]

■ 107. Amend section 234.004—

■ a. In paragraph (2)(i)(C)(*2*) by removing ''10 U.S.C. 2366a'' and adding ''10 U.S.C. 4251'' in its place; and

■ b. In paragraph (3)(ii) by removing ''10 U.S.C. 2443'' and adding ''10 U.S.C. 4328'' in its place.

234.005–1 [Amended]

■ 108. Amend section 234.005–1 in paragraph (3) by removing ''10 U.S.C. 2302e'' and adding ''10 U.S.C. 4004'' in its place.

234.7000 [Amended]

■ 109. Amend section 234.7000 in paragraph (a) by removing ''10 U.S.C. 2379'' and adding ''10 U.S.C. 3455'' in its place.

234.7002 [Amended]

■ 110. Amend section 234.7002 in paragraph (d) introductory text by removing ''10 U.S.C. 2377'' and adding ''10 U.S.C. 3453'' in its place.

234.7100 [Amended]

■ 111. Amend section 234.7100 in paragraph (a) by removing ''10 U.S.C. 2430'' and adding ''10 U.S.C. 4201'' in its place.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

235.006 [Amended]

■ 112. Amend section 235.006 in paragraph (b)(i) introductory text by removing ''10 U.S.C. 2430'' and adding ''10 U.S.C. 4201'' in its place.

235.006–70 [Amended]

■ 113. Amend section 235.006–70 in the introductory text by removing ''10 U.S.C. 2521(d)'' and adding ''10 U.S.C. 4841(d) and 4872'' in its place.

235.070–1 [Amended]

■ 114. Amend section 235.070–1 in paragraph (a) introductory text by removing ''10 U.S.C. 2354'' and adding ''10 U.S.C. 3861'' in its place.

235.070–2 [Amended]

■ 115. Amend section 235.070–2 by removing ''10 U.S.C. 2354'' wherever it appears and adding ''10 U.S.C. 3861'' in their places.

235.070–3 [Amended]

■ 116. Amend section 235.070–3 in paragraphs (a) and (b) by removing ''10 U.S.C. 2354'' and adding ''10 U.S.C. 3861'' in their places.

PART 236—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

236.303–1 [Amended]

■ 117. Amend section 236.303–1 in paragraph (a)(4)(i)(B) by removing ''10 U.S.C. 2305a(d)'' and adding ''10 U.S.C. 3241(d)'' in its place.

PART 237—SERVICE CONTRACTING

237.106 [Amended]

■ 118. Amend section 237.106 in paragraph (2) by removing ''10 U.S.C. 2410a'' and adding ''10 U.S.C. 3133'' in its place.

237.170–1 [Amended]

■ 119. Amend section 237.170–1 in paragraph (a) by removing ''10 U.S.C. 2330'' and adding ''10 U.S.C. 4501'' in its place.

237.7300 [Amended]

■ 120. Amend section 237.7300 by removing ''10 U.S.C. 2360'' and adding ''10 U.S.C. 4143'' in its place.

237.7302 [Amended]

■ 121. Amend section 237.7302 by removing ''10 U.S.C. 2304(a)(1) and 10 U.S.C. 2360'' and adding ''10 U.S.C. 3204(a) and 10 U.S.C. 4143'' in its place.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

239.7300 [Amended]

■ 122. Amend section 239.7300 by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in its place.

239.7301 [Amended]

■ 123. Amend section 239.7301 in the definitions of ''Covered item of supply'', ''Covered system'' introductory text, and ''Supply chain risk'' by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in their places.

239.7302 [Amended]

■ 124. Amend section 239.7302—

■ a. In the introductory text by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in its place;

■ b. In paragraph (a) by removing ''10 U.S.C. 2305(a)(1)(C)(ii)'' and ''10 U.S.C. 2305(a)(2)(A)'' and adding ''10 U.S.C. 3206(a)(3)(B)'' and ''10 U.S.C. 3206(b)(1)'' in their places, respectively; and

■ c. In paragraph (b) by removing ''10 U.S.C. 2304c(d)(3)'' and adding ''10 U.S.C. 3406(d)(3)'' in its place.

239.7304 [Amended]

■ 125. Amend section 239.7304 in paragraph (c)(2)(i) introductory text by removing ''10 U.S.C. 2304(f)(3)'' and adding ''10 U.S.C. 3204(e)(2)'' in its place.

239.7305 [Amended]

■ 126. Amend section 239.7305 in paragraph (a) by removing ''10 U.S.C. 2319'' and adding ''10 U.S.C. 3243'' in its place.

239.7406 [Amended]

■ 127. Amend section 239.7406 in paragraph (a) by removing ''10 U.S.C. 2306a'' and adding ''10 U.S.C. 3703'' in its place.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 128. Revise section 242.771–1 to read as follows:

242.771–1 Scope.

This section implements 10 U.S.C. 3762, Independent research and development costs: allowable costs.

242.1502 [Amended]

■ 129. Amend section 242.1502 in paragraph (g)(ii) by removing ''10 U.S.C. 2306a(d)(2)(B)(ii)'' and adding ''10 U.S.C. 3705(b)(2)(B)'' in its place.

242.7000 [Amended]

■ 130. Amend section 242.7000 in paragraph (a), in the definition of ''Covered contract'', by removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 3841 note prec.'' in its place.

242.7203 [Amended]

■ 131. Amend section 242.7203 in paragraph (b) by removing ''10 U.S.C. 2306a'' and adding ''10 U.S.C. 3702'' in its place.

242.7302 [Amended]

■ 132. Amend section 242.7302 in paragraph (a)(2) by removing ''10 U.S.C. 2306a'' and adding ''10 U.S.C. 3702'' in its place.

PART 243—CONTRACT MODIFICATIONS

242.204–71 [Amended]

■ 133. Amend section 243.204–71 in paragraph (c) by removing ''10 U.S.C. 2410(a)'' wherever it appears and ''Subpart'' and adding ''10 U.S.C. 3862(a)'' and ''subpart'' in their places, respectively.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

244.402 [Amended]

■ 134. Amend section 244.402 in paragraph (S–70) by removing ''10 U.S.C. 2380b'' and adding ''10 U.S.C. 3457(c)'' in its place.

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

250.101–2–70 [Amended]

■ 135. Amend section 250.101–2–70 by removing ''10 U.S.C. 2410(b)'' and adding ''10 U.S.C. 3862'' in its place.

250.102–1 [Amended]

■ 136. Amend section 250.102–1 in paragraph (d) by removing ''Acquisition, Technology, and Logistics (USD (AT&L))'', ''10 U.S.C. 133'', and ''(AT&L)'' and adding ''Acquisition and Sustainment (USD (A&S))'', ''10 U.S.C. 133(b)'', and ''(A&S)'' in their places, respectively.

250.104–3–70 [Amended]

■ 137. Amend section 250.104–3–70 in the introductory text and paragraphs (a) and (b) by removing ''10 U.S.C. 2354'' and adding ''10 U.S.C. 3861'' in their places.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 138. Amend section 252.203–7001—

■ a. By revising the section heading and the clause date;

■ b. In paragraphs (d) introductory text and (e) introductory text by removing ''10 U.S.C. 2408'' and adding ''10 U.S.C. 4656'' in their places; and

■ c. In paragraph (h) by removing ''10 U.S.C. 2408(c)'' and adding ''10 U.S.C. 4656(c)'' in its place.

The revisions read as follows:

252.203–7001 Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.

* * * * *

Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies (DEC 2022)

* * * * *

252.203–7002 [Amended]

■ 139. Amend section 252.203–7002—

■ a. By removing the clause date ''(SEP 2013)'' and adding ''(DEC 2022)'' in its place; and

■ b. In paragraph (a) by removing ''10 U.S.C. 2409'' and adding ''10 U.S.C. 4701'' in its place.

■ 140. Amend section 252.206–7000—

■ a. By revising the section heading and the clause date; and

■ b. In the provision by removing ''10 U.S.C. 2304(c)(3)'' and adding ''10 U.S.C. 3204(a)(3)'' in its place.

The revisions read as follows:

252.206–7000 Domestic Source Restriction.

* * * * *

Domestic Source Restriction (DEC 2022)

* * * * *

■ 141. Amend section 252.209–7002—

■ a. By revising the section heading and the clause date; and

■ b. In paragraph (b) by removing ''10 U.S.C. 2536(a)'' and adding ''10 U.S.C. 4874'' in its place.

The revisions read as follows:

252.209–7002 Disclosure of Ownership or Control by a Foreign Government.

* * * * *

Disclosure of Ownership or Control by a Foreign Government (DEC 2022)

* * * * *

252.209–7006 [Amended]

■ 142. Amend section 252.209–7006—

■ a. By removing the clause date ''(JAN 2008)'' and adding ''(DEC 2022)'' in its place; and

■ b. In paragraph (f) by removing ''10 U.S.C. 2410p, as added by section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364)'' and adding ''10 U.S.C. 4292'' in its place.

252.209–7007 [Amended]

■ 143. Amend section 252.209–7007—

■ a. By removing the clause date ''(JUL 2009)'' and adding ''(DEC 2022)'' in its place; and

■ b. In paragraph (e) by removing ''10 U.S.C. 2410p, as added by section 807 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364), and section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181)'' and adding ''10 U.S.C. 4292'' in its place.

252.215–7008 [Amended]

■ 144. Amend section 252.215–7008—
■ a. By removing the clause date ''(JUL 2019)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (a)(1) by removing ''reasonable'' and ''10 U.S.C. 2306a'' and adding ''reasonable (10 U.S.C. 3705)'' and ''10 U.S.C. 3702'' in their places, respectively.

252.215–7013 [Amended]

■ 145. Amend section 252.215–7013—
■ a. In the provision heading by:
■ i. Removing ''SUPPLES'' and adding ''SUPPLIES'' in its place; and
■ ii. Removing the provision date ''(JAN 2018)'' and adding ''(DEC 2022)'' in its place; and
■ b. In the provision by removing ''10 U.S.C. 2380a'' and ''212.001'' and adding ''10 U.S.C. 3457'' and ''202.101'' in their places, respectively.

252.215–7014 [Amended]

■ 146. Amend section 252.215–7014—
■ a. By removing the clause date ''(JUN 2018)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b) by removing ''10 U.S.C. 2306a(b)(1)'' and adding ''10 U.S.C. 3703(a)(4)'' in its place.

252.215–7016 [Amended]

■ 147. Amend section 252.215–7016—
■ a. By removing the clause date ''(MAR 2022)'' and adding ''(DEC 2022)'' in its place; and
■ b. In the paragraph (a), in definition of ''Nontraditional defense contractor'', by removing ''10 U.S.C. 2302(9)'' and adding ''10 U.S.C. 3014'' in its place.

■ 148. Amend section 252.216–7009—
■ a. By revising the section heading, the clause date, and the clause introductory text;
■ b. By redesignating paragraphs (1) and (2) as paragraphs (a) and (b);
■ c. In the newly redesignated paragraphs (a) and (b) by removing ''10 U.S.C. 2409'' wherever it appears and adding ''10 U.S.C. 4701'' in their places.

The revisions read as follows:

252.216–7009 Allowability of Legal Costs Incurred in Connection with a Whistleblower Proceeding.

* * * * *

Allowability of Legal Costs Incurred in Connection With a Whistleblower Proceeding (DEC 2022)

Pursuant to 10 U.S.C. 3750, notwithstanding FAR clause 52.216–7, Allowable Cost and Payment—

* * * * *

252.216–7010 [Amended]

■ 149. Amend section 252.216–7010—
■ a. By removing the clause date ''(MAR 2022)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b)(1) by removing ''10 U.S.C. 2304c(e)'' and adding ''10 U.S.C. 3406(e)'' in its place.

■ 150. Amend section 252.217–7026—
■ a. By revising the section heading and the provision date; and
■ b. In paragraph (a) by removing ''10 U.S.C. 2384'' and adding ''10 U.S.C. 4753'' in its place.

The revisions read as follows:

252.217–7026 Identification of Sources of Supply.

* * * * *

Identification of Sources of Supply (DEC 2022)

* * * * *

252.219–7000 [Amended]

■ 151. Amend section 252.219–7000—
■ a. By removing the clause date ''(SEP 2016)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (a) by removing ''10 U.S.C. 2419'' and adding ''10 U.S.C. 4959'' in its place.

252.219–7004 [Amended]

■ 152. Amend section 252.219–7004—
■ a. By removing the clause date ''(MAY 2019)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (d)(1)(ii)(B) by removing ''10 U.S.C. 2430(a)'' and adding ''10 U.S.C. 4201'' in its place.

252.225–7006 [Amended]

■ 153. Amend section 252.225–7006—
■ a. By removing the clause date ''(AUG 2015)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b) removing ''10 U.S.C. 2533a'' and adding ''10 U.S.C. 4862'' in its place.

252.225–7009 [Amended]

■ 154. Amend section 252.225–7009—
■ a. By removing the clause date ''(DEC 2019)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (c)(5)(iii) by removing ''10 U.S.C. 2533b(m)(4)'' and adding ''10 U.S.C. 4863(m)(4)'' in its place.

252.225–7050 [Amended]

■ 155. Amend section 252.225–7050—
■ a. By removing the clause date ''(SEP 2021)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b) introductory text by removing ''10 U.S.C. 2327'' and adding ''10 U.S.C. 4871'' in its place.

252.225–7051 [Amended]

■ 156. Amend section 252.225–7051—
■ a. By removing the clause date ''(SEP 2021)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (a), in the definition of ''State sponsor of terrorism'', by removing ''10 U.S.C. 2327'' and adding ''10 U.S.C. 4871'' in its place.

252.225–7052 [Amended]

■ 157. Amend section 252.225–7052—
■ a. By removing the clause date ''(AUG 2022)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b)(1) by removing ''10 U.S.C. 2533c'' and adding ''10 U.S.C. 4872'' in its place.

■ 158. Amend section 252.227–7012—
■ a. By revising the section heading and the clause date;
■ b. In the clause by removing ''10 U.S.C. 2386'' and adding ''10 U.S.C. 3793'' in its place.

The revisions read as follows:

252.227–7012 Patent License and Release Contract.

* * * * *

Patent License and Release Contract (DEC 2022)

* * * * *

■ 159. Amend 252.227–7013—
■ a. By revising the section heading and the clause date; and
■ b. In paragraph (k)(1) by removing ''10 U.S.C. 2320, 10 U.S.C. 2321'' and adding ''10 U.S.C. 3771–3775, 10 U.S.C. 3781–3786'' in its place.

The revisions read as follows:

252.227–7013 Rights in Technical Data–Noncommercial Items.

* * * * *

Rights in Technical Data—Noncommercial Items (DEC 2022)

* * * * *

■ 160. Amend 252.227–7015—
■ a. By revising the section heading and the clause date; and
■ b. In paragraph (e)(1) by removing ''10 U.S.C. 2320 and 10 U.S.C. 2321'' and adding ''10 U.S.C. 3771–3775 and 10 U.S.C. 3781–3786'' in its place.

The revisions read as follows:

252.227–7015 Technical Data—Commercial Items.

* * * * *

Technical Data—Commercial Items (DEC 2022)

* * * * *

■ 161. Amend section 252.227–7018—
■ a. By revising the section heading and the clause date; and
■ b. In paragraph (k)(1) by removing ''the Contractor'' and ''10 U.S.C. 2320, 10 U.S.C. 2321'' and adding ''The

Contractor'' and ''10 U.S.C. 3771–3775, 10 U.S.C. 3781–3786'' in their places, respectively.

The revisions read as follows:

252.227–7018 Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

* * * * *

Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program (DEC 2022)

* * * * *

252.227–7037 [Amended]

■ 162. Amend section 252.227–7037—
■ a. By removing the clause date ''(APR 2022)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (i)(3) by removing ''10 U.S.C. 2321'' and adding ''10 U.S.C. 3785(c)'' in its place.

252.232–7012 [Amended]

■ 163. Amend section 252.232–7012—
■ a. By removing the clause date ''(APR 2020)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b) by removing ''10 U.S.C. 2307(b)(4)(A)'' and adding ''10 U.S.C. 3802(c)'' in its place.

252.232–7013 [Amended]

■ 164. Amend section 252.232–7013—
■ a. By removing the clause date ''(APR 2020)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b) by removing ''10 U.S.C. 2307(b)(4)(A)'' and adding ''10 U.S.C. 3802(c)'' in its place.

252.232–7015 [Amended]

■ 165. Amend section 252.232–7015—
■ a. By removing the clause date ''(APR 2020)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (a) by removing ''10 U.S.C. 2307(b)(4)(A)'' and adding ''10 U.S.C. 3802(c)'' in its place.

252.232–7017 [Amended]

■ 166. Amend section 252.232–7017—
■ a. By removing the clause date ''(APR 2020)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (b) by removing ''section 852 of Public Law 115–232'' and adding ''10 U.S.C. 3801(b)(2)'' in its place.

■ 167. Amend section 252.235–7000—
■ a. By revising the section heading and clause heading and date; and
■ b. In paragraph (a) by removing ''10 U.S.C. 2354'' and adding ''10 U.S.C. 3861'' in its place.

The revisions read as follows:

252.235–7000 Indemnification Under 10 U.S.C. 3861—Fixed Price.

* * * * *

Indemnification Under 10 U.S.C. 3861—Fixed Price (DEC 2022)

* * * * *

■ 168. Amend section 252.235–7001—
■ a. By revising the section heading and clause heading and date; and
■ b. In paragraph (a) by removing ''10 U.S.C. 2354'' and adding ''10 U.S.C. 3861'' in its place.

The revisions read as follows:

252.235–7001 Indemnification Under 10 U.S.C. 3861—Cost Reimbursement.

* * * * *

Indemnification Under 10 U.S.C. 3861—Cost Reimbursement (DEC 2022)

* * * * *

■ 169. Amend section 252.239–7017—
■ a. By revising the section heading and clause date; and
■ b. In paragraphs (a), (b), and (c) by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in their places.

The revisions read as follows:

252.239–7017 Notice of Supply Chain Risk.

* * * * *

Notice of Supply Chain Risk (DEC 2022)

* * * * *

■ 170. Amend section 252.239–7018—
■ a. By revising the section heading and clause date;
■ b. In the paragraph (a), in the definition of ''Supply chain risk'', and paragraphs (c) and (d) by removing ''10 U.S.C. 2339a'' and adding ''10 U.S.C. 3252'' in their places.

The revisions read as follows:

252.239–7018 Supply Chain Risk.

* * * * *

Supply Chain Risk (DEC 2022)

* * * * *

■ 171. Amend section 252.243–7002—
■ a. By revising the section heading and the clause date; and
■ b. In paragraph (b) introductory text by removing ''10 U.S.C. 2410(a)'' and adding ''10 U.S.C. 3862(a)'' in its place.

The revisions read as follows:

252.243–7002 Requests for Equitable Adjustment.

* * * * *

Requests for Equitable Adjustment (DEC 2022)

* * * * *

252.244–7000 [Amended]

■ 172. Amend section 252.244–7000—
■ a. By removing the clause date ''(JAN 2021)'' and adding ''(DEC 2022)'' in its place; and
■ b. In paragraph (c)(1) by removing ''10 U.S.C. 2380b'' and adding ''10 U.S.C. 3457(c)'' in its place.

252.249–7002 [Amended]

■ 173. Amend section 252.249–7002—
■ a. By removing the clause date ''(JUN 2020)'' and adding ''(DEC 2022)'' in its place; and
■ b. In the paragraph (a), in the definition of ''Major defense program'', removing ''10 U.S.C. 2302(5)'' and adding ''10 U.S.C. 3041(a)'' in its place.

■ 174. Amend appendix I to chapter 2 as follows:
■ a. In section I–100, in paragraph (a) introductory text, by removing ''10 U.S.C. 2302 note'' and adding ''10 U.S.C. 4901 note prec.'' in its place;
■ b. By removing sections I–101.1, I–101.2, I–101.3, I–101.4, I–101.5, I–101.6, and I–101.7; and
■ c. In section I–106 by revising paragraph (d)(6)(ii).

The revision reads as follows:

Appendix I to Chapter 2—Policy and Procedures for the DoD Pilot Mentor-Protégé Program

* * * * *

I–106 Development of mentor-protégé agreements.

* * * * *

(d) * * *

(6) * * *

(ii) Entities providing procurement technical assistance pursuant to 10 U.S.C. Chapter 388 (Procurement Technical Assistance Cooperative Agreement Program).

* * * * *

[FR Doc. 2022–26689 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[RTID 0648–XC604]

Implementation of Import Restrictions; Certification of Admissibility for Certain Fish Products From New Zealand

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Import restrictions.

SUMMARY: Under the authority of the Marine Mammal Protection Act

(MMPA), and pursuant to a court order, the NMFS Assistant Administrator for Fisheries (Assistant Administrator) has implemented import restrictions on the products harvested in certain Government of New Zealand (GNZ) regulated fisheries: West Coast North Island multi-species set-net fishery, and West Coast North Island multi-species trawl fishery. Similar fish products harvested from other areas or with other types of fishing gear are eligible for entry into the U.S. market only when accompanied by Certification of Admissibility validating origin from other than the restricted fisheries.

DATES: These import restrictions and requirement for Certification of Admissibility are effective December 5, 2022, until revoked or revised by the Assistant Administrator in a subsequent action.

FOR FURTHER INFORMATION CONTACT: Kellie Foster-Taylor, NMFS Office of International Affairs, Trade, and Commerce at *kellie.foster-taylor@noaa.gov* or 301–427–7721.

SUPPLEMENTARY INFORMATION:

The MMPA Import Provisions

The MMPA, 16 U.S.C. 1371 *et seq.,* states that the Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying this import restriction, the Secretary of Commerce shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States.

In August 2016, NMFS published a final rule (81 FR 54390; August 15, 2016) implementing the fish and fish product import provisions in section 101(a)(2) of the MMPA. This rule established conditions for evaluating a harvesting nation's regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in fisheries operated by nations that export fish and fish products to the United States. Under the final rule, fish or fish products may not be imported into the United States from commercial fishing operations that result in the incidental mortality or serious injury of marine mammals in excess of U.S. standards (16 U.S.C. 1371(a)(2)). NMFS published a List of Foreign Fisheries (LOFF) on October 8, 2020 (85 FR 63527), to classify fisheries subject to the import requirements.

The final rule established a five-year exemption period, through December 31, 2021, before imports would be subject to any trade restrictions (see 50 CFR 216.24(h)(2)(ii)). In recognition of the diversion of foreign government resources away from fishery research and regulatory programs in response to the COVID pandemic, NMFS issued an interim final rule to extend the exemption period through December 31, 2022 (85 FR 69515, November 3, 2020). Subsequently, NMFS issued a final rule to extend further the exemption period through December 31, 2023 (87 FR 63955, October 21, 2022) due to the large number of foreign nation applications for comparability findings received and the need to evaluate regulatory programs fairly and equitably for more than 2500 foreign fisheries.

In the 2016 final rule, NMFS stated that it may consider emergency rulemaking during the exemption period to ban imports of fish and fish products from a foreign fishery having or likely to have an immediate and significant adverse impact on a marine mammal stock. In addition, pursuant to the MMPA Import Provisions rule, nothing prevents a nation from implementing a bycatch reduction regulatory program and seeking a comparability finding during the exemption period. The GNZ requested that NMFS consider comparability findings for certain fisheries prior to the end of the exemption period.

Petition for Rulemaking and Request for a Comparability Finding

In February 2019, Sea Shepherd Legal, Sea Shepherd New Zealand Ltd., and Sea Shepherd Conservation Society petitioned NMFS for an emergency rulemaking to ban the import of fish caught in gillnet and trawl fisheries in the Māui dolphin's range because the GNZ 2012 regulations allegedly were insufficient to protect the Māui dolphin. NMFS rejected the petition (84 FR 32853, July 10, 2019) on the basis that the GNZ had in place an existing regulatory program to reduce Māui dolphin bycatch and was proposing a revised regulatory program which, when fully implemented, would likely further reduce risk to Māui dolphin.

On May 21, 2020, Sea Shepherd New Zealand and Sea Shepherd Conservation Society (collectively, ''Plaintiffs'') initiated a lawsuit in the Court of International Trade (CIT) challenging NMFS' denial of its petition. On June 24, 2020, the GNZ announced its final fisheries measures for reducing bycatch of Māui dolphins (effective October 1, 2020) and its final Threat Management Plan (TMP). On July 1, 2020, Plaintiffs moved for a preliminary injunction to ban imports of seafood into the United States from New Zealand's set-net and trawl fisheries. Before responding to Plaintiffs' motion for a preliminary injunction, NMFS moved for a voluntary remand in order to reconsider the Plaintiffs' petition for emergency rulemaking under the MMPA due to GNZ's final fisheries measures and final TMP.

On July 15, 2020, the GNZ, acting through the Ministry for Primary Industries, requested that NMFS perform a comparability assessment of the TMP and its regulatory program as it relates to Māui dolphins. On August 13, 2020, the CIT granted NMFS the voluntary remand. On August 27, 2020, NMFS received the Plaintiffs' supplemental petition, which both maintained the grounds for action outlined in the original petition and included new information on sightings of Māui dolphins, the final TMP and the 2020 LOFF.

NMFS Determination on the Petition and the GNZ's Comparability Application

NMFS rejected the supplemental petition to ban the importation of commercial fish or products from fish harvested in a manner that results in the incidental kill or incidental serious injury of Māui dolphins in excess of U.S. standards. Further, NMFS issued comparability findings for the West Coast North Island multi-species set-net and trawl fisheries because the GNZ has implemented a regulatory program governing the bycatch of Māui dolphin that is comparable in effectiveness to U.S. standards.

Motion for Preliminary Injunction and Court Order

Plaintiffs subsequently filed a Renewed Motion for Preliminary Injunction on December 11, 2020, seeking a preliminary injunction requiring the U.S. Government to ban the import of fish or fish products from any New Zealand commercial fishery that uses set-nets or trawl gear within the Māui dolphin's range.

On November 28, 2022, the CIT granted the plaintiffs' request for a preliminary injunction requiring the U.S. government, pending final adjudication of the merits, to ban immediately the importation of certain fish and fish products from New Zealand commercial fisheries that use set-nets or trawls within the Māui dolphin's range. Under the CIT order,

all (1) snapper; (2) tarakihi; (3) spotted dogfish; (4) trevally; (5) warehou; (6) hoki; (7) barracouta; (8) mullet; and (9) gurnard derived from the fisheries of the West Coast North Island are subject to the ban. The court also ordered NMFS to submit notice of the ban for publication in the **Federal Register** within 15 days. By granting this preliminary injunction and requiring the imposition of import restrictions and a comparability finding determination for the export fisheries operating on the West Coast North Island within the Māui dolphin's range, the judge's order effectively removes the currently operative exemption under 50 CFR 216.24 (h)(2)(ii) for these fisheries.

Implementing Import Restrictions Under the Court Order

The CIT order stipulates that specific fish products deriving from West Coast North Island multi-species set-net and trawl fisheries are prohibited from entry into the U.S market. Several of these fish species are not imported into the United States under Harmonized Tariff Schedule (HTS) codes that are specific to the type of fish. Instead, these fish are imported under non-specific fish and marine fish codes. Consequently, the list of affected HTS codes has been determined by NMFS and is available at: *https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/seafood-import-restrictions.* The list includes those non-specific HTS codes necessary to encompass the possible codes used for products subject to the trade restriction.

However, NMFS acknowledges that fish species harvested in the West Coast North Island fisheries are also harvested elsewhere in New Zealand and harvested with other fishing gear not subject to the court-ordered embargo. Consequently, further steps are needed to enforce an import restriction focused on fish harvested in the affected fisheries and included in the court order while not affecting trade in products not subject to embargo. NMFS must collect additional information from importers during the entry process to identify products not subject to an import restriction. To that end, NMFS has identified tariff codes for the fish and fish products that require Certification of Admissibility to validate that the fish and fish products from New Zealand being offered for entry into the United States do not originate from West Coast North Island set-net and trawl fisheries.

On December 5, 2022, U.S. Customs and Border Protection (CBP) transmitted a user-defined rule to inspectors at affected ports of entry with instructions for port inspectors to examine entry filings from New Zealand under the specified tariff codes. Fish or fish products imported to the United States from New Zealand under the designated HTS codes that are not subject to the import prohibition must be accompanied by Certification of Admissibility. The Certification of Admissibility form and accompanying instructions for its use in entry filing are available at *https://www.fisheries.noaa.gov/foreign/marine-mammal-protection/seafood-import-restrictions.* The Certification of Admissibility is an information collection subject to the requirements of the Paperwork Reduction Act and has been approved by the Office of Management and Budget under control number 0648–0651.

Absent Certification of Admissibility, entry filings under the specified tariff codes will be rejected. Implementing this process will require notice to the trade community (importers and customs brokers) and CBP inspectors. NMFS is working with CBP to use its internal and external messaging systems for such notification. Also, consultations with the GNZ are needed to identify those officials authorized to certify shipments bound for the United States. NMFS initiated these steps prior to the effective date of the embargo.

Importers are advised to determine if other NMFS program requirements (*e.g.,* Tuna Tracking and Verification Program, Seafood Import Monitoring Program) or other agency requirements (*e.g.,* U.S. Fish and Wildlife Service, State Department, Food and Drug Administration) have Automated Commercial Environment (ACE) data reporting requirements applicable to the designated HTS codes subject to certification under the MMPA import provisions. In such cases, the other reporting requirements still pertain in addition to the Certification of Admissibility requirements imposed to implement the CIT order.

Until such time as the CIT (or other court of competent jurisdiction) lifts the preliminary injunction, trade restrictions on the fish products harvested by set-nets and trawls operating off the West Coast North Island within the Māui dolphin's range will continue and Certification of Admissibility will be required for the HTS codes designated under this notice.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: December 9, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–27155 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 221208–0265]

RIN 0648–BL41

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Whiting Utilization in the At-Sea Sectors

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule implements regulatory amendments that apply to the Pacific Coast Groundfish Trawl Rationalization Program participants that operate in the non-tribal Pacific whiting fishery. This rulemaking adjusts the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery north of 40°30′ N latitude (lat.) from May 15 to May 1, removes from regulation the mothership catcher vessel (MSCV) processor obligation deadline of November 30, removes from regulation the Mothership (MS) processor cap of 45 percent, and provides the ability to operate as a Catcher/Processor (CP) and an MS in the same year. This action is necessary to provide MS sector participants with greater operational flexibility by modifying specific regulations that have been identified as potentially contributing to lower attainment of the Pacific whiting allocation compared to the CP and shoreside Pacific whiting sectors. This final rule is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Coast Groundfish Fishery Management Plan, and other applicable laws.

DATES: This final rule is effective January 17, 2023.

ADDRESSES: This rule is accessible via the Office of the Federal Register website at *https://www.federalregister.gov/.* Background information and analytical documents (Analysis) are available at the NMFS

West Coast Region website at *https://www.fisheries.noaa.gov/region/west-coast* and at the Pacific Fishery Management Council's website at *https://www.pcouncil.org.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS and to *https://www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Abbie Moyer, phone: 206–305–9601, or email: *abbie.moyer@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS and the Pacific Fishery Management Council (Council) manage the groundfish fisheries in the exclusive economic zone seaward of California, Oregon, and Washington under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*). Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 660.

Background

This purpose of this final rule is to revise regulations that may be unnecessarily constraining, in order to provide increased operational flexibility in the Pacific whiting fishery and increase the Mothership (MS) sector's ability to utilize its Pacific whiting allocation, while maintaining fair and equitable access to Pacific whiting by all sectors of the program. The following sections of this preamble provide (1) a description of the non-tribal Pacific whiting fishery; (2) the need for action; and (3) the final regulations.

A Description of the Non-Tribal Pacific Whiting Fishery

Pacific Whiting Fishery

In January 2011, NMFS implemented a trawl rationalization program, a catch share system, for the Pacific coast groundfish fishery's trawl fleet. The program was adopted through Amendment 20 to the Pacific Coast Groundfish Fishery Management Plan (FMP) (75 FR 78344, December 15, 2010) and is a type of limited access privilege program under the MSA. Many of the specific provisions of the program, including those modified through this rulemaking, are in regulation at 50 CFR 660, but were not included in the Amendment 20 changes to the FMP. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. The program consists of cooperatives for the at-sea MS and CP fleets that target and process Pacific whiting (or the at-sea trawl fleet), and an individual fishing quota (IFQ) program for the shorebased trawl fleet that targets both Pacific whiting and a wide range of other groundfish species (or the Shorebased IFQ Program).

The at-sea trawl fleet consists of fishery participants harvesting and processing Pacific whiting and is further divided as follows: (1) The Pacific whiting CP sector, which has been operating under the Pacific Whiting Conservation Cooperative (PWCC) since 1997 and was formalized for management with the implementation of Amendment 20 (the CP Co-op Program); and (2) the Pacific whiting MS sector (MS Co-op Program). The MS sector is made up of mothership catcher vessels (MSCVs), which harvest fish, and motherships, which process the fish at-sea. The MS sector program may include multiple co-ops where vessels pool their harvest together to form fishing cooperatives, as well as vessels not associated with a co-op (*i.e.,* the ''non-co-op'' segment of the MS fishery). In March of 2011, the owners of all 37 MSCV permits formed a co-op called the ''Whiting Mothership Cooperative (WMC)''. Every year since then, all participants in the sector have operated in the co-op. One of the primary purposes of the WMC is to minimize the bycatch of constraining rockfish species and Chinook salmon.

The shoreside Pacific whiting sector was grouped into the Shorebased IFQ Program during the development of Amendment 20. Vessels in this fishery target Pacific whiting with midwater trawl gear. Fishery participants must have quota pounds to harvest Pacific whiting catch and associated bycatch. About half of the shoreside Pacific whiting vessels also cross-participate in the MS fishery (*i.e.,* MSCV). Within the shoreside Pacific whiting fishery, there is the Shoreside Whiting Cooperative, which is voluntarily made up of participating vessels, and is not formally recognized in the groundfish regulations. Historically, approximately two-thirds of shoreside Pacific whiting vessels have participated in the co-op between 2012–2018.

Catch allocations for these subsectors are based on formulas set in Amendment 21 to the FMP, or are determined during the biennial management process. The total allowable catch (TAC) for Pacific whiting is set annually outside of the Council's harvest specifications process. The TAC is set through a bilateral process with Canada, consistent with the Agreement Between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting of 2003 (commonly known as the Pacific Hake/Whiting Treaty) where 73.88 percent of the TAC is allocated to U.S. fisheries, of which 17.5 percent is allocated to the Tribal sector. In the fall of each fishing year, an unused portion of the Tribal allocation may be reapportioned to the non-Tribal sectors. This often results in an initial allocation to the non-tribal sectors and then a post-reapportionment allocation. Species in the Groundfish FMP are managed differently between the at-sea sectors and the shoreside fishery. For the shoreside Pacific whiting fishery, participants must have quota pounds (QPs) to cover all catch of any IFQ species and some non-IFQ species are managed with trip limits. For the at-sea fisheries, set asides are established for select groundfish species within the biennial harvest specifications process. Set asides are managed on an annual basis unless there is a risk of exceeding a harvest specification, an unforeseen impact on other fisheries, or a conservation concern.

The recent management programs affected by this final rule are described in greater detail in the proposed rule (87 FR 55979, September 13, 2022).

Need for Action

The MS sector has experienced lower than average attainment than the other non-tribal commercial Pacific whiting sectors since the start of the trawl catch share program, particularly since 2017. Causes of under-attainment have been attributed to the limited availability of motherships for delivery of catch due to seasonal overlap with the Alaskan Eastern Bering Sea walleye pollock fishery. In addition, existing regulations have been identified as hindering some catcher vessels' opportunity to harvest or deliver fish to MS processors, by limiting the ability for available processors to accept fish from catcher vessels. These obstacles to harvesting and processing in the MS sector have led to reduced economic opportunity for participants.

Section 2.2.1 of the Analysis (see **ADDRESSES**) found that from 2017–2019, the shoreside sector averaged attainment of 92 percent of the initial Pacific whiting allocations while the MS sector averaged 71 percent and the CP sector 100 percent (83, 64, and 90 percent of

the post-tribal reapportionment allocation, respectively). Additionally, from 2017–2019, the MS sector is estimated to have not achieved potential economic opportunity of $14.5–$27.3 million in production value from unharvested Pacific whiting from the initial allocations and $21.5 to $31.8 million compared to the post-reapportionment allocations (section 5.4.1.0 of the Analysis).

In an informational report submitted by the Council's Groundfish Advisory Subpanel (GAP), the GAP reported during the previous five seasons, more than 350 million pounds of Pacific whiting worth more than $28 million in ex-vessel revenue had been left unharvested in the MS sector. Some catcher vessels had been unable to harvest and deliver their full MS sector allocations and, in certain cases, catcher vessels had been stranded without a MS processor to deliver to in a season or year. The GAP also reported that many MS sector participants, including all six MS processor vessels and several MS catcher vessels, participate in the Alaska pollock fishery where record high catch limits in recent years had limited the availability of processor vessels and some catcher vessels to participate in the Pacific whiting fishery during the primary Pacific whiting season, between May 15 and December 31.

The Council considered this action over a number of meetings and made its final recommendation in March 2022.

Final Action

This final rule revises existing regulations that apply to the Pacific Coast Groundfish Trawl Rationalization Program participants while operating in the non-tribal Pacific whiting fishery in order to provide increased operational flexibility and harvesting capabilities in the Pacific whiting fishery and increase the MS sector's ability to utilize its Pacific whiting allocation. The revisions include: (1) adjusting the primary Pacific whiting season start date for all sectors of the Pacific whiting fishery north of 40°30′ N lat. from May 15 to May 1, and adjusting administrative dates associated with the start of the season; (2) removing from regulation the MSCV processor obligation deadline of November 30; (3) removing from regulation the MS processor cap of 45 percent; and (4) removing restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or CP in the same calendar year.

The Council recommended and NMFS is implementing these changes based on information in the Analysis indicating that these measures will: (1) increase utilization of available MS quota that has previously been unrealized; (2) increase opportunities in the MS sector by providing participants with an additional 15 days to participate in the Pacific whiting fishery, providing up to a month of Pacific whiting harvest opportunities between the Alaska pollock seasons; and (3) increase overall attainment leading to economic benefits for all sectors.

Season Start Date

This final rule amends regulations at 50 CFR 660.131(b)(2)(iii) to allow all sectors of the Pacific whiting fishery north of 40°30′ N lat. to begin operating May 1. Currently, there are reporting requirements due 45 days prior to the current season start date of May 15. This final rule aligns all of these administrative dates to 45 days prior to the new season start date of May 1, which would be March 17. Specifically, these date changes apply to the annual MS co-op and CP co-op reports (50 CFR 660.113(c)(3) and (d)(3), respectively), the deadline for proposed salmon mitigation plans (SMPs) (50 CFR 660.113(e)(3)), the submission deadline for post season SMP reports (50 CFR 660.113(e)(6)(i)), the deadline for declaring into the MS co-op or non-co-op fishery (50 CFR 660.150(g)(2)(i)), and the MS co-op and CP co-op permit annual registration deadlines (50 CFR 660.150(d)(1)(ii) and 660.160(d)(1)(ii), respectively). Additionally, this final rule moves up an Electronic Monitoring (EM) application due date (50 CFR 660.604(e)) and an EM renewal date (50 CFR 660.604(i)) from February 15 to February 1 to align with the new season start date of May 1.

The Council recommended and NMFS is implementing this earlier season start date to provide vessels with an additional 15 days to participate in the Pacific whiting fishery and provide even more opportunity to harvest the Pacific whiting quota. The new season start date applies to all non-tribal sectors participating in the Pacific whiting fishery north of 40°30′ N lat. As noted in section 2.2.1 of the Analysis, many vessels that fish in the Pacific whiting fishery earn the majority of their revenue in the Alaska fisheries and are likely incentivized to prioritize higher price of pollock above Pacific whiting. Therefore, this final rule provides vessels with an additional 15 days to participate in the Pacific whiting fishery, providing up to a month of Pacific whiting harvest opportunities between the Alaskan Eastern Bering Sea walleye pollock seasons.

This final rule is expected to considerably increase attainment for the MS sector, leading to economic benefits for all participants. According to section 2.2.1 of the Analysis, the potential additional catch that could have occurred in the additional two weeks of fishing in the 2016–2020 period could have been associated with $8.4 to $20.3 million in production revenue for the MS sector (assuming market conditions, weather, and other factors). The additional catch would have resulted in an estimated $10.5–$22.8 million in income impacts and 159 to 345 associated jobs.

As described in the proposed rule (87 FR 55979, September 13, 2022), no additional biological impacts to Pacific whiting and other groundfish species are expected under this final rule. Additionally, overall estimates of Pacific salmon bycatch are still within the estimates analyzed in the 2017 Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion (F/WCR–2017–7552) regarding the effects of the PFMC's Groundfish FMP on listed salmonids (2017 Biological Opinion).

MS Obligation Deadline

This final rule removes regulations at 50 CFR 660.150(c)(7) that require MSCVs to obligate their catch history assignment (CHA) to a MS permit by November 30 during the limited entry permit (LEP) renewal process (50 CFR 660.25(b)(4)(i)(A)). Under this final rule, there is no longer a requirement for MSCV-endorsed permit owners to notify NMFS of a mutual agreement exception (MAE) nor a requirement for NMFS to track the obligations (50 CFR 660.150(c)(7)(iv)). Additionally, the requirement for notification of a MS permit withdrawal at 50 CFR 660.150(c)(7)(v) is no longer required. MSCVs are still required to renew their limited entry permits each year, which includes the co-op declaration for the following year (50 CFR 660.150(g)(2)(i)), and co-op(s) are still required to submit their annual application per 50 CFR 660.150(d)(1)(iii).

The Council recommended and NMFS is implementing the removal of the MS obligation requirement from regulations to provide MSCVs additional flexibility to change processors inseason without regulatory delay. Removal of the obligation deadline will provide a more flexible management regime whereby participants may continue to balance individual needs of each entity to optimally harvest fish through private contracts and still provide consistent revenue. This final rule is expected to reduce administrative costs due to MSCVs not needing to notify NMFS of MAEs inseason and is expected to remove a regulatory and administrative

burden to NMFS and members of the MS sector. Current enforcement costs, the capability to monitor fishing activity (*i.e.,* area closures, gear requirements, safety standards) and monitoring of the fishery through electronic monitoring or observers, including catch and discard accounting, will not change.

MS Processor Cap

This final rule removes the MS usage limit (*i.e.,* processor cap) of 45 percent from regulation (§ 660.150(f)(3)(i)), and there are no longer restrictions on the amount of the MS sector allocation that an entity could process. MS permit holders are no longer required to submit to NMFS a trawl identification of ownership interest (OI) form in order to verify compliance of the MS processor cap, as per § 660.150(f)(3)(iv). MSCVs are still held to a 20 percent accumulation limit of the Pacific whiting CHA (50 CFR 660.150(g)(3)(i)) and a catch limit of 30 percent of the allocation (50 CFR 660.150(g)(3)(ii)).

The Council recommended and NMFS is implementing the removal of the MS processor cap to provide MS permit holders additional flexibility and to prevent occurrences of MSCVs not being able to deliver to a MS processor that had exceeded or was close to exceeding the 45 percent processing cap. Removal of the MS processor cap is expected to provide positive benefits to the MS sector through increased harvesting capabilities and increased flexibility in management of the MS sector. This in turn may provide an increase in revenue for the fishery as a whole and for fishing communities.

Additionally, this final rule will eliminate the need for the industry or NMFS to monitor compliance with the accumulation limit and will provide the industry with the ability to harvest more fish when fish are present on the grounds and optimize the efficiencies built into the fishery (*i.e.,* available crew, scheduled landings to motherships and processing capacity). As discussed in the proposed rule, the Council set the processing cap for the MS sector at 45 percent to inhibit consolidation. Section 3.1.4 of The Analysis, however, shows it is likely that more than one MS would continue to participate in the fishery under the this final rule. Several factors, including Alaska pollock fishery opportunities and actual capacity of a single MS vessel, suggest that it would be unlikely and probably not feasible for one vessel to process the entire allocation. In addition, the Analysis shows even if an entity was able to process the entirety of the MS allocation under this final rule, there would still be competition from other owners across the other whiting sectors and other fisheries that produce whitefish.

MS Processor & CP Permit Transfer

This final rule removes restrictions prohibiting an at-sea Pacific whiting processing vessel from operating as a MS or CP in the same calendar year (50 CFR 660.112(d)(3) and (e)(3)). This action allows a processing vessel to operate as both an MS and CP in the same calendar year, but not on the same trip. Owners of processing vessels that intend to operate as both an MS and a CP during the Pacific whiting season are required to register the processing vessel under valid MS and CP permits per regulations at 50 CFR 660.25(b). The vessel may be registered under both an MS permit and a CP endorsed permit simultaneously. Additionally, this final rule includes some administrative changes to allow additional transfers of limited entry MS permits and limited entry permits with a CP endorsement so that these permits may be transferred more than twice within a calendar year.

Current requirements for operating as a MS or CP continue to apply. To operate in the MS fishery (*i.e.,* receive deliveries of catch from MS catcher vessel and process MS sector allocations at-sea) the vessel must be included in the MS co-op agreement. To operate in the CP fishery (*i.e.,* catch and process CP sector allocations at-sea) the vessel must be included in the CP co-op agreement. Including a new vessel in either the MS or CP co-op agreement constitutes a material change to the co-op agreement. Within 7 calendar days of the new processing vessel operating for the first time in either the MS co-op fishery or the CP co-op fishery, the respective co-op manager must notify NMFS in writing of such change to the co-op agreement as required in regulations at 50 CFR 660.150(d)(1)(iii)(B)(*4*) and 660.160(d)(1)(iii)(B)(*4*).

Consistent with current regulations at 50 CFR 660.150(d)(1)(iii)(B)(*4*) and 660.160(d)(1)(iii)(B)(*4*), within 30 days of a new vessel participating in a co-op fishery, the MS or CP co-op manager must submit a revised co-op agreement to NMFS that lists all vessels and/or processing vessels operating in the respective co-op and include the new processing vessel, along with a letter describing the change to the co-op agreement.

For each trip, the vessel is still required to update its vessel monitoring system (VMS) declaration to reflect its activity for that trip prior to departure as specified in existing groundfish regulations at 50 CFR 660.13(d)(4)(iv)(A).

A separate economic data collection (EDC) form is required for the owner, lessee, charterer of a mothership vessel registered to an MS permit as well as owner, lessee, charterer of a catcher processor vessel registered to a CP-endorsed limited entry permit. If a vessel holds both types of permit in one calendar year, two EDC forms must be submitted as specified at 50 CFR 660.114. Additionally, separate cost recovery requirements apply to each sector, as described at 50 CFR 660.115.

The Council recommended and NMFS is lifting the restriction on MS and CP permit transfers to increase the likelihood that MSCVs have markets to which to deliver catch throughout the fishing season. The operational flexibility provided in this action would provide significant additional economic opportunity to at-sea Pacific whiting fishery participants and fishing communities. These measures will allow catcher vessels to harvest MS sector allocations and provide catch revenue to the respective vessel crews. In the event that additional processing vessels cannot commit to taking deliveries from catcher vessels (due to changes in business plans, for example) this action will provide additional harvesting and processing opportunities for at-sea Pacific whiting fishery participants.

Summary of Anticipated Effects of This Final Rule

Overall, this final rule is expected to increase attainment across all three non-tribal Pacific whiting sectors, with the largest change expected in the MS sector. While the movement of the primary season start date is likely to provide the most benefit in terms of harvest opportunities when both MS and MSCVs can be on the fishing grounds, the increased flexibility to have more processors (via the unlimited permit transfer) or have processors accept and potentially process higher amounts of catch (removal of the processor cap) may, in combination, provide the most opportunity to increase attainment and economic benefits for all sectors. Increased attainment of the Pacific whiting allocation, through additional fishing opportunity, processing capacity, and flexibility, will result in positive benefits to the fleet and the communities in which participants reside. There are expected to be no biological impacts outside of those previously disclosed in harvest specifications processes for both groundfish and Pacific whiting or those in the 2017 Biological Opinion for salmonids.

Other Actions Included in This Final Rule

NMFS is also implementing additional administrative changes in this rule. This final rule adjusts cost recovery regulation language to state that the value of ''Pacific whiting'' instead of ''all groundfish'' will be used in the annual cost recovery fee calculations for the at-sea sectors to reflect the current practice of using Pacific whiting only in the cost recovery fee calculations. While the cost recovery regulations state that all groundfish harvested should be used to calculate ex-vessel value, it is current practice to use Pacific whiting only when calculating the ex-vessel value of the MS and CP sectors. Only Pacific whiting is used because there is insufficient data available on the value of non-whiting species encountered by the MS and CP sectors. This change reflects the original intention of the Council in their 2011 cost recovery recommendations. The Council recommended this change to NMFS at the April 2021 meeting.

This final rule makes some technical, non-substantive changes to improve comprehensibility of the regulations by removing outdated regulations.

Comments and Responses

NMFS held a public comment period on the proposed rule (87 FR 55979, September 13, 2022) from September 13, 2022, to October 13, 2022. NMFS received a total of four public comment submissions. Three of the public comments were from private citizens, and one of the public comments was from a commercial fishing entity that participates in one of the affected sectors. All expressed general support of the proposed rule with the exception of one commenter not supporting the change of the season start date. This comment and response is summarized below.

Comment: A private citizen commented that they are concerned about moving the season start date forward two weeks due to the possible impacts on other fish populations, particularly Pacific salmon. That private citizen does not believe there is sufficient evidence to support moving the season start date forward, but is in favor of the other components of the rule.

Response: This final rule appropriately balances NMFS's duties under the Magnuson-Stevens Act to conserve marine resources while simultaneously creating opportunities to achieve optimum yield and extends gratitude for the engagement of the public during this process. As detailed in the proposed rule (87 FR 55979, September 13, 2022) and in the Analysis, NMFS evaluated the potential impact of the season date change on salmon bycatch in the whiting sectors and determined that this action is unlikely to either increase the total amount of catch or change the composition of the bycatch. Specifically, the Analysis indicates the anticipated impacts would be within the effects considered in the 2017 Biological Opinion. NMFS is aware of the uncertainty in salmon bycatch and stock compositions since the fishery has not occurred during early May since the 1990s. However, the fishery continues to operate under the reasonable and prudent measures described in the incidental take statement (ITS) of the 2017 Biological Opinion to limit bycatch, and inseason management tools to reduce listed bycatch, therefore we have the ability to act to reduce bycatch if an issue does arise.

Classification

NMFS is issuing this rule pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, which provides specific authority and procedure for implementing this action. The majority of this rulemaking is promulgated pursuant to section 304(b)(1)(A); the Council recommended this action at its April 2021 and March 2022 meetings. This rulemaking also includes minor regulatory changes promulgated pursuant to section 305(d). This action is necessary to improve comprehensibility of the regulations by removing outdated regulations.

The NMFS Assistant Administrator has determined this final rule is consistent with the FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This rule extends the existing requirements for the Pacific Coast Groundfish Trawl Rationalization Program Permit and License Information Collection OMB Control Number 0648–0620 and revises the existing requirements by removing the requirement for the owner of the MSCV-endorsed permit to submit a copy of a MAE to NMFS that includes the MS permit owner's acknowledgement of termination of the catcher vessel's obligation to the permitted MS vessel. If a MS permit withdraws from the fishery before Pacific whiting has been allocated to the MS sector, this rule removes the requirement of the MS permit owner withdrawing from the fishery to provide written notification to NMFS and all owners of MSCV-endorsed permits with CHA obligated to the MS permit withdrawing. Additionally, this rule removes the requirement for a MS to submit an ownership interest (OI) form. This rule removes 3 hours and 18 burden minutes per year for the fishery. Public reporting burden for removing the requirements of submitting a MAE, a MS permit withdrawal and removing the requirement of a MS submitting an OI form is estimated to result in a reduced average cost of $5.34 per year for participants of the fishery.

The existing collection of information requirements continue to apply under the following OMB Control Number 0648–0573: Expanded Vessel Monitoring System (VMS) Requirements for the Pacific Groundfish Fishery.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted on the following website: *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648–0620.

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

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: December 9, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend § 660.25 by:
■ a. Revise paragraphs (b)(4)(i)(E), (b)(4)(v)(A), and (b)(4)(vii)(C);
■ b. Add paragraph (b)(4)(vii)(D); and
■ c. Revise paragraph (b)(4)(viii)(C).

The revisions and addition read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(E) Limited entry permits with an MS/catcher vessel (CV) endorsement will not be renewed until SFD has received complete documentation of permit ownership as required under § 660.150(g).

* * * * *

(v) * * *

(A) *General.* Change in permit owner and/or vessel owner applications must be submitted to NMFS with the appropriate documentation described at paragraphs (b)(4)(viii) and (ix) of this section. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit owner has been registered with and approved by NMFS. NMFS will not approve a change in permit owner for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(B) of this section. NMFS will not approve a change in permit owner for a limited entry permit with an MS/CV endorsement that does not meet the ownership requirements for such permit described at § 660.150(g)(3). NMFS considers the following as a change in permit owner that would require registering with and approval by NMFS, including but not limited to: Selling the permit to another individual or entity; adding an individual or entity to the legal name on the permit; or removing an individual or entity from the legal name on the permit. A change in vessel owner includes any changes to the name(s) of any or all vessel owners, as registered with U.S. Coast Guard (USCG) or a state. The new owner(s) of a vessel registered to a limited entry permit must report any change in vessel ownership to NMFS within 30 calendar days after such change has been registered with the USCG or a state licensing agency.

* * * * *

(vii) * * *

(C) *Limited entry permits with an MS/CV endorsement.* Limited entry permits with an MS/CV endorsement may be registered to another vessel up to two times during the calendar year as long as the second change in vessel registration is back to the original vessel. The original vessel is either the vessel registered to the permit as of January 1, or if no vessel is registered to the permit as of January 1, the original vessel is the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first change in vessel registration would be to another vessel, but any second change in vessel registration must be back to the original vessel. On the second change in vessel registration back to the original vessel, that vessel must be used to fish exclusively in the MS Co-op Program described at § 660.150 for the remainder of the calendar year, and declare into the limited entry mid water trawl, Pacific whiting mothership sector as specified at § 660.13(d)(4)(iv).

(D) *Limited entry MS permits and limited entry permits with a catcher/processor (C/P) endorsement.* Vessels registered to both a MS permit and a C/P endorsed permit may operate in both the at-sea MS sector and C/P sector during the same calendar year, but not on the same trip. Prior to leaving port, a vessel registered under both a MS permit and a C/P endorsed permit must declare through VMS the sector in which it will participate for the duration of the trip, as specified at § 660.13(d)(4)(iv)(A).

(viii) * * *

(C) For a request to change a vessel registration and/or change a permit owner or vessel owner for a MS/CV-endorsed limited entry permit, an Identification of Ownership Interest Form must be completed and included with the application form.

* * * * *

■ 3. Amend § 660.111 by:
■ a. Under the definition ''Accumulation limits'', remove paragraph (2)(i) and redesignate paragraphs (2)(ii) and (iii) as paragraphs (2)(i) and (ii);
■ b. Under the definition ''Ex-vessel value'', revise paragraphs (2) and (3); and
■ c. Remove the definitions of ''Mutual agreement exception'' and ''Processor obligation''.

The revisions read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Ex-vessel value * * *

(2) For the MS Co-op Program, the value of Pacific whiting delivered by a catcher vessel to an MS-permitted vessel.

(3) For the C/P Co-op Program, the value as determined by the aggregate pounds of Pacific whiting retained on board by the vessel registered to a C/P-endorsed limited entry trawl permit, multiplied by the MS Co-op Program average price per pound as announced pursuant to § 660.115(b)(2).

* * * * *

§ 660.112 [Amended]

■ 4. Amend § 660.112 by:
■ a. Remove paragraph (d)(3);
■ b. Redesignate paragraphs (d)(4) through (6) as paragraphs (d)(3) through (5);
■ c. Remove paragraph (d)(7);
■ d. Redesignate paragraphs (d)(8) through (16) as paragraphs (d)(6) through (14);
■ e. Remove paragraph (e)(3); and
■ f. Redesignate paragraphs (e)(4) through (10) as paragraphs (e)(3) through (9).

■ 5. Amend § 660.113 by revising paragraphs (c)(3) introductory text, (c)(5)(ii)(A) introductory text, (c)(5)(ii)(A)(*3*), (*5*), (*6*), and (*9*), (d)(3) introductory text, (d)(5)(ii)(A) introductory text, (d)(5)(ii)(A)(*2*), (*4*), (*5*), and (*6*), (e)(3), and (e)(6)(i) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(c) * * *

(3) *Annual co-op report.* The designated co-op manager for the mothership co-op must submit an annual report to NMFS and the Council by March 17 each year, before a co-op permit is issued for that year. The annual co-op report will contain information about the previous year's fishery, including:

* * * * *

(5) * * *

(ii) * * *

(A) For all deliveries of Pacific whiting that the fish buyer buys from each fish seller:

* * * * *

(*3*) The weight of Pacific whiting delivered;

* * * * *

(*5*) The ex-vessel value of Pacific whiting;

(*6*) The net ex-vessel value of Pacific whiting;

* * * * *

(*9*) The total fee amount collected as a result of all Pacific whiting.

* * * * *

(d) * * *

(3) *Annual co-op report.* The designated co-op manager for the C/P co-op must submit an annual report to NMFS and the Council by March 17 each year, before a co-op permit is issued for that year. The annual co-op report will contain information about the previous year's fishery, including:

* * * * *

(5) * * *

(ii) * * *

(A) For all Pacific whiting:

* * * * *

(*2*) The weight of Pacific whiting retained on board;

* * * * *

(*4*) The ex-vessel value of Pacific whiting retained on board;

(*5*) The net ex-vessel value of Pacific whiting retained on board; and

(*6*) The total fee amount collected as a result of all Pacific whiting.

* * * * *

(e) * * *

(3) *Deadline for proposed SMP.* A proposed SMP must be submitted between February 1 and March 17 of the year in which it intends to be in effect to NMFS at: NMFS, West Coast Region, ATTN: Fisheries Permit Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115.

* * * * *

(6) * * *

(i) *Submission deadline.* The SMP postseason report must be received by NMFS and the Council no later than March 17 of the year following that in which the SMP was approved.

* * * * *

■ 6. Amend § 660.131 by revising paragraphs (b)(2)(ii), (b)(2)(iii)(A) and (B), and (b)(2)(iii)(C)(*1*) to read as follows:

§ 660.131 Pacific whiting fishery management measures.

* * * * *

(b) * * *

(2) * * *

(ii) *Criteria.* The start of a Pacific whiting primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(iii) * * *

(A) Catcher/processor sector—May 1.

(B) Mothership sector—May 1.

(C) * * *

(*1*) North of 40°30′ N lat.—May 1; and

* * * * *

■ 7. Amend § 660.150 by:

■ a. Revise the section heading;

■ b. In paragraph (b)(1)(i)(A), add the word ''and'' following the semicolon at the end of paragraph;

■ c. In paragraph (b)(1)(i)(B), remove ''; and'' and add a period in its place;

■ d. Remove paragraphs (b)(1)(i)(C) and (b)(2)(i)(A)(*3*);

■ e. Redesignate paragraph (b)(2)(i)(A)(*4*) as paragraph (b)(2)(i)(A)(*3*);

■ f. Revise paragraph (c)(6)(i)(A);

■ g. Remove paragraph (c)(7);

■ h. Revise paragraph (d)(1)(ii) and the introductory text of paragraph (d)(1)(iii);

■ i. Remove paragraph (d)(1)(iii)(A)(*1*)(*iii*);

■ j. Redesignate paragraphs (d)(1)(iii)(A)(*1*)(*iv*) through (*xii*) as paragraphs (d)(1)(iii)(A)(*1*)(*iii*) through (*xi*);

■ k. Remove paragraph (f)(3);

■ l. Redesignate paragraphs (f)(4) through (6) as paragraphs (f)(3) through (5); and

■ m. Revise paragraph (g)(2)(i) introductory text.

The revisions read as follows:

§ 660.150 Mothership (MS) Co-op Program.

* * * * *

(c) * * *

(6) * * *

(i) * * *

(A) Through an inter-co-op agreement, the designated co-op managers of permitted MS co-ops may distribute Pacific whiting allocations among one or more permitted MS co-ops.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual registration and deadline.* Each year, a co-op entity intending to participate as a co-op under the MS Co-op Program must submit an application for a MS co-op permit between January 17 and March 17 of the year in which it intends to fish. NMFS will not consider any applications received after March 17. An MS co-op permit expires on December 31 of the year in which it was issued.

(iii) *Application for MS co-op permit.* The designated co-op manager, on behalf of the co-op entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a MS co-op permit. An application will not be considered complete if any required application fees and annual co-op reports have not been received by NMFS. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS West Coast Region (WCR) website (*https://www.fisheries.noaa.gov/permit/groundfish-mothership-cooperative-permit*) or by request from NMFS. The designated co-op manager must sign the application acknowledging the responsibilities of a designated co-op manager defined in paragraph (b)(3) of this section. For permit owners with more than one MS/CV endorsement and associated CHA, paragraph (g)(2)(iv)(D) of this section specifies how to join an MS co-op(s).

* * * * *

(g) * * *

(2) * * *

(i) *Renewal.* An MS/CV-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4). During renewal, all MS/CV-endorsed limited entry permit owners must make a preliminary declaration regarding their intent to participate in the co-op or non-co-op portion of the MS Co-op Program for the following year. MS/CV-endorsed permits not obligated to a permitted MS co-op by March 17 of the fishing year will be assigned to the non-co-op fishery. For an MS/CV-endorsed permit that is not renewed, the following occurs:

* * * * *

■ 8. Amend § 660.160 by:

■ a. Remove paragraph (b)(1)(i)(C); and

■ b. Revise paragraphs (d)(1)(ii), (e)(1)(iii), and (e)(2)(i).

The revisions read as follows:

§ 660.160 Catcher/processor (C/P) Co-op Program.

* * * * *

(d) * * *

(1) * * *

(ii) *Annual registration and deadline.* Each year, the co-op entity must submit

a complete application to NMFS for a C/P co-op permit. The application must be submitted to NMFS by between January 17 and March 17 of the year in which it intends to participate. NMFS will not consider any applications received after March 17. A C/P co-op permit expires on December 31 of the year in which it was issued.

* * * * *

(e) * * *

(1) * * *

(iii) *Restriction on C/P vessel operating as mothership.* A vessel registered to a C/P-endorsed permit may operate as a mothership during the same calendar year it participates in the C/P sector but not on the same trip.

* * * * *

(2) * * *

(i) *Renewal.* A C/P-endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4).

* * * * *

■ 9. Amend § 660.604 by revising paragraph (e) introductory text and paragraph (i) to read as follows:

§ 660.604 Vessel and first receiver responsibilities.

* * * * *

(e) *Electronic Monitoring (EM) Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their EM Authorizations effective for the primary whiting season start date must submit their complete application to NMFS by February 1 of the same year.

* * * * *

(i) *Renewing an EM Authorization.* To maintain a valid EM Authorization, vessel owners must renew annually prior to the permit expiration date. NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for non-trawl shorebased IFQ vessels and January 1 for Pacific whiting IFQ and MS/CV vessels. Vessel owners who want to have their EM Authorizations effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by October 15. Vessel owners who want to have their EM Authorizations effective for the primary whiting season start date of the following calendar year must submit their complete renewal form to NMFS by February 1.

* * * * *

[FR Doc. 2022–27117 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 221206–0261]

RIN 0648–BL48

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Pacific Coast Groundfish Fishery Management Plan; Amendment 30; 2023–24 Biennial Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes the 2023–24 harvest specifications for groundfish caught in the U.S. exclusive economic zone seaward of Washington, Oregon, and California, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan. This final rule also revises management measures intended to keep the total annual catch of each groundfish stock or stock complex within the annual catch limits. These measures are intended to help prevent overfishing, rebuild overfished stocks, achieve optimum yield, and ensure management measures are based on the best scientific information available. This final rule also makes minor corrections to the regulations. This action also implements portions of Amendment 30 to the Pacific Coast Groundfish Fishery Management Plan, which specifies a shortbelly rockfish catch threshold to initiate Council review; extends the length of the limited entry fixed gear sablefish primary season; changes the use of Rockfish Conservation Area boundaries; expands the use of Block Area Closures to control catch of groundfish; and corrects the definition of Block Area Closures.

DATES: This final rule is effective January 1, 2023.

ADDRESSES: The Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) which addresses the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act, is accessible via the internet at the NMFS West Coast Region website at *https://www.fisheries.noaa.gov/region/west-coast.* Background information and documents including an analysis for this action (Analysis), which addresses the statutory requirements of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) are available from the Pacific Fishery Management Council's website at *http://www.pcouncil.org.* The final 2022 Stock Assessment and Fishery Evaluation (SAFE) report for Pacific Coast groundfish, as well as the SAFE reports for previous years, are available from the Pacific Fishery Management Council's website at *http://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew, Fishery Management Specialist, at 206–526–6147 or *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Harvest Specifications

This final rule sets 2023–24 harvest specifications and management measures for 127 of the 128 groundfish stocks or management units which currently have ACLs or ACL contributions to stock complexes managed under the PCGFMP, except for Pacific whiting. Pacific whiting harvest specifications are established annually through a separate bilateral process with Canada.

The OFLs, ABCs, and ACLs are based on the best available biological and socioeconomic data, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. See Tables 1a and 2a to Part 660, Subpart C in the regulatory text supporting this rule for the 2023–24 OFLs, ABCs, and ACLs for each stock or stock complex.

A detailed description of each stock and stock complex for which the Council establishes harvest specifications set through this rule can be found in the 2022 SAFE document posted on the Council's website at *https://www.pcouncil.org/stock-assessments-star-reports-stat-reports-rebuilding-analyses-terms-of-reference/*

safe-documents-4/. A summary of how the 2023–24 harvest specifications were developed, including a description of off-the-top deductions for tribal, research, incidental, and experimental fisheries, was provided in the proposed rule (87 FR 62676, October 14, 2022) and is not repeated here. Additional information on the development of these harvest specifications is also provided in the Analysis.

For most stocks, the Council recommended harvest specifications based on the default harvest control rule used in the prior biennium. The Council recommended deviating from the default harvest control rule for two stocks in 2023–2024. Table 1 presents a summary of the changes to the harvest control rules for these stocks for the 2023–24 biennium. Each of these changes was discussed in the proposed rule and that discussion is not repeated here.

TABLE 1—CHANGES TO HARVEST CONTROL RULES FOR 2023–24

Stock complex component	Alternative	Harvest control rule	ACL contribution to stock complex [a] [b]
Black Rockfish off of Oregon.	Default	ACL contribution = ABC (P* = 0.45)	477 mt (2023), 471 mt (2024).
	New Harvest Control Rule.	ACL contribution = 2020 ABC	512 mt (2023), 512 mt (2024).
Quillback Rockfish off of California.	Default	ACL contribution < ABC with the 40–10 adjustment [c] off California only (P* = 0.45).	2023 statewide ACL contribution = 0.11 mt; 2024 statewide ACL contribution 0.42 mt.
	New Harvest Control Rule.	ACL contribution < ABC (SPR 0.55; P* 0.45)	2023 statewide ACL contribution = 1.76 mt; 2024 statewide ACL contribution = 1.93 mt.

[a] Default ACL is for 2023 and 2024 under the default harvest control rule, Proposed change ACL is for 2023 and 2024 under the alternative harvest specifications.

[b] The ACL contribution for quillback rockfish off of California are apportioned to create the ACL contributions to the nearshore rockfish complexes north and south of 40°10′ N lat. The apportionment was determined by the proportion of catch between 2005 and 2020 north and south of 40°10′ N lat. in California where 49.6 percent of the statewide ACL is apportioned to the area between 42° and 40°10′ N lat. for the California contribution to the northern complex, and 50.4 percent to the area south of 40°10′ N lat. for the contribution to the southern complex.

[c] The 40–10 adjustment is applied to only some component species when calculating the complex ACL, where a precautionary reduction is warranted, per the PCGFMP at section 4.6.1. The 40–10 adjustment reduces the harvest rate to help the stock return to the maximum sustainable yield level.

II. Management Measures

This final rule will revise management measures, which are used to further allocate the ACLs to the various components of the fishery (*i.e.,* biennial fishery harvest guidelines and set-asides) and to control fishing. Management measures for the commercial fishery modify fishing behavior during the fishing year to ensure catch does not exceed the ACL, and include trip and cumulative landing limits, time/area closures, size limits, and gear restrictions. Management measures for the recreational fisheries include bag limits, size limits, gear restrictions, fish dressing requirements, and time/area closures. Each of these changes was discussed in the proposed rule and that discussion is not repeated here.

As described in the proposed rule, before making allocations to the primary commercial and recreational components of groundfish fisheries, the Council recommends ''off-the-top deductions,'' or deductions from the ACLs to account for anticipated mortality for certain types of activities: harvest in Pacific Coast treaty Indian tribal fisheries; harvest in scientific research activities; harvest in non-groundfish fisheries (incidental catch); and harvest that occurs under EFPs. These off-the-top deductions are proposed for individual stocks or stock complexes and can be found in the footnotes to Tables 1a and 2a to part 660, subpart C in the regulatory text of this final rule. The details of the EFPs were discussed in Section III.H of the proposed rule. The Tribal harvest set-asides and allocations proposed for the 2023–24 biennium for groundfish species other than Pacific whiting, were shown in Table 5 of the proposed rule.

The Council routinely recommends 2-year trawl and non-trawl allocations during the biennial specifications process for stocks without formal allocations (as defined in Section 6.3.2 of the PCGFMP) or stocks where the long-term allocation is suspended. Allocations are detailed in the harvest specification tables appended to 50 CFR part 660, subpart C in the regulatory text of this final rule and described in Section III.C. of the proposed rule. As proposed, allocations for big skate, bocaccio South of 40°10′ N lat., canary rockfish, cowcod, lingcod South of 40°10′ N lat., longnose skate, Shelf Rockfish Complex, Slope Rockfish Complex, petrale sole, and widow rockfish are revised with this final rule.

Rockfish Conservation Areas (RCAs) are large area closures intended to reduce the catch of a stock or stock complex by restricting fishing activity at specific depths. The boundaries for RCAs are defined by straight lines connecting a series of latitude and longitude coordinates that approximate depth contours. This final rule makes minor line modifications seaward of California around Eel Canyon (near Eureka), Mendocino Canyon, Mattole Canyon, the Farallon Islands (near San Francisco), the Channel Islands (near Santa Barbara and east of Anacapa Island), Redondo Canyon, Santa Catalina Island, Lasuen Knoll, and Santa Clemente Island, as well as in near Albion, Monterey Bay, Point Sur, Morro Bay, Port Hueneme, Santa Monica Bay, Point Vincente, Huntington Beach, and San Diego. These modifications would better align existing RCA coordinates with chart-based depth contours, reduce boundary line crossovers, and address enforcement concerns. See Section III.D of the proposed rule or Section 2.1 of the Analysis for more details on these changes.

A. Routine Measures for Commercial Limited Entry Trawl, Non-Trawl, and Recreational Fisheries

The limited entry trawl fishery is made up of the shorebased IFQ program, whiting and non-whiting, and the at-sea whiting sectors. For some stocks and stock complexes with a trawl allocation, an amount is first set-aside for the at-sea whiting sector with the remainder of the trawl allocation going to the shorebased IFQ sector. Set-asides are not managed by NMFS or the Council except in the case of a risk to the ACL. This final rule adopts at-sea set asides as shown in Section III.E., Table 16 of the proposed rule. For vessels fishing in the Shorebased IFQ Program, with either groundfish trawl gear or non-trawl

gears, the following incidentally-caught stocks are managed with trip limits: Minor Nearshore Rockfish north and south, Washington black rockfish, Oregon black/blue/deacon rockfish, cabezon (46°16′ to 40°10′ N lat. and south of 40°10′ N lat.), spiny dogfish, longspine thornyhead south of 34° N lat., big skate, California scorpionfish, longnose skate, Pacific whiting, and the Other Fish complex. As described in the proposed rule in Section III.E., this rule maintains the same IFQ fishery trip limits for these stocks for the start of the 2023–24 biennium as those in place in 2022. Trip limits for the IFQ fishery can be found in Table 1 North and Table 1 South to part 660, subpart D of this final rule. Changes to trip limits would be considered a routine measure under § 660.60(c), and may be implemented or adjusted, if determined necessary, through inseason action.

Management measures for the LEFG and OA non-trawl fisheries tend to be similar because the majority of participants in these fisheries use hook-and-line gear. Management measures, including area restrictions (*e.g.,* non-trawl RCA) and trip limits in these non-trawl fisheries, are generally designed to allow harvest of target stocks while keeping catch of overfished stocks low. LEFG trip limits are specified in Table 2 (North) and Table 2 (South) to subpart E. OA trip limits are specified in Table 3 (North) and Table 3 (South) to subpart F in the regulatory text of this final rule. As described in Section III.F. of the proposed rule, sablefish trip limits are being modified and the sablefish annual tier limits are being updated. Sablefish annual tier limits for 2023 and 2024 can be found at § 660.231(b)(3)(i) in the regulatory text of this final rule.

The Council primarily recommends depth restrictions and bag limit changes to constrain catch within the recreational harvest guidelines for each stock. Washington, Oregon, and California each proposed, and the Council recommended, different combinations of seasons, bag limits, area closures, and size limits for stocks targeted in recreational fisheries, as described in Section III.G of the proposed rule. These measures are designed to limit catch of overfished stocks found in the waters adjacent to each state while allowing target fishing opportunities in their particular recreational fisheries. Changes to management measures for recreational fisheries off the coasts of Washington, Oregon and California can be found in § 660.360 of the regulatory text of this final rule.

B. New Management Measures

Shortbelly rockfish is one of the most abundant rockfish species in the California Current Ecosystem and is a key forage species for many fish, birds, and marine mammals. Amendment 30 adds language to the PCGFMP stating that if shortbelly rockfish mortalities exceed, or are projected to exceed, 2,000 mt in a calendar year, the Council would review relevant fishery information and consider if management changes were warranted, including, but not limited to reconsideration of its current classification as an ecosystem component (EC) species. To estimate mortality and provide for catch accounting, this final rule adds a sorting requirement for shortbelly rockfish in the LEFG and OA fisheries. For more information on this measure, see the NOA for Amendment 30, the Analysis, and Section III.I of the proposed rule.

NMFS notes that routine management measures as laid out in 50 CFR 660.60(c) are not currently available for shortbelly rockfish management because shortbelly rockfish is an EC species. Shortbelly rockfish would need to be redesignated as ''in the fishery'' prior to routine management measures being available for inseason use. However, the Council could recommend, consistent with the points of concern framework (FMP Section 6.2.2), management measures to minimize bycatch or bycatch mortality of EC species as laid out in 50 CFR 600.305(c)(5). Depending on the issue triggering the need for management measures, this pathway might require revisiting the EC designation.

This final rule also allows non-trawl vessels to use select hook-and-line gear configurations within the NT–RCA to provide additional opportunity to commercial non-trawl fisheries to target healthy stocks, relieve pressure on overfished or constraining nearshore stocks, and limit impacts to sensitive habitats, as described in Section III.J of the proposed rule.

This final rule allows vessels in the directed open access fishery targeting groundfish to operate inside the NT–RCA from 46°16′ N lat. to the U.S./Mexico border with non-bottom contact hook-and-line gear only, subject to the specifications described in Section III.J of the proposed rule, including but not limited to the vessel declaring into the directed open access fishery, and the vessel would not be permitted to declare into any other fishery if fishing inside the NT–RCA.

This final rule permanently extends the LEFG sablefish primary tier fishery (hereinafter referred to as primary fishery) season end date from October 31 to December 31. The primary fishery would close on December 31, or close for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier. This action also extends the incidental Pacific halibut retention allowance provision for the primary fishery north of Point Chehalis, Washington from October 31 to the date/time specified by the International Pacific Halibut Commission (IPHC) annually for the closure of Pacific halibut commercial fisheries coastwide, or until the quota is taken, whichever comes first. For more information on this measure, see the Analysis and in Section III.K of the proposed rule.

Amendment 30 makes a minor change to the PCGFMP to resolve a mismatch between the FMP and current regulatory text. The PCGFMP will be revised to match the Council's intent to manage incidental salmon bycatch by vessels using groundfish midwater trawl gear in the EEZ off of Washington, Oregon, and California with Block Area Closures (BACs), as currently described in regulations. For more information on this measure, see the NOA for Amendment 30, the Analysis, and Section III.L of the proposed rule.

This final rule sets Annual Catch Targets (ACTs) for copper rockfish and quillback rockfish, for the reasons described in Section III.M of the proposed rule. For copper rockfish, the ACT would be set equal to its ACL contribution for the portion of the stock found off of California and would be set at 91.54 mt in 2023, and 94.72 mt in 2024. For quillback rockfish, an ACT would be set for the portion of the stock found off of California and would be set at 1.86 mt in 2023, and 1.97 mt in 2024.

This final rule allows for novel utilization of the previously established Rockfish Conservation Area (RCA) boundary lines for the recreational fishery seaward of California (§ 660.360(c)(3)) by allowing fishing seaward of a specified RCA boundary line and prohibiting fishing shoreward of that line. This measure is taken in addition to the regulatory management measures to reduce mortality of copper and quillback rockfish in 2022 (and continued for 2023–2024) and voluntary measures taken by industry, to reduce mortality of copper and quillback rockfishes. If mortality is lower than expected through the regular inseason monitoring and reporting, the Council and NMFS would consider relieving restrictions during the biennium in order to reduce socioeconomic impacts, while keeping mortality within the

recommended ACTs for these species. For more information on this measure, see the NOA for Amendment 30, the Analysis, and Section III.N of the proposed rule.

This final rule makes Block Area Closures (BACs) available as a routine management measure to control catch of groundfish by midwater trawl and bottom trawl non-tribal vessels. BACs could be implemented in the EEZ seaward of Washington, Oregon, and California. For more information on this measure, see the Analysis and Section III.O of the proposed rule.

C. Corrections

This rule makes minor corrections to the regulations at 50 CFR 600. These regulations are associated with Amendment 29 (85 FR 79880, December 11, 2020), Amendment 21–4 to the PCGFMP (84 FR 68799, December 17, 2019), and the 2019–2020 biennial harvest specifications (83 FR 63970, December 12, 2018). These minor corrections are necessary to reduce confusion and inconsistencies in the regulatory text and ensure the regulations accurately implement the Council's intent.

This rule updates the definition of ''Ecosystem component species'' at § 660.11 to add shortbelly rockfish in the list of species designated as ecosystem component and removes the shortbelly rockfish trip limit from Table 2 (North) and Table 2 (South) to Part 660, Subpart E, as well as Table 3 (North) and Table 3 (South) to Part 660, Subpart F.

This rule amends § 660.55(c)(1) Table 1 by removing the allocations for canary rockfish, as well as petrale sole, widow rockfish, lingcod south of 40°10′ N lat., and the slope rockfish complex south of 40°10′ N lat., consistent with Amendment 29.

This rule amends § 660.140 to remove darkblotched rockfish, Pacific ocean perch, and widow rockfish from paragraph (c)(3)(iii) and add them to paragraph (c)(3)(iv), consistent with Amendment 21–4.

This rule removes cross references to at-sea set-asides at Table 1d to Subpart C of part 660, in § 660.150 and § 660.160 and clarifies that the at-sea set-asides are described in the biennial specifications, consistent with Amendment 29.

This final rule amends the regulations regarding depth restrictions for recreational vessels operating within the Western Cowcod Conservation Area at § 660.360(c)(3)(i)(B), to note that a coordinate list describing the 40 fm (73 m) depth contour can be found in § 660.71.

For more information on each of these changes, see Section III.P. of the proposed rule.

IV. Comments and Responses

The notice of availability was published on September 6, 2022 (87 FR 54445) and received 5 public comments. Of those public comments, one commenter agreed with the proposed measures. A comment letter from California Department of Fish and Wildlife supported the measures to extend the length of the limited entry fixed gear sablefish primary season, supported changing the use of RCA boundaries, and supported expanding the use of BACs and correcting its definition. The other 4 comments pertained to measures in the proposed rule for implementing regulations. The proposed rule was published on October 14, 2022 (87 FR 62676) and received 6 public comments. All comments pertaining to the measures in the proposed rule are addressed below.

Comment: Five commenters disagreed with new, more restrictive, management measures for certain groundfish. Reasons for disagreement included the perception that the fishery is thriving, and that the surveys and stock assessments were inaccurate.

Response: The 2023–2024 groundfish harvest specifications and management measures are informed by the best scientific information available, including surveys and new stock assessments. As discussed in the proposed rule (87 FR 62676), new stock assessments for certain rockfish species indicate these species are depleted, and more restrictive management measures are necessary to keep catch within lower catch limits.

Comment: One commenter disagreed with the trip limits for sablefish north of 36° N latitude between the limited entry and open access sectors and thinks the open access limits should be proportionally lower than the limited entry limits to increase the value of limited entry permits and recognize the difference in investment between the two sectors.

Response: The Council recommended, and NMFS is implementing with this rule, the sablefish trip limits north of 36° N latitude. Typically, the trip limits in the open access sector are lower than the limited entry sector; however, the proportionality fluctuates across years and across species. This fluctuation is caused mostly by differences in fishing effort and market changes. Sector specific trip limits are designed to increase the likelihood of each sector attaining its annual sector-specific sablefish allocation. Trip limits for each sector are a policy recommendation from the Council based on fishery information and the fixed proportion of harvest privilege for each sector.

Comment: Two commenters pointed out discrepancies between the proposed rule preamble and regulatory text and recommended corrections to the proposed rule to bring consistency with Council recommendations.

Response: NMFS appreciates the attention to these details, agrees that those corrections are warranted for consistency with the Council recommendations, and has therefore made corrections and changes in this final rule, as described in the corrections to the proposed rule section below.

Comment: One fisherman commented that the open access north trip limits for the shelf rockfish complex are too low and are likely to result in regulatory discards as fishermen catch increased trip limits for co-occurring species. They request that NMFS consider inseason changes to increase those limits to reduce potential regulatory discards.

Response: NMFS acknowledges the difference in trip limits for these co-occurring species and notes that differences in the scale of the trip limits does not necessarily mean that regulatory discards will occur, or that higher trip limits can be accommodated while keeping total catch within applicable harvest specifications. In the future the Council may, based on updated fishery information, recommend an inseason increase to the subject shelf rockfish limits, at which point NMFS will consider such regulation changes.

Comment: The California Department of Fish and Wildlife (CDFW) commented to express uncertainty whether current and proposed new sorting requirements for shortbelly rockfish are sufficient to allow the agency and the Council to monitor whether shortbelly rockfish catch exceeds the review trigger established as part of Amendment 30 or whether additional measures would be needed.

Response: This final rule implements new scientific sorting requirements for shortbelly rockfish consistent with § 660.12(a)(8), removes management measures that are no longer necessary, and otherwise allows the continued tracking of shortbelly rockfish catch to allow the agency and the Council to determine if and when the review trigger is met. Scientific sorting requirements allow for sorting requirements that are not otherwise necessary due to management measures such as trip limits. The trawl sector is

already subject to a sorting requirement for shortbelly rockfish (see 50 CFR 660.130(d)(1)(i)). This final rule implements a scientific sorting requirement for the limited entry fixed gear (§ 660.230(c)(2)(i)) and open access sectors (§ 660.330(c)(2)(1)). Collectively, these new scientific sorting requirements, in conjunction with the sorting requirements already in place, provide the agency and the Council the ability to track shortbelly rockfish catch inseason and evaluate if and when the review trigger is met.

Comment: CDFW questioned the removal of management measures for shortbelly rockfish. CDFW also expressed concern that under the new shortbelly rockfish review trigger provisions, there may not be inseason management responses available to the agency or Council.

Response: As noted in the proposed rule (87 FR 62676; October 14, 2022), we proposed removing trip limits for shortbelly rockfish because under Amendment 29 to the FMP, shortbelly rockfish was designated as an ecosystem component (EC) species. NMFS notes that routine management measures as laid out in 50 CFR 660.60(c) are not currently available for EC species. EC species are designated as such because they are not in need of conservation and management (see Amendment 29 final rule; 85 FR 79880, December 11, 2020). As we noted in Council deliberations on this action and again in the proposed rule, if the review trigger were met and if the Council was considering taking action in response, shortbelly rockfish would need to be redesignated as ''in the fishery'' prior to routine management measures being available for inseason use. However, the Council could recommend, consistent with the points of concern framework (FMP Section 6.2.2), management measures to minimize bycatch or bycatch mortality of EC species as laid out in 50 CFR 600.305(c)(5). Depending on the issue triggering the need for management measures, this pathway might require revisiting the EC designation.

Comment: CDFW suggested an addition to the recreational management measures off California to implement new provisions for ''other groundfish'' consistent with California state regulations.

Response: This suggested change is outside the scope of this action and would require additional consideration through the Pacific Fishery Management Council process.

Comment: CDFW suggests there is an error in the example of what is allowed under the recreational management measures at § 660.330(c)(3)(i)(A). For example, if a vessel fishes in the recreational salmon fishery within the RCA, the vessel cannot be in possession of rockfish while in the RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the RCA on the return trip to port. If the season is closed for a species or species group, fishing for that species or species group is prohibited both within the recreational RCA and shoreward of the recreational RCA, unless otherwise authorized in this section.

Response: The recreational management measures are found at § 660.360(c)(3)(i)(A) rather than in § 660.330. The example in this paragraph is already in place and was not being proposed for modification through this rulemaking. The example relates to what is allowed when the recreational RCA is used in its traditional structure, *i.e.,* fishing is prohibited seaward of the line. Further down in the same paragraph, there is new explanation of the additional possible usage of the RCA line, *e.g.,* prohibiting fishing shoreward of the line. Both uses will be available in the future, and therefore the example is still relevant for one of the uses of the RCA lines.

Comment: The Center for Biological Diversity (CBD) comment letter expressed concern about the risk of entanglements for humpback whales and Southern Resident killer whales in fishing gear due to the extension of the sablefish primary fishery from the current October 31 closure to December 31.

Response: As noted in the proposed rule and Analysis, the sablefish primary fishery is managed with quotas (tiers) that are restricted to a finite number of permits, and thus effort is also finite, which constrains any potential for spill-over from other fisheries. The quotas in this fishery are highly attained under the status quo and, therefore, the season extension is expected to spread effort out across the year, but not increase effort overall. Additionally, based on non-transferable gear endorsements, the fishery is comprised of more vessels using bottom longline gear than vessels using pot gear. Numerous surveys, sightings, models, and tracking efforts on humpback whale migrations and behavioral patterns have found that the presence of humpback whales along the West Coast is likely to be higher during the late spring through the fall, particularly in the northern areas of the coast where the Sablefish primary fishery is primarily prosecuted. This reflects a general migration pattern of humpback whales heading south to breeding areas by December each year, and subsequently starting to return to feeding areas by April (see Section 4.2 of the Analysis). Because the overall number of permits is restricted in this fishery, we would expect this season extension would allow a temporal distribution of effort so that some fishing effort that normally occurs earlier in the shorter season would shift to later in the extended season. Because the densities of humpback whales are generally decreasing later in the season, this action will not cause an effect to listed humpback whales or their critical habitat that was not considered in the 2020 Biological Opinion.

There have been no documented entanglements of any killer whales in the Pacific coast groundfish fishery (see List of Fisheries, 87 FR 55376, September 9, 2022). Killer whale entanglement with fishing gear is rare; there has never been a documented entanglement of a southern resident killer whale in gear associated with the primary sablefish fishery, and the known total fishery mortality and serious injury for SRKWs is zero (Carretta et al. 2022).

The probability of such an event is extremely small and this action would not increase that probability. As described in the Analysis, this action is not expected to change the location or level of fishing effort of the primary sablefish fishery, which is composed of both longline gear and, to a lesser extent, pot gear. Based on timing and distribution of the fishery, including the sablefish season extending to December 31 annually, and seasonal movement patterns of southern resident killer whales, direct overlap of Southern Resident killer whales and fishing vessels or gear in open coastal waters is unlikely and fishing vessel activities are not expected to affect Southern Resident killer whale passage. Therefore, we expect extension of the season to have little to no effect on southern resident killer whales or their designated critical habitat.

Comment: CBD also expressed concern that the extension of the sablefish primary fishery could affect Southern Resident killer whales by catching salmon, a prey species, in their critical habitat.

Response: The sablefish primary fishery is only prosecuted with bottom longlines and pot gear. These gear types have very low bycatch of salmon, particularly Chinook salmon. In the most recent salmon bycatch report for the groundfish fishery developed by the Northwest Fisheries Science Center covering 2002–2021, no salmon bycatch were documented in the pot gear sectors, and a maximum yearly count of

25 coho and 4 unspecified salmon were estimated in the limited entry sablefish hook and line fishery. As described in the Analysis, this season extension action is unlikely to change the location or level of fishing effort in the sablefish primary fishery. Therefore, we do not expect any changes in salmon bycatch in the fixed gear sectors from this action.

V. Corrections to the Proposed Rule

NMFS received comment letters from ODFW and CDFW noting inconsistencies in information presented in the preamble to the proposed rule and the regulatory text in the proposed rule. NMFS offers the following corrections in this final rule. These clarifications and corrections to the information in the proposed rule do not change the substance or intent of this action.

At 87 FR 62680 of the preamble of the proposed rule in the section Quillback Rockfish Off California two of the ACL contributions for the portion of the quillback rockfish off of California to the Nearshore Rockfish complex were transposed and so mislabeled. The ACL contribution for the portion of quillback rockfish off of California to the Nearshore Rockfish complex north of 40°10′ N lat. is 0.96 mt in 2024. The ACL contribution for the portion of quillback rockfish off of California to the Nearshore Rockfish complex south of 40°10′ N lat. is 0.89 mt in 2023.

At 87 FR 62684 of the preamble of the proposed rule in section III.C. Biennial Fishery Allocations all of the metric tonnage values for canary rockfish in 2023 and 2024 were slightly miscalculated in the preamble text and Table 8 but correct in the regulatory text. The following are the correct canary rockfish allocation numbers. In 2023, the trawl sector would receive 878.5 mt of canary rockfish, of which 36 mt would be deducted to account for bycatch in the at-sea sectors, and the remaining 842.5 mt would be distributed to the shorebased individual fishing quota (IFQ) sector. In 2023, the non-trawl sector would receive 336.6 mt which is distributed to the commercial non-trawl (121.2 mt), WA recreational (41.4 mt), OR recreational (62.3 mt), and CA recreational (111.7 mt) fisheries. In 2024, the trawl sector would receive 866.2 mt of canary rockfish, of which 36 mt would be deducted to account for bycatch in the at-sea sectors, and the remaining 830.2 mt would be distributed to the shorebased IFQ sector. The non-trawl sector would receive 331.9 mt, which is distributed to the commercial non-trawl sector (119.4 mt), WA recreational (40.8 mt), OR recreational (61.4 mt), and CA recreational (110.2 mt) fisheries.

TABLE 8—2023 AND 2024 ALLOCATIONS OF CANARY ROCKFISH, CORRECTED

	2023 Allocation (mt)	2024 Allocation (mt)
Shorebased IFQ Program	842.5	830.2
At-sea Sectors	36	36
Nearshore/Non-nearshore	121.2	119.4
Washington recreational	41.4	40.8
Oregon recreational	62.3	61.4
California recreational	111.7	110.2

At 87 FR 62684 of the proposed rule, the description in the preamble text of the cowcod non-trawl allocation in 2023 should have been 44.1 mt and not 44.0 mt. The 44.1 mt non-trawl allocation in 2023 was correctly listed in Table 9 of the preamble and in the applicable regulatory text.

At 87 FR 62685 of the preamble of the proposed rule, all of the metric tonnage values for lingcod south of 40°10′ N lat. in 2023 and 2024 were slightly miscalculated in the preamble text and Table 8 but correct in the regulatory text and used the correct percentage distribution. The following are the correct lingcod south of 40°10′ N lat. allocation numbers. In 2023, the distribution results in 284.2 mt to the trawl sector and 426.3 mt to the non-trawl sectors. In 2024, the distribution results in 282.6 mt to the trawl sectors and 423.9 mt to the non-trawl sectors. No further allocations or distributions are made.

TABLE 10—2023 AND 2024 TRAWL/NON-TRAWL ALLOCATIONS OF LINGCOD SOUTH OF 40°10′ N LAT., CORRECTED

	Percentage	2023 Allocation (mt)	2024 Allocation (mt)
Trawl	40	284.2	282.6
Non-trawl	60	426.3	423.9

In Tables 1a and 2a to Part 660 Subpart C of the regulatory text in the proposed rule, the OFLs, ABCs, ACLs and Fishery HGs for longspine thornyhead, sablefish, and shortspine thornyhead were mistakenly mislabeled when published due to a formatting error. The table published in the proposed rule showed that OFLs were only for the northern portion of the species and in Table 1a to part 660 subpart C it showed southern ACLs and HGs in the OFL and ABC columns for all three species. In this final rule the tables properly label the coastwide OFLs and ABCs and area-specific ACLs and Fishery HGs for each of those three species. Also in Table 2a to Part 660 Subpart C, footnote ''x'' mistakenly referenced that annual 2024 Pacific whiting harvest specifications would be announced in 2023. In this final rule footnote ''x'' is revised to reference the setting of 2024 annual Pacific whiting harvest specifications being announced in 2024.

In Table 1b. to Part 660 Subpart C of the regulatory text in the proposed rule, the trawl allocation percentage for bocaccio and canary rockfish was mistakenly carried to multiple decimal places. This resulted in rounding error in the published metric tonnage of the trawl and non-trawl allocations for canary rockfish. Table1b. to Part 660 Subpart C is revised to show 2023

bocaccio allocations as 39 percent to trawl and 61 percent to non-trawl and the canary rockfish trawl allocation percentage as 72.3 percent and allocation as 878.5 mt and to show the canary rockfish non-trawl allocation percentage as 27.7 percent and allocation as 336.6 mt. These percentages are consistent with those described in the preamble of the proposed rule in section III.C. Biennial Fishery Allocations.

At 87 FR 62690 of the proposed rule, in some places, Table 19 only provides the depth in fathoms, rather than also in meters. At 87 FR 62695, cowcod is included in a list of nearshore rockfish species of concern, however, cowcod is a shelf rockfish, nor a nearshore rockfish. At 87 FR 62719 in the proposed regulatory text for § 660.360(c)(3)(i)(A)(3), there is a typographical error of the word 'is'.

VI. Changes From the Proposed Rule

As a result of comments received on the proposed rule, in this final rule NMFS is making the following changes from the proposed rule. In addition, a clarifying cross reference is being added from what was published in the proposed rule, revising the definition of the directed open access fishery as described below.

The proposed rule did not revise any of the southernmost boundary lines that approximate the 40 fm depth contour, found at § 660.71(o), or the 250 fm depth contour around San Diego Rise, found at § 660.74(q), aside from redesignating the order of some coordinates. In CDFW's thorough review of all of the coordinates in regulations, including the changes in the proposed rule, they discovered that one point on each of these boundary lines lay outside of the U.S. EEZ. NMFS does not have jurisdiction to establish or enforce fishing restrictions outside the EEZ. Therefore, CDFW recommended that one waypoint of each of these lines be revised in the following way: along the line that was formed by the existing points in regulation, where that line intersects the EEZ, add a revised waypoint and remove the old waypoint outside the EEZ. Therefore, NMFS is including a revision to newly redesignated paragraph § 660.71(o)(219) and a revision to § 660.74(q)(4) in this final rule as a technical correction to remove waypoints outside the EEZ while maintaining the size and shape of any closed areas bounded by the subject lines.

The proposed rule included regulatory revisions for a new management measure to allow vessels fishing as part of the directed open access fishery to fish within the NT–RCA with specified hook and line gear types and following certain provisions (*e.g.,* declarations, etc.). For more information on this new measure, see the proposed rule at Section III.J. Separately, NMFS published a final rule implementing a logbook requirement for the same group of vessels (87 FR 59724; October 3, 2022), and that final rule added a definition of the directed open access fishery to § 660.11. That added definition is pertinent to the fishery participants that are allowed to fish under the new management measure in this final rule that allows them to fish with non-bottom contact gear in the NT–RCA. This final rule adds text in paragraph (1) in the definition of ''open access fishery'' to cross reference the new measure at § 660.330(b)(3) that was published in the proposed rule and this final rule. This addition of the cross-reference is both administrative in nature and a logical extension of the proposed rule provisions, and does not change the function of the regulations described in the proposed rule or the logbook final rule.

V. Classification

Pursuant to section 304(b)(1)(A) and section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the PCGFMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the North Pacific Fishery Management Council, and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council, having authority for a particular geographical area, to develop regulations governing the allocation and catch of Pacific halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This final rule is consistent with the Council's authority to allocate Pacific halibut catches among fishery participants in the waters in and off the United States.

NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective on January 1, 2023. This action establishes the final specifications (*i.e.,* annual catch limits) for the Pacific Coast groundfish fisheries for the 2023 fishing year, which begins on January 1, 2023. If this final rule is not effective on January 1, 2023, then the fishing year begins using the catch limits and management measures from 2022.

Because this final rule changes the catch limits for several species for 2023, leaving 2022 harvest specifications in place could create a conservation risk for species that have decreasing catch limits and for species with increasing catch limits, could unnecessarily delay fishing opportunities until later in the year, potentially reducing the total catch for these species in 2023. Thus, a delay in effectiveness could ultimately cause conservation issues and economic harm to the fishing industry and associated fishing communities or result in harvest levels inconsistent with the best available scientific information.

This final rule is not unexpected or controversial. The groundfish harvest specifications are published biennially and are intended to be effective on January 1 of odd numbered years. This action establishes final specifications (*i.e.,* annual catch limits) and management measures for the Pacific Coast groundfish fisheries for the 2023 fishing year, which begins on January 1, 2023. If this final rule is not effective on January 1, 2023, then the fishing year begins using the catch limits and management measures from 2022.

Because this final rule increases the catch limits for several species for 2023, leaving 2022 harvest specifications in and management measures in place could unnecessarily delay fishing opportunities until later in the year, potentially reducing the total catch for these species in 2019. Thus, a delay in effectiveness could ultimately cause economic harm to the fishing industry and associated fishing communities or result in harvest levels inconsistent with the best available scientific information. For example, due to the improved status of sablefish, the Council recommended changes in catch limits and management measures for a number of commercial sectors of the fishery, including higher trip limits for open access fisheries, increased tier limits for the limited entry fixed gear sablefish primary fishery, and more quota pounds for the Shorebased IFQ fishery. Because this final rule decreases catch limits for some species for 2023, leaving 2022 harvest specifications and management measures in place could allow harvest at the beginning of the year to be too high. Thus, a delay in effectiveness could ultimately cause further restrictions or even closures to be necessary later in the year, preventing one of the objectives of the FMP for year-round fishing opportunities to not be met. For example, due to needs to reduce harvest of copper and quillback rockfish, California recreational seasons are

shorter and depth restrictions are more restrictive. Because of the potential conservation risk and potential harm to fishing communities that could be caused by delaying the effectiveness of this final rule, NMFS finds there is good cause to waive the 30-day delay in effectiveness.

Pursuant to Executive Order 13175, this rule was developed after meaningful consultation and collaboration with tribal officials from the area covered by the PCGFMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. In addition, regulations implementing the PCGFMP establish a procedure by which the tribes with treaty fishing rights in the area covered by the PCGFMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. The regulations at 50 CFR 660.50 further direct NMFS to develop tribal allocations and regulations in consultation with the affected tribes. The tribal management measures in this rule have been developed following these procedures. The tribal representative on the Council made a motion to adopt the non-whiting tribal management measures, which was passed by the Council. Those management measures, which were developed and proposed by the tribes, are included in this final rule.

The Council prepared an environmental assessment for Amendment 30 to the PCGFMP and the 2023–24 harvest specifications and management measures, and concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the analysis is available from NMFS (see **ADDRESSES**).

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule, and is not repeated here. No comments were received regarding this certification. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 6, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Amend § 660.11 by:
■ a. Revising paragraph (1)(vi)(c) under the definition of ''Conservation areas(s)'';
■ b. Revising paragraph (1) under the definition of ''Fishing gear'' and adding paragraph (12);
■ c. Revising paragraph (10) under the definition of ''Groundfish'';
■ d. Revising paragraph (1) under the definition of ''Open access fishery''.

The revisions read as follows:

§ 660.11 General definitions.

* * * * *

Conservation area(s) * * *

(1) * * *

(vi) * * *

(C) *Recreational RCAs.* Recreational RCAs are closed areas intended to protect overfished rockfish species. In the EEZ seaward of California, recreational RCAs are also intended to limit catch of non-overfished groundfish species. Recreational RCAs may either have boundaries defined by general depth contours or boundaries defined by specific latitude and longitude coordinates approximating depth contours. Boundaries for the recreational RCAs throughout the year are provided in the text in subpart G of this part under each state (Washington, Oregon and California) and may be modified by NMFS inseason pursuant to § 660.60(c).

* * * * *

Fishing gear includes the following types of gear and equipment:

(1) *Bottom contact gear* means fishing gear designed or modified to make contact with the bottom. This includes, but is not limited to, beam trawl, bottom trawl, dredge, fixed gear, set net, demersal seine, dinglebar gear, and other gear (including experimental gear) designed or modified to make contact with the bottom. Gear used to harvest bottom dwelling organisms (*e.g.* by hand, rakes, and knives) are also considered bottom contact gear for purposes of this subpart. Non-bottom contact gear is defined in paragraph (12) of this definition.

* * * * *

(12) *Non-bottom contact gear* means fishing gear designed or modified to not make contact with the bottom. This includes, but is not limited to, commercial vertical hook-and-line gear not anchored to the bottom (*e.g.,* vertical jig gear or rod-and-reel gear with weights suspended off the bottom) and troll gear.

* * * * *

Groundfish * * *

* * * * *

(10) ''Ecosystem component species'' means species that are included in the PCGFMP but are not ''in the fishery'' and therefore not actively managed and do not require harvest specifications. Ecosystem component species are not targeted in any fishery, not generally retained for sale or personal use, and are not determined to be subject to overfishing, approaching an overfished condition, or overfished, nor are they likely to become subject to overfishing or overfished in the absence of conservation and management measures. Ecosystem component species include: All skates listed here in paragraph (2), except longnose skate and big skate; all grenadiers listed here in paragraph (5); soupfin shark; ratfish; finescale codling; and shortbelly rockfish as listed here in paragraph (7)(ii).

* * * * *

Open access fishery * * *

(1) For the purpose of the non-trawl logbook requirements at § 660.13 and the provision to fish inside the nontrawl RCA at § 660.330(b)(3), directed open access fishery means that a fishing vessel is target fishing for groundfish under the requirements of 50 CFR 660 subpart F, is only declared into an open access groundfish gear type or sector as defined in § 660.13(d)(4)(iv)(A), and has not declared into any other gear type or sector.

* * * * *

■ 3. In § 660.25, revise paragraphs (b)(4)(v)(C) and (b)(4)(vi)(D) to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(v) * * *

(C) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new permit owner or

vessel owner during the primary sablefish season described at § 660.231 (generally April 1 through December 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

(vi) * * *

(D) *Sablefish-endorsed permits.* If a permit owner submits an application to register a sablefish-endorsed limited entry permit to a new vessel during the primary sablefish season described at § 660.231 (generally April 1 through December 31), the initial permit owner must certify on the application form the cumulative quantity, in round weight, of primary season sablefish landed against that permit as of the application signature date for the then current primary season. The new permit owner or vessel owner associated with the new vessel must sign the application form acknowledging the amount of landings to date given by the initial permit owner. This certified amount should match the total amount of primary season sablefish landings reported on state landing receipts. As required at § 660.12(b), any person landing sablefish must retain on board the vessel from which sablefish is landed, and provide to an authorized officer upon request, copies of any and all reports of sablefish landings from the primary season containing all data, and in the exact manner, required by the applicable state law throughout the primary sablefish season during which a landing occurred and for 15 days thereafter.

* * * * *

■ 4. In § 660.50, revise paragraph (f)(2)(ii) to read as follows:

§ 660.50 Pacific Coast treaty Indian fisheries.

* * * * *

(f) * * *

(2) * * *

(ii) The Tribal allocation is 849 mt in 2023 and 778 mt in 2024 per year. This allocation is, for each year, 10 percent of the Monterey through Vancouver area (North of 36° N lat.) ACL. The Tribal allocation is reduced by 1.7 percent for estimated discard mortality.

* * * * *

■ 5. In § 660.55, revise Table 1 to paragraph (c)(1) to read as follows:

§ 660.55 Allocations.

* * * * *

(c) * * *

(1) * * *

TABLE 1 TO PARAGRAPH (c)(1)—ALLOCATION AMOUNTS AND PERCENTAGES FOR LIMITED ENTRY TRAWL AND NON-TRAWL SECTORS SPECIFIED FOR FMP GROUNDFISH STOCKS AND STOCK COMPLEXES

Stock or complex	All non-treaty LE trawl sectors	All non-treaty non-trawl sectors
Arrowtooth Flounder	95%	5%
Chilipepper Rockfish S of 40°10′ N lat	75%	25%
Darkblotched Rockfish	95%	5%
Dover Sole	95%	5%
English Sole	95%	5%
Lingcod N of 40°10′ N lat	45%	55%
Longspine Thornyhead N of 34°27′ N lat	95%	5%
Pacific Cod	95%	5%
Pacific Ocean Perch	95%	5%
Sablefish S of 36° N lat	42%	58%
Shortspine Thornyhead N of 34°27′ N lat	95%	5%
Shortspine Thornyhead S of 34°27′ N lat	50 mt	Remaining Yield
Splitnose Rockfish S of 40°10′ N lat	95%	5%
Starry Flounder	50%	50%
Yellowtail Rockfish N of 40°10′ N lat	88%	12%
Minor Slope Rockfish North of 40°10′ N lat	81%	19%
Other Flatfish	90%	10%

* * * * *

■ 6. Amend § 660.71 by:

■ a. Removing paragraphs (e)(193) and (e)(277);

■ b. Redesignating paragraphs (e)(194) through (276) as (e)(193) through (275), and (e)(278) through (336) as (e)(276) through (334);

■ c. Revising paragraphs (e)(144) and (e)(192), and newly redesignated paragraphs (e)(263), (e)(274), (e)(280), (e)(287), and (e)(307);

■ d. Revising paragraphs (h)(13), (i)(1), (i)(9), (i)(14), (i)(20), (i)(34), (j)(27), (j)(30), and (j)(40);

■ e. Redesignating paragraphs (o)(113) through (218) as (o)(114) through (219) and adding new parargraph (o)(113);

■ f. Revising paragraphs (o)(95), (o)(97), (o)(112), and newly redesignated paragraphs (o)(181), (o)(193), (o)(215), (o)(216) and (o)(219);

■ g. Revising paragraphs (q)(8), (q)(14), (q)(19), and (q)(24);

■ h. Redesignating paragraph (q)(25) as (q)(26), and adding a new paragraph (q)(25);

■ i. Removing paragraph (r)(20);

■ j. Redesignating paragraphs (r)(21) through (r)(23) as (r)(20) through (r)(22);

■ k. Revising paragraphs (r)(8), (r)(15).

The revisions and additions read as follows:

§ 660.71 Latitude/longitude coordinates defining the 10-fm (18-m) through 40-fm (73-m) depth contours.

* * * * *

(e) * * *

* * * * *

(144) 39°16.88′ N lat., 123°49.29′ W long.;

* * * * *

(192) 36°33.20′ N lat., 121°57.50′ W long.;

* * * * *

(263) 34°06.13′ N lat., 119°15.26′ W long.;

* * * * *

(274) 34°04.66′ N lat., 119°04.51′ W long.;

* * * * *

(280) 33°59.78′ N lat., 118°47.26′ W long.;

* * * * *

(287) 33°50.29′ N lat., 118°24.58′ W long.;

* * * * *

(307) 33°35.26′ N lat., 118°02.55′ W long.;

* * * * *

(h) * * *

* * * * *

(13) 33 °56.75′ N lat., 119°49.13′ W long.;

* * * * *

(i) * * *

* * * * *

(1) 33°02.98′ N lat., 118°37.64′ W long.;

* * * * *

(9) 32°54.79′ N lat., 118°33.34′ W long.;

* * * * *

(14) 32°48.05′ N lat., 118°26.81′ W long.;

* * * * *

(20) 32°49.04′ N lat., 118°20.71′ W long.;

* * * * *

(34) 33°02.98′ N lat., 118°37.64′ W long.;

* * * * *

(j) * * *

* * * * *

(27) 33°28.77′ N lat., 118°32.95′ W long.;

* * * * *

(30) 33°27.58′ N lat., 118°29.51′ W long.;

* * * * *

(40) 33°20.21′ N lat., 118°18.50′ W long.;

* * * * *

(o) * * *

* * * * *

(95) 40 °22.41′ N lat., 124°24.19′ W long.;

* * * * *

(97) 40°18.71′ N lat., 124°22.63′ W long.;

* * * * *

(112) 39°22.63′ N lat., 123°51.03′ W long.;

(113) 39°11.86′ N lat., 123°48.83′ W long.;

* * * * *

(181) 34°08.23′ N lat., 119°13.21′ W long.;

* * * * *

(193) 33°49.87′ N lat., 118° 24.15′ W long.;

* * * * *

(215) 32°51.90′ N lat., 117°16.32′ W long.;

(216) 32°52.11′ N lat., 117°19.33′ W long.;

* * * * *

(219) 32°33.00′ N lat., 117°16.39′ W long.;

* * * * *

(q) * * *

* * * * *

(8) 32° 54.78′ N lat., 118°33.44′ W long.;

* * * * *

(14) 32°45.53′ N lat., 118°24.82′ W long.;

* * * * *

(19) 32°49.70′ N lat., 118°21.04′ W long.;

* * * * *

(24) 33°02.98′ N lat., 118°35.40′ W long.;

(25) 33°03.36′ N lat., 118°37.57′ W long.; and

* * * * *

(r) * * *

* * * * *

(8) 33°20.88′ N lat., 118°30.54′ W long.;

* * * * *

(15) 33°22.24′ N lat., 118°19.99′ W long.;

* * * * *

■ 7. Amend § 660.72 by:

■ a. Revising paragraphs (a)(74) and (75), (a)(106) and (107), (a)(130), (a)(132) and (133),

■ b. Redesignating paragraphs (a)(134) through (200) as (a)(135) through (201);

■ c. Adding new paragraph (a)(134);

■ d. Revising newly redesignated paragraphs (a)(147) and (148), (a)(162), (a)(169), (a)(171), (a)(173), (a)(174)

■ e. Revising paragraphs (c)(18), (c)(33), (d)(2) through (4), (f)(89), (f)(96), (f)(129), (f)(143) and (144), (f)(146), (f)(155), (f)(159), (f)(169), (f)(175) and (176), (f)(208), (g)(17), (h)(2), (h)(4) through (6), (i)(6);

■ f. Removing paragraph (j)(140);

■ g. Redesignating paragraphs (j)(99) through (139) as (j)(100) through (140);

■ h. Adding new paragraph (j)(99);

■ i. Revising newly redesignated paragraphs (j)(100), and (j)(109) and paragraphs (j)(154), (j)(157), (j)(166), (j)(186) and (187), (j)(189) and (190), (j)(206), (j)(208) through (210), (j)(215), (j)(220) through (222), (j)(227), (k)(29), (l)(3), (m)(1), (m)(3) and (4), (m)(6), (m)(15), and (m)(18).

The additions and revisions read as follows:

§ 660.72 Latitude/longitude coordinates defining the 50 fm (91 m) through 75 fm (137 m) depth contours.

* * * * *

(a) * * *

* * * * *

(74) 40°23.71′ N lat., 124°28.32′ W long.;

(75) 40°22.53′ N lat., 124°24.67′ W long.;

* * * * *

(106) 37°49.84′ N lat., 123°16.05′ W long.;

(107) 37°35.67′ N lat., 122°55.43′ W long.;

* * * * *

(130) 36°00.00′ N lat., 121°34.95′ W long.;

* * * * *

(132) 35°40.44′ N lat., 121° 22.43′ W long.;

(133) 35°27.11′ N lat., 121°03.55′ W long.;

(134) 35°14.91′ N lat., 120°56.67′ W long.;

* * * * *

(147) 34°07.83′ N lat., 119°13.48′ W long.;

(148) 34°07.71′ N lat., 119°13.29′ W long.;

* * * * *

(162) 33°51.33′ N lat., 118°36.00′ W long.;

* * * * *

(169) 33°48.25′ N lat., 118°26.97′ W long.;

* * * * *

(171) 33°44.11′ N lat., 118°25.23′ W long.;

* * * * *

(173) 33°38.16′ N lat., 118°15.65′ W long.;

(174) 33°37.47′ N lat., 118° 16.62′ W long.;

* * * * *

(c) * * *

* * * * *

(18) 33°58.76′ N lat., 119°32.27′ W long.;

* * * * *

(33) 34°02.47′ N lat., 120°30.00′ W long.;

* * * * *

(d) * * *

* * * * *

(2) 33°02.53′ N lat., 118°34.25′ W long.;

(3) 32°55.51′ N lat., 118°28.92′ W long.;

(4) 32°54.99′ N lat., 118°27.72′ W long.;
* * * * *
(f) * * *
* * * * *
(89) 40°34.26′ N lat., 124°29.52′ W long.;
* * * * *
(96) 40°21.58′ N lat., 124°24.87′ W long.;
* * * * *
(129) 36°51.42′ N lat., 121°57.62′ W long.;
* * * * *
(143) 36°10.30′ N lat., 121°43.00′ W long.;
(144) 36°02.54′ N lat., 121°36.43′ W long.;
* * * * *
(146) 35°58.21′ N lat., 121°32.88′ W long.;
* * * * *
(155) 34°23.05′ N lat., 119°56.25′ W long.;
* * * * *
(159) 34°03.80′ N lat., 119°12.70′ W long.;
* * * * *
(169) 33°55.20′ N lat., 118°33.18′ W long.;
* * * * *
(175) 33°49.93′ N lat., 118°26.36′ W long.;
(176) 33°50.68′ N lat., 118°26.15′ W long.;
* * * * *
(208) 32°43.03′ N lat., 117°20.43′ W long.;
* * * * *
(g) * * *
* * * * *
(17) 33°59.22′ N lat., 119°55.49′ W long.;
* * * * *
(h) * * *
* * * * *
(2) 33°02.56′ N lat., 118°34.19′ W long.;
* * * * *
(4) 32°55.01′ N lat., 118°27.70′ W long.;
(5) 32°49.77′ N lat., 118°20.92′ W long.;
(6) 32°48.38′ N lat., 118°20.02′ W long.;
* * * * *
(i) * * *
* * * * *
(6) 33°25.39′ N lat., 118°22.80′ W long.;
* * * * *
(j) * * *
* * * * *
(99) 40°39.40′ N lat., 124°28.90′ W long.;
(100) 40°36.96′ N lat., 124°28.02′ W long.;
* * * * *
(109) 40°21.65′ N lat., 124°24.89′ W long.;
* * * * *
(154) 37°04.49′ N lat., 122°38.50′ W long.;
* * * * *
(157) 37°01.16′ N lat., 122°24.50′ W long.;
* * * * *
(166) 36°49.80′ N lat., 121°57.93′ W long.;
* * * * *
(186) 36°10.35′ N lat., 121°43.03′ W long.;
(187) 36°02.50′ N lat., 121°36.47′ W long.;
* * * * *
(189) 36°00.00′ N lat., 121°35.32′ W long.;
(190) 35°58.20′ N lat., 121°32.97′ W long.;
* * * * *
(206) 34°03.70′ N lat., 119°12.77′ W long.;
* * * * *
(208) 34°04.44′ N lat., 119°04.90′ W long.;
(209) 34°02.94′ N lat., 119°02.89′ W long.;
(210) 34°01.30′ N lat., 119°00.48′ W long.;
* * * * *
(215) 33°58.99′ N lat., 118°47.33′ W long.;
* * * * *
(220) 33°49.85′ N lat., 118°32.31′ W long.;
(221) 33°49.61′ N lat., 118°28.07′ W long.;
(222) 33°49.77′ N lat., 118°26.34′ W long.;
* * * * *
(227) 33°44.07′ N lat., 118°25.28′ W long.;
* * * * *
(k) * * *
* * * * *
(29) 33°51.69′ N lat., 120°07.98′ W long.;
* * * * *
(l) * * *
* * * * *
(3) 32°55.57′ N lat., 118°28.84′ W long.;
* * * * *
(m) * * *
(1) 33°28.13′ N lat., 118°38.25′ W long.;
* * * * *
(3) 33°28.94′ N lat., 118°30.81′ W long.;
(4) 33°26.73′ N lat., 118°27.35′ W long.;
* * * * *
(6) 33°25.42′ N lat., 118°22.76′ W long.;
* * * * *
(15) 33°24.94′ N lat., 118°32.29′ W long.;
* * * * *
(18) 33°28.13′ N lat., 118°38.25′ W long.;
* * * * *

■ 8. Amend § 660.73 by:
■ a. Revising paragraphs (a)(159) through (322);
■ b. Adding new paragraphs (a)(323) through (329);
■ c. Revising paragraphs (d)(10), (e)(188) and (189), (e)(264), (e)(272), (e)(274) through (276), (e)(284) through (286), (e)(290), (e)(318) through (323), (e)(350) through (363);
■ d. Adding new paragraphs (e)(364) through (371); and
■ e. Revising paragraphs (f), (g)(12) and (13), (h) and (l).

The additions and revisions read as follows:

§ 660.73 Latitude/longitude coordinates defining the 100 fm (183 m) through 150 fm (274 m) depth contours.

* * * * *
(a) * * *
(159) 40°39.44′ N lat., 124°29.08′ W long.;
(160) 40°37.08′ N lat., 124°28.29′ W long.;
(161) 40°34.76′ N lat., 124°29.82′ W long.;
(162) 40°36.78′ N lat., 124°37.06′ W long.;
(163) 40°32.44′ N lat., 124°39.58′ W long.;
(164) 40°30.37′ N lat., 124°37.30′ W long.;
(165) 40°28.48′ N lat., 124°36.95′ W long.;
(166) 40°24.82′ N lat., 124°35.12′ W long.;
(167) 40°23.30′ N lat., 124°31.60′ W long.;
(168) 40°23.52′ N lat., 124°28.78′ W long.;
(169) 40°22.43′ N lat., 124°25.00′ W long.;
(170) 40°21.72′ N lat., 124°24.94′ W long.;
(171) 40°21.87′ N lat., 124°27.96′ W long.;
(172) 40°21.40′ N lat., 124°28.74′ W long.;
(173) 40°19.68′ N lat., 124°28.49′ W long.;
(174) 40°17.73′ N lat., 124°25.43′ W long.;
(175) 40°18.37′ N lat., 124°23.35′ W long.;
(176) 40°15.75′ N lat., 124°26.05′ W long.;
(177) 40°16.75′ N lat., 124°33.71′ W long.;

(178) 40°16.29′ N lat., 124°34.36′ W long.;
(179) 40°10.13′ N lat., 124°21.92′ W long.;
(180) 40°07.70′ N lat., 124°18.44′ W long.;
(181) 40°08.84′ N lat., 124°15.86′ W long.;
(182) 40°06.39′ N lat., 124°17.26′ W long.;
(183) 40°03.15′ N lat., 124°14.43′ W long.;
(184) 40°02.19′ N lat., 124°12.85′ W long.;
(185) 40°02.89′ N lat., 124°11.78′ W long.;
(186) 40°02.78′ N lat., 124°10.70′ W long.;
(187) 40°04.57′ N lat., 124°10.08′ W long.;
(188) 40°06.06′ N lat., 124°08.30′ W long.;
(189) 40°04.05′ N lat., 124°08.93′ W long.;
(190) 40°01.17′ N lat., 124°08.80′ W long.;
(191) 40°01.00′ N lat., 124°09.96′ W long.;
(192) 39°58.07′ N lat., 124°11.81′ W long.;
(193) 39°56.39′ N lat., 124°08.69′ W long.;
(194) 39°54.64′ N lat., 124°07.30′ W long.;
(195) 39°53.86′ N lat., 124°07.95′ W long.;
(196) 39°51.95′ N lat., 124°07.63′ W long.;
(197) 39°48.78′ N lat., 124°03.29′ W long.;
(198) 39°47.36′ N lat., 124°03.31′ W long.;
(199) 39°40.08′ N lat., 123°58.37′ W long.;
(200) 39°36.16′ N lat., 123°56.90′ W long.;
(201) 39°30.75′ N lat., 123°55.86′ W long.;
(202) 39°31.62′ N lat., 123°57.33′ W long.;
(203) 39°30.91′ N lat., 123°57.88′ W long.;
(204) 39°01.79′ N lat., 123°56.59′ W long.;
(205) 38°59.42′ N lat., 123°55.67′ W long.;
(206) 38°58.89′ N lat., 123°56.28′ W long.;
(207) 38°57.50′ N lat., 123°56.28′ W long.;
(208) 38°54.72′ N lat., 123°55.68′ W long.;
(209) 38°48.95′ N lat., 123°51.85′ W long.;
(210) 38°36.67′ N lat., 123°40.20′ W long.;
(211) 38°33.82′ N lat., 123°39.23′ W long.;
(212) 38°29.02′ N lat., 123°33.52′ W long.;
(213) 38°18.88′ N lat., 123°25.93′ W long.;
(214) 38°14.12′ N lat., 123°23.26′ W long.;
(215) 38°11.07′ N lat., 123°22.07′ W long.;
(216) 38°03.18′ N lat., 123°20.77′ W long.;
(217) 38°00.00′ N lat., 123°23.08′ W long.;
(218) 37°55.07′ N lat., 123°26.81′ W long.;
(219) 37°50.66′ N lat., 123°23.06′ W long.;
(220) 37°45.18′ N lat., 123°11.88′ W long.;
(221) 37°35.67′ N lat., 123°01.20′ W long.;
(222) 37°26.81′ N lat., 122°55.57′ W long.;
(223) 37°26.78′ N lat., 122°53.91′ W long.;
(224) 37°25.74′ N lat., 122°54.13′ W long.;
(225) 37°25.33′ N lat., 122°53.59′ W long.;
(226) 37°25.29′ N lat., 122°52.57′ W long.;
(227) 37°24.50′ N lat., 122°52.09′ W long.;
(228) 37°23.25′ N lat., 122°53.12′ W long.;
(229) 37°15.58′ N lat., 122°48.36′ W long.;
(230) 37°11.00′ N lat., 122°44.50′ W long.;
(231) 37°07.00′ N lat., 122°41.25′ W long.;
(232) 37°03.18′ N lat., 122°38.15′ W long.;
(233) 37°00.48′ N lat., 122°33.93′ W long.;
(234) 36°58.70′ N lat., 122°27.22′ W long.;
(235) 37°00.85′ N lat., 122°24.70′ W long.;
(236) 36°58.00′ N lat., 122°24.14′ W long.;
(237) 36°58.74′ N lat., 122°21.51′ W long.;
(238) 36°56.97′ N lat., 122°21.32′ W long.;
(239) 36°51.52′ N lat., 122°10.68′ W long.;
(240) 36°48.39′ N lat., 122°07.60′ W long.;
(241) 36°47.43′ N lat., 122°03.22′ W long.;
(242) 36°50.95′ N lat., 121°58.03′ W long.;
(243) 36°49.92′ N lat., 121°58.01′ W long.;
(244) 36°48.86′ N lat., 121°58.80′ W long.;
(245) 36°47.76′ N lat., 121°58.68′ W long.;
(246) 36°48.39′ N lat., 121°51.10′ W long.;
(247) 36°45.74′ N lat., 121°54.17′ W long.;
(248) 36°45.51′ N lat., 121°57.72′ W long.;
(249) 36°38.84′ N lat., 122°01.32′ W long.;
(250) 36°35.62′ N lat., 122°00.98′ W long.;
(251) 36°32.46′ N lat., 121°59.15′ W long.;
(252) 36°32.79′ N lat., 121°57.67′ W long.;
(253) 36°31.98′ N lat., 121°56.55′ W long.;
(254) 36°31.79′ N lat., 121°58.40′ W long.;
(255) 36°30.73′ N lat., 121°59.70′ W long.;
(256) 36°30.31′ N lat., 122°00.22′ W long.;
(257) 36°29.35′ N lat., 122°00.28′ W long.;
(258) 36°27.66′ N lat., 121°59.80′ W long.;
(259) 36°26.22′ N lat., 121°58.35′ W long.;
(260) 36°21.20′ N lat., 122°00.72′ W long.;
(261) 36°20.47′ N lat., 122°02.92′ W long.;
(262) 36°18.46′ N lat., 122°04.51′ W long.;
(263) 36°15.92′ N lat., 122°01.33′ W long.;
(264) 36°13.81′ N lat., 121°57.40′ W long.;
(265) 36°14.43′ N lat., 121°55.43′ W long.;
(266) 36°10.24′ N lat., 121°43.08′ W long.;
(267) 36°07.66′ N lat., 121°40.91′ W long.;
(268) 36°02.49′ N lat., 121°36.51′ W long.;
(269) 36°01.08′ N lat., 121°36.63′ W long.;
(270) 36°00.00′ N lat., 121°35.41′ W long.;
(271) 35°57.84′ N lat., 121°32.81′ W long.;
(272) 35°50.36′ N lat., 121°29.32′ W long.;
(273) 35°39.03′ N lat., 121°22.86′ W long.;
(274) 35°24.27′ N lat., 121°02.74′ W long.;
(275) 35°16.53′ N lat., 121°00.39′ W long.;
(276) 35°04.82′ N lat., 120°53.96′ W long.;
(277) 34°52.51′ N lat., 120°51.62′ W long.;
(278) 34°43.36′ N lat., 120°52.12′ W long.;
(279) 34°38.06′ N lat., 120°49.65′ W long.;
(280) 34°30.85′ N lat., 120°44.76′ W long.;
(281) 34°27.00′ N lat., 120°39.00′ W long.;
(282) 34°21.90′ N lat., 120°25.25′ W long.;

(283) 34°24.86′ N lat., 120°16.81′ W long.;
(284) 34°22.80′ N lat., 119°57.06′ W long.;
(285) 34°18.59′ N lat., 119°44.84′ W long.;
(286) 34°15.04′ N lat., 119°40.34′ W long.;
(287) 34°14.40′ N lat., 119°45.39′ W long.;
(288) 34°12.32′ N lat., 119°42.41′ W long.;
(289) 34°09.71′ N lat., 119°28.85′ W long.;
(290) 34°04.70′ N lat., 119°15.38′ W long.;
(291) 34°03.33′ N lat., 119°12.93′ W long.;
(292) 34°02.72′ N lat., 119°07.01′ W long.;
(293) 34°03.90′ N lat., 119°04.64′ W long.;
(294) 34°02.75′ N lat., 119°02.88′ W long.;
(295) 33°59.44′ N lat., 119°03.43′ W long.;
(296) 33°59.12′ N lat., 118°59.59′ W long.;
(297) 33°59.84′ N lat., 118°57.29′ W long.;
(298) 33°58.83′ N lat., 118°46.69′ W long.;
(299) 33°58.73′ N lat., 118°41.76′ W long.;
(300) 33°55.09′ N lat., 118°34.11′ W long.;
(301) 33°54.09′ N lat., 118°38.42′ W long.;
(302) 33°51.00′ N lat., 118°36.66′ W long.;
(303) 33°49.06′ N lat., 118°31.86′ W long.;
(304) 33°49.69′ N lat., 118°26.49′ W long.;
(305) 33°49.35′ N lat., 118°26.04′ W long.;
(306) 33°47.60′ N lat., 118°31.13′ W long.;
(307) 33°39.82′ N lat., 118°18.31′ W long.;
(308) 33°35.68′ N lat., 118°16.81′ W long.;
(309) 33°32.85′ N lat., 118°09.41′ W long.;
(310) 33°35.14′ N lat., 118°04.95′ W long.;
(311) 33°33.56′ N lat., 118°00.63′ W long.;
(312) 33°34.25′ N lat., 117°53.44′ W long.;
(313) 33°31.65′ N lat., 117°49.21′ W long.;
(314) 33°16.07′ N lat., 117°34.74′ W long.;
(315) 33°07.06′ N lat., 117°22.71′ W long.;
(316) 33°02.81′ N lat., 117°21.17′ W long.;
(317) 33°01.76′ N lat., 117°20.51′ W long.;
(318) 32°59.90′ N lat., 117°19.38′ W long.;
(319) 32°57.29′ N lat., 117°18.94′ W long.;
(320) 32°56.15′ N lat., 117°19.54′ W long.;
(321) 32°55.30′ N lat., 117°19.38′ W long.;
(322) 32°54.27′ N lat., 117°17.17′ W long.;
(323) 32°52.94′ N lat., 117°17.11′ W long.;
(324) 32°52.66′ N lat., 117°19.67′ W long.;
(325) 32°50.95′ N lat., 117°21.17′ W long.;
(326) 32°47.11′ N lat., 117°22.98′ W long.;
(327) 32°45.60′ N lat., 117°22.64′ W long.;
(328) 32°42.79′ N lat., 117°21.16′ W long.; and
(329) 32°34.22′ N lat., 117°21.20′ W long.

* * * * *

(d) * * *

* * * * *

(10) 34°02.97′ N lat., 119°16.89′ W long.;

* * * * *

(e) * * *

* * * * *

(188) 40°22.32′ N lat., 124°25.15′ W long.;
(189) 40°21.85′ N lat., 124°25.09′ W long.;

* * * * *

(264) 36°51.44′ N lat., 122°10.79′ W long.;

* * * * *

(272) 36°45.52′ N lat., 121°57.74′ W long.;

* * * * *

(274) 36°38.84′ N lat., 122°01.44′ W long.;
(275) 36°35.62′ N lat., 122°01.06′ W long.;
(276) 36°32.41′ N lat., 121°59.18′ W long.;

* * * * *

(284) 36°13.66′ N lat., 121°57.17′ W long.;
(285) 36°14.35′ N lat., 121°55.38′ W long.;
(286) 36°10.18′ N lat., 121°43.26′ W long.;

* * * * *

(290) 35°59.96′ N lat., 121°35.39′ W long.;

* * * * *

(318) 34°07.06′ N lat., 120°10.42′ W long.;
(319) 34°08.93′ N lat., 120°18.34′ W long.;
(320) 34°11.04′ N lat., 120°25.20′ W long.;
(321) 34°13.01′ N lat., 120°29.29′ W long.;
(322) 34°09.41′ N lat., 120°37.69′ W long.;
(323) 34°03.20′ N lat., 120°34.52′ W long.;

* * * * *

(350) 33°48.70′ N lat., 118°31.99′ W long.;
(351) 33°48.87′ N lat., 118°29.47′ W long.;
(352) 33°48.37′ N lat., 118°29.40′ W long.;
(353) 33°47.63′ N lat., 118°31.57′ W long.;
(354) 33°39.78′ N lat., 118°18.40′ W long.;
(355) 33°35.50′ N lat., 118°16.85′ W long.;
(356) 33°32.46′ N lat., 118°10.90′ W long.;
(357) 33°32.81′ N lat., 118°07.30′ W long.;
(358) 33°34.38′ N lat., 118°05.94′ W long.;
(359) 33°34.42′ N lat., 118°03.95′ W long.;
(360) 33°33.40′ N lat., 118°01.26′ W long.;
(361) 33°34.11′ N lat., 117°54.07′ W long.;
(362) 33°31.61′ N lat., 117°49.30′ W long.;
(363) 33°16.36′ N lat., 117°35.48′ W long.;
(364) 33°06.81′ N lat., 117°22.93′ W long.;
(365) 32°59.28′ N lat., 117°19.69′ W long.;
(366) 32°55.37′ N lat., 117°19.55′ W long.;
(367) 32°53.12′ N lat., 117°17.49′ W long.;
(368) 32°52.56′ N lat., 117°20.75′ W long.;
(369) 32°46.42′ N lat., 117°23.45′ W long.;
(370) 32°42.71′ N lat., 117°21.45′ W long.; and
(371) 32°34.54′ N lat., 117°23.04′ W long.

* * * * *

(f) The 125 fm (229 m) depth contour around San Clemente Island off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°04.86′ N lat., 118°37.89′ W long.;
(2) 33°02.67′ N lat., 118°34.07′ W long.;
(3) 32°55.97′ N lat., 118°28.95′ W long.;
(4) 32°55.06′ N lat., 118°27.66′ W long.;
(5) 32°49.79′ N lat., 118°20.84′ W long.;
(6) 32°48.02′ N lat., 118°19.49′ W long.;
(7) 32°47.37′ N lat., 118°21.72′ W long.;

(8) 32°43.58′ N lat., 118°24.54′ W long.;
(9) 32°47.74′ N lat., 118°30.39′ W long.;
(10) 32°49.74′ N lat., 118°32.11′ W long.;
(11) 32°53.36′ N lat., 118°33.44′ W long.;
(12) 32°54.89′ N lat., 118°35.37′ W long.;
(13) 33°00.20′ N lat., 118°38.72′ W long.;
(14) 33°03.15′ N lat., 118°39.80′ W long.; and
(15) 33°04.86′ N lat., 118°37.89′ W long.;
* * * * *
(g) * * *
* * * * *
(12) 33°19.85′ N lat., 118°32.25′ W long.;
(13) 33°20.82′ N lat., 118°32.98′ W long.;
* * * * *

(h) The 125 fm (229 m) depth contour around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°24.50′ N lat., 118°01.08′ W long.;
(2) 33°23.35′ N lat., 117°59.83′ W long.;
(3) 33°23.69′ N lat., 117°58.47′ W long.;
(4) 33°24.76′ N lat., 117°59.33′ W long.; and
(5) 33°24.50′ N lat., 118°01.08′ W long.
* * * * *

(l) The 150 fm (274 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.07′ N lat., 117°59.26′ W long.;
(2) 33°23.69′ N lat., 117°58.13′ W long.;
(3) 33°23.18′ N lat., 117°59.87′ W long.;
(4) 33°24.61′ N lat., 118°01.31′ W long.; and
(5) 33°25.07′ N lat., 117°59.26′ W long.
* * * * *

■ 9. In § 660.74, revise paragraphs (d), (j), (p)(3) through (7), and (q)(4) to read as follows:

§ 660.74 Latitude/longitude coordinates defining the 180 fm (329 m) through 250 fm (457 m) depth contours.
* * * * *

(d) The 180 fm (329 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.05′ N lat., 118°01.70′ W long.;
(2) 33°25.41′ N lat., 117°59.36′ W long.;
(3) 33°23.49′ N lat., 117°57.47′ W long.;
(4) 33°23.02′ N lat., 117°59.78′ W long.;
(5) 33°23.85′ N lat., 118°00.88′ W long.; and
(6) 33°25.05′ N lat., 118°01.70′ W long.
* * * * *

(j) The 200 fm (366 m) depth contour used around Lasuen Knoll off the state of California is defined by straight lines connecting all of the following points in the order stated:
(1) 33°25.91′ N lat., 117°59.44′ W long.;
(2) 33°23.37′ N lat., 117°56.97′ W long.;
(3) 33°22.88′ N lat., 117°59.72′ W long.;
(4) 33°23.85′ N lat., 118°01.03′ W long.;
(5) 33°25.20′ N lat., 118°01.89′ W long.; and
(6) 33°25.91′ N lat., 117°59.44′ W long.
* * * * *
(p) * * *
* * * * *
(3) 33°23.83′ N lat., 117°56.19′ W long.;
(4) 33°22.24′ N lat., 117°57.20′ W long.;
(5) 33°22.78′ N lat., 117°59.68′ W long.;
(6) 33°23.79′ N lat., 118°01.32′ W long.;
(7) 33°25.79′ N lat., 118°02.25′ W long.;
* * * * *
(q) * * *
(4) 32°36.07′ N lat., 117°44.29′ W long.;
* * * * *

■ 10. Revise Tables 1a through 1c to part 660, subpart C, to read as follows:
* * * * *

TABLE 1a. TO PART 660, SUBPART C—2023, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG
[(Weights in metric tons). Capitalized stocks are rebuilding.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
YELLOWEYE ROCKFISH [c]	Coastwide	123	103	66	55.3
Arrowtooth Flounder [d]	Coastwide	26,391	18,632	18,632	16,537
Big Skate [e]	Coastwide	1,541	1,320	1,320	1,260.2
Black Rockfish [f]	California (S of 42° N lat.)	368	334	334	332.1
Black Rockfish [g]	Washington (N of 46°16′ N lat.)	319	290	290	271.8
Bocaccio [h]	S of 40°10′ N lat	2,009	1,842	1,842	1,793.9
Cabezon [i]	California (S of 42° N lat.)	197	182	182	180.4
California Scorpionfish [j]	S of 34°27′ N lat	290	262	262	258.4
Canary Rockfish [k]	Coastwide	1,413	1,284	1,284	1,215.1
Chilipepper [l]	S of 40°10′ N lat	2,401	2,183	2,183	2,085
Cowcod [m]	S of 40°10′ N lat	113	80	80	68.8
Cowcod	(Conception)	94	69	NA	NA
Cowcod	(Monterey)	19	11	NA	NA
Darkblotched Rockfish [n]	Coastwide	856	785	785	761.2
Dover Sole [o]	Coastwide	63,834	59,685	50,000	48,402.9
English Sole [p]	Coastwide	11,133	9,018	9,018	8,758.5
Lingcod [q]	N of 40°10′ N lat	5,010	4,378	4,378	4,098.4
Lingcod [r]	S of 40°10′ N lat	846	739	726	710.5
Longnose Skate [s]	Coastwide	1,993	1,708	1,708	1,456.7
Longspine Thornyhead	Coastwide	4,616	3,019	.....	.....
Longspine Thornyhead [t]	N of 34°27′ N lat	.....	.....	2,295	2,241.3
Longspine Thornyhead [u]	S of 34°27′ N lat	.....	.....	725	722.8
Pacific Cod [v]	Coastwide	3,200	1,926	1,600	1,094
Pacific Ocean Perch [w]	N of 40°10′ N lat	4,248	3,573	3,573	3,427.5
Pacific Whiting [x]	Coastwide	(x)	(x)	(x)	(x)
Petrale Sole [y]	Coastwide	3,763	3,485	3,485	3,098.8
Sablefish	Coastwide	11,577	10,825	.....	.....
Sablefish [z]	N of 36° N lat	.....	.....	8,486	See Table 1c

TABLE 1a. TO PART 660, SUBPART C—2023, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HG—Continued

[(Weights in metric tons). Capitalized stocks are rebuilding.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Sablefish [aa]	S of 36° N lat			2,338	2,310.6
Shortspine Thornyhead	Coastwide	3,177	2,078		
Shortspine Thornyhead [bb]	N of 34°27′ N lat			1,359	1,280.7
Shortspine Thornyhead [cc]	S of 34°27′ N lat			719	712.3
Spiny Dogfish [dd]	Coastwide	1,911	1,456	1,456	1,104.5
Splitnose [ee]	S of 40°10′ N lat	1,803	1,592	1,592	1,573.4
Starry Flounder [ff]	Coastwide	652	392	392	343.7
Widow Rockfish [gg]	Coastwide	13,633	12,624	12,624	12,385.7
Yellowtail Rockfish [hh]	N of 40°10′ N lat	6,178	5,666	5,666	4,638.5
Stock Complexes					
Blue/Deacon/Black Rockfish [ii]	Oregon	679	597	597	595.2
Cabezon/Kelp Greenling [jj]	Oregon	202	185	185	184.2
Cabezon/Kelp Greenling [kk]	Washington	25	20	20	18.0
Nearshore Rockfish North [ll]	N of 40°10′ N lat	110	93	93	89.7
Nearshore Rockfish South [mm]	S of 40°10′ N lat	1,089	897	887	882.5
Other Fish [nn]	Coastwide	286	223	223	201.8
Other Flatfish [oo]	Coastwide	7,887	4,862	4,862	4,641
Shelf Rockfish North [pp]	N of 40°10′ N lat	1,614	1,283	1,283	1,212.1
Shelf Rockfish South [qq]	S of 40°10′ N lat	1,835	1,469	1,469	1,336.2
Slope Rockfish North [rr]	N of 40°10′ N lat	1,819	1,540	1,540	1,474.6
Slope Rockfish South [ss]	S of 40°10′ N lat	870	701	701	662.1

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Yelloweye rockfish. The 66 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 10.7 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.12 mt), research catch (2.92 mt), and incidental open access mortality (2.66 mt) resulting in a fishery HG of 55.3 mt. The non-trawl HG is 50.9 mt. The combined non-nearshore/nearshore HG is 10.7 mt. Recreational HGs are: 13.2 mt (Washington); 11.7 mt (Oregon); and 15.3 mt (California). In addition, the non-trawl ACT is 39.9 mt, and the combined non-nearshore/nearshore ACT is 8.4 mt. Recreational ACTs are: 10.4 mt (Washington), 9.2 mt (Oregon), and 12.0 mt (California).

[d] Arrowtooth flounder. 2,094.98 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), research catch (12.98 mt) and incidental open access mortality (41 mt), resulting in a fishery HG of 16,537 mt.

[e] Big skate. 59.8 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), research catch (5.49 mt), and incidental open access mortality (39.31 mt), resulting in a fishery HG of 1,260.2 mt.

[f] Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research catch (0.08 mt), and incidental open access mortality (1.18 mt), resulting in a fishery HG of 332.1 mt.

[g] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 271.8 mt.

[h] Bocaccio south of 40°10′ N lat Bocaccio are managed with stock-specific harvest specifications south of 40°10′ N lat and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 48.12 mt is deducted from the ACL to accommodate EFP fishing (40 mt), research catch (5.6 mt), and incidental open access mortality (2.52 mt), resulting in a fishery HG of 1,793.9 mt. The California recreational fishery south of 40°10′ N lat. has an HG of 755.6 mt.

[i] Cabezon (California). 1.63 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (0.02 mt), and incidental open access fishery mortality (0.61 mt), resulting in a fishery HG of 180.4 mt.

[j] California scorpionfish south of 34°27′ N lat. 3.89 mt is deducted from the ACL to accommodate research (0.18 mt) and the incidental open access fishery (3.71 mt), resulting in a fishery HG of 258.4 mt.

[k] Canary rockfish. 68.91 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP fishing (6 mt), and research catch (10.08 mt), and incidental open access mortality (2.83 mt), resulting in a fishery HG of 1,215.1 mt. The combined nearshore/non-nearshore HG is 121.2 mt. Recreational HGs are: 41.4 mt (Washington); 62.3 mt (Oregon); and 111.7 mt (California).

[l] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research catch (14.04 mt), incidental open access fishery mortality (13.66 mt), resulting in a fishery HG of 2,085 mt.

[m] Cowcod south of 40°10′ N lat. Cowcod are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (10 mt), and incidental open access mortality (0.17 mt), resulting in a fishery HG of 68.8 mt.

[n] Darkblotched rockfish. 23.76 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.5 mt), research catch (8.46 mt), and incidental open access mortality (9.8 mt) resulting in a fishery HG of 761.2 mt.

[o] Dover sole. 1,597.11 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), research catch (50.84 mt), and incidental open access mortality (49.27 mt), resulting in a fishery HG of 48,402.9 mt.

[p] English sole. 259.52 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), research catch (17 mt), and incidental open access mortality (42.52 mt), resulting in a fishery HG of 8,758.5 mt.

[q] Lingcod north of 40°10′ N lat. 279.63 mt is deducted from the ACL for the Tribal fishery (250 mt), research catch (17.71 mt), and incidental open access mortality (11.92 mt) resulting in a fishery HG of 4,098.4 mt.

[r] Lingcod south of 40°10′ N lat. 15.5 mt is deducted from the ACL to accommodate EFP fishing (4 mt), research catch (3.19 mt), and incidental open access mortality (8.31 mt), resulting in a fishery HG of 710.5 mt.

[s] Longnose skate. 251.3 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), research catch (12.46 mt), and incidental open access mortality (18.84 mt), resulting in a fishery HG of 1,456.7 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and incidental open access mortality (6.22 mt), resulting in a fishery HG of 2,241.3 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and incidental open access mortality (0.83 mt), resulting in a fishery HG of 722.8 mt.

[v] Pacific cod. 506 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.47 mt), and incidental open access mortality (0.53 mt), resulting in a fishery HG of 1,094 mt.

[w] Pacific ocean perch north of 40°10′ N lat. Pacific ocean perch are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Slope Rockfish complex south of 40°10′ N lat. 145.48 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), research catch (5.39 mt), and incidental open access mortality (10.09 mt), resulting in a fishery HG of 3,427.5 mt.

[x] Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S-Canada Pacific Whiting Agreement and will be announced after the Council's April 2023 meeting.

[y] Petrale sole. 386.24 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP fishing (1 mt), research catch (24.14 mt), and incidental open access mortality (11.1 mt), resulting in a fishery HG of 3,098.8 mt.

[z] Sablefish north of 36° N lat. The sablefish coastwide ACL value is not specified in regulations. The coastwide sablefish ACL value is apportioned north and south of 36° N lat., using the rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.6 percent apportioned south of 36° N lat. The northern ACL is 8,486 mt and is reduced by 849 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 849 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 2,338 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research catch (2.40 mt) and incidental open access mortality (25 mt), resulting in a fishery HG of 2,310.6 mt.

[bb] Shortspine thornyhead north of 34°27′ N lat. 78.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), research catch (10.48 mt), and incidental open access mortality (17.82 mt), resulting in a fishery HG of 1,280.7 mt for the area north of 34°27′ N lat.

[cc] Shortspine thornyhead south of 34°27′ N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and incidental open access mortality (6 mt), resulting in a fishery HG of 712.3 mt for the area south of 34°27′ N lat.

[dd] Spiny dogfish. 351.48 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP fishing (1 mt), research catch (41.85 mt), and incidental open access mortality (33.63 mt), resulting in a fishery HG of 1,104.5 mt.

[ee] Splitnose rockfish south of 40°10′ N lat. 18.42 mt is deducted from the ACL to accommodate EFP fishing (1.5 mt), research catch (11.17 mt), and incidental open access mortality (5.75 mt), resulting in a fishery HG of 1,573.4 mt.

[ff] Starry flounder. 48.28 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), research catch (0.57 mt), and incidental open access mortality (45.71 mt), resulting in a fishery HG of 343.7 mt.

[gg] Widow rockfish. 238.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (18 mt), research catch (17.27 mt), and incidental open access mortality (3.05 mt), resulting in a fishery HG of 12,385.7 mt.

[hh] Yellowtail rockfish north of 40°10′ N lat. Yellowtail rockfish are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Shelf Rockfish complex south of 40°10′ N lat. 1,027.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), research catch (20.55 mt), and incidental open access mortality (7 mt), resulting in a fishery HG of 4,638.5 mt.

[ii] Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.82 mt is deducted from the ACL to accommodate research catch (0.08 mt) and incidental open access mortality (1.74 mt), resulting in a fishery HG of 595.2 mt.

[jj] Cabezon/kelp greenling (Oregon). 0.79 mt is deducted from the ACL to accommodate research catch (0.05 mt), and incidental open access mortality (0.74 mt), resulting in a fishery HG of 184.2 mt.

[kk] Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG is 18 mt.

[ll] Nearshore Rockfish north of 40°10′ N lat. 3.27 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), research catch (0.47 mt), and incidental open access mortality (1.3 mt), resulting in a fishery HG of 89.7 mt. State specific HGs are Washington (17.7 mt), Oregon (32.0 mt), and California (39.6 mt). The ACT for copper rockfish (California) is 6.93 mt. The ACT for quillback rockfish (California) is 0.87 mt.

[mm] Nearshore Rockfish south of 40°10′ N lat. 4.54 mt is deducted from the ACL to accommodate research catch (2.68 mt) and incidental open access mortality (1.86 mt), resulting in a fishery HG of 882.5 mt. The ACT for copper rockfish is 84.61 mt. The ACT for quillback rockfish is 0.89 mt.

[nn] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.24 mt is deducted from the ACL to accommodate research catch (6.29 mt) and incidental open access mortality (14.95 mt), resulting in a fishery HG of 201.8 mt.

[oo] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.79 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), research catch (23.63 mt), and incidental open access mortality (137.16 mt), resulting in a fishery HG of 4,641.2 mt.

[pp] Shelf Rockfish north of 40°10′ N lat. 70.94 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (15.32 mt), and incidental open access mortality (25.62 mt), resulting in a fishery HG of 1,212.1 mt.

[qq] Shelf Rockfish south of 40°10′ N lat. 132.77 mt is deducted from the ACL to accommodate EFP fishing (50 mt), research catch (15.1 mt), and incidental open access mortality (67.67 mt) resulting in a fishery HG of 1,336.2 mt.

[rr] Slope Rockfish north of 40°10′ N lat. 65.39 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), and research catch (10.51 mt), and incidental open access mortality (18.88 mt), resulting in a fishery HG of 1,474.6 mt.

[ss] Slope Rockfish south of 40°10′ N lat. 38.94 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (18.21 mt), and incidental open access mortality (19.73 mt), resulting in a fishery HG of 662.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 172.4 mt.

TABLE 1b. TO PART 660, SUBPART C—2023, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH[a]	Coastwide	55.3	8	4.4	92	50.9
Arrowtooth flounder	Coastwide	16,537	95	15,710.2	5	826.9
Big skate[a]	Coastwide	1,260.2	95	1,197.2	5	63
Bocaccio[a]	S of 40°10′ N lat	1,793.9	39	700.3	61	1,093.5
Canary rockfish[a]	Coastwide	1,215.1	72.3	878.5	27.7	336.6
Chilipepper rockfish	S of 40°10′ N lat	2,085	75	1,563.8	25	521.3
Cowcod[a b]	S of 40°10′ N lat	68.8	36	24.8	64	44.1
Darkblotched rockfish	Coastwide	761.2	95	723.2	5	38.1
Dover sole	Coastwide	48,402.8	95	45,982.7	5	2,420.1
English sole	Coastwide	8,758.5	95	8,320.6	5	437.9
Lingcod	N of 40′10° N lat	4,098.4	45	1,844.3	55	2,254.1
Lingcod[a]	S of 40′10° N lat	710.5	40	284.2	60	426.3
Longnose skate[a]	Coastwide	1,456.7	90	1,311	10	145.7
Longspine thornyhead	N of 34°27′ N lat	2,241.3	95	2,129.2	5	112.1
Pacific cod	Coastwide	1,094	95	1,039.3	5	54.7
Pacific ocean perch	N of 40°10′ N lat	3,427.5	95	3,256.1	5	171.4
Pacific whiting[c]	Coastwide	TBD	100	TBD	0	0
Petrale sole[a]	Coastwide	3,098.8	.....	3,068.8	.....	30
Sablefish	N of 36° N lat	NA	See Table 1c			
Sablefish	S of 36° N lat	2,310.6	42	970.5	58	1,340.1
Shortspine thornyhead	N of 34°27′ N lat	1,280.7	95	1,216.7	5	64
Shortspine thornyhead	S of 34°27′ N lat	712.3	.....	50	.....	662.3
Splitnose rockfish	S of 40°10′ N lat	1,572.4	95	1,494.7	5	78.7
Starry flounder	Coastwide	343.7	50	171.9	50	171.9
Widow rockfish[a]	Coastwide	12,385.7	.....	11,985.7	.....	400
Yellowtail rockfish	N of 40°10′ N lat	4,638.5	88	4,081.8	12	556.6
Other Flatfish	Coastwide	4,641.2	90	4,177.1	10	464.1
Shelf Rockfish[a]	N of 40°10′ N lat	1,212.1	60.2	729.7	39.8	482.4
Shelf Rockfish[a]	S of 40°10′ N lat	1,336.2	12.2	163	87.8	1,173.2
Slope Rockfish	N of 40°10′ N lat	1,474.6	81	1,194.4	19	280.2
Slope Rockfish[a]	S of 40°10′ N lat	662.1	63	417.1	37	245

[a] Allocations decided through the biennial specification process.

[b] The cowcod non-trawl allocation is further split 50:50 between the commercial and recreational sectors. This results in a sector-specific ACT of 22 mt for the commercial sector and 22 mt for the recreational sector.

[c] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

TABLE 1c. TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2023

[Weight in metric tons]

Year	ACL	Set-asides		Recreational estimate	EFP	Commercial HG	Limited entry HG		Open access HG	
		Tribal [a]	Research				Percent	mt	Percent	mt [b]
2023	8,486	849	30.7	6	1	7,600	90.6	6,885	9.4	714
Year	LE all	Limited entry trawl [c]				Limited entry fixed gear [d]				
		All trawl	At-sea whiting	Shorebased IFQ		All FG	Primary		DTL	
2023	6,885	3,994	100	3,893.5		2,892	2,458		434	

[a] The tribal allocation is further reduced by 1.7 percent for discard mortality resulting in 834.6 mt in 2023.
[b] The open access HG is taken by the incidental OA fishery and the directed OA fishery.
[c] The trawl allocation is 58 percent of the limited entry HG.
[d] The limited entry fixed gear allocation is 42 percent of the limited entry HG.

■ 11. Revise Tables 2a through 2c to Part 660, Subpart C, to read as follows:

TABLE 2a. TO PART 660, SUBPART C—2024, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES

[(Weights in metric tons). Capitalized stocks are overfished.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
YELLOWEYE ROCKFISH [c]	Coastwide	123	103	66	55.3
Arrowtooth Flounder [d]	Coastwide	20,459	14,178	14,178	12,083
Big Skate [e]	Coastwide	1,492	1,267	1,267	1,207.2
Black Rockfish [f]	California (S of 42° N lat.)	364	329	329	326.6
Black Rockfish [g]	Washington (N of 46°16′ N lat.)	319	289	289	270.5
Bocaccio [h]	S of 40°10′ N lat	2,002	1,828	1,828	1,779.9
Cabezon [i]	California (S of 42° N lat.)	185	171	171	169.4
California Scorpionfish [j]	S of 34°27′ N lat	280	252	252	248
Canary Rockfish [k]	Coastwide	1,401	1,267	1,267	1,198.1
Chilipepper [l]	S of 40°10′ N lat	2,346	2,121	2,121	2,023.4
Cowcod [m]	S of 40°10′ N lat	112	79	79	67.8
Cowcod	(Conception)	93	67	NA	NA
Cowcod	(Monterey)	19	12	NA	NA
Darkblotched Rockfish [n]	Coastwide	822	750	750	726.2
Dover Sole [o]	Coastwide	55,859	51,949	50,000	48,402.9
English Sole [p]	Coastwide	11,158	8,960	8,960	8,700.5
Lingcod [q]	N of 40°10′ N lat	4,455	3,854	3,854	3,574.4
Lingcod [r]	S of 40°10′ N lat	855	740	722	706.5
Longnose Skate [s]	Coastwide	1,955	1,660	1,660	1,408.7
Longspine Thornyhead	Coastwide	4,433	2,846	n/a	n/a
Longspine Thornyhead [t]	N of 34°27′ N lat	n/a	n/a	2,162	2,108.3
Longspine Thornyhead [u]	S of 34°27′ N lat	n/a	n/a	683	680.8
Pacific Cod [v]	Coastwide	3,200	1,926	1,600	1,094
Pacific Ocean Perch [w]	N of 40°10′ N lat	4,133	3,443	3,443	3,297.5
Pacific Whiting [x]	Coastwide	(x)	(x)	(x)	(x)
Petrale Sole [y]	Coastwide	3,563	3,285	3,285	2,898.8
Sablefish	Coastwide	10,670	9,923	n/a	n/a
Sablefish [z]	N of 36° N lat	n/a	n/a	7,780	See Table 2c
Sablefish [aa]	S of 36° N lat	n/a	n/a	2,143	2,115.6
Shortspine Thornyhead	Coastwide	3,162	2,030	.....	.....
Shortspine Thornyhead [bb]	N of 34°27′ N lat	n/a	n/a	1,328	1,249.7
Shortspine Thornyhead [cc]	S of 34°27′ N lat	n/a	n/a	702	695.3
Spiny Dogfish [dd]	Coastwide	1,883	1,407	1,407	1,055.5
Splitnose [ee]	S of 40°10′ N lat	1,766	1,553	1,553	1,534.3
Starry Flounder [ff]	Coastwide	652	392	392	343.7
Widow Rockfish [gg]	Coastwide	12,453	11,482	11,482	11,243.7
Yellowtail Rockfish [hh]	N of 40°10′ N lat	6,090	5,560	5,560	4,532.5
Stock Complexes					
Blue/Deacon/Black Rockfish [ii]	Oregon	671	594	594	592.2
Cabezon/Kelp Greenling [jj]	Washington	22	17	17	15
Cabezon/Kelp Greenling [kk]	Oregon	198	180	180	179.2
Nearshore Rockfish North [ll]	N of 40°10′ N lat	109	91	91	87.7
Nearshore Rockfish South [mm]	S of 40°10′ N lat	1,097	902	891	886.5
Other Fish [nn]	Coastwide	286	223	223	201.8
Other Flatfish [oo]	Coastwide	7,946	4,874	4,874	4,653.2
Shelf Rockfish North [pp]	N of 40°10′ N lat	1,610	1,278	1,278	1,207

TABLE 2a. TO PART 660, SUBPART C—2024, AND BEYOND, SPECIFICATIONS OF OFL, ABC, ACL, ACT AND FISHERY HARVEST GUIDELINES—Continued

[(Weights in metric tons). Capitalized stocks are overfished.]

Stocks	Area	OFL	ABC	ACL [a]	Fishery HG [b]
Shelf Rockfish South [qq]	S of 40°10′ N lat	1,838	1,469	1,469	1,336.2
Slope Rockfish North [rr]	N of 40°10′ N lat	1,797	1,516	1,516	1,450.6
Slope Rockfish South [ss]	S of 40°10′ N lat	868	697	697	658.1

[a] Annual catch limits (ACLs), annual catch targets (ACTs) and harvest guidelines (HGs) are specified as total catch values.

[b] Fishery HGs means the HG or quota after subtracting Pacific Coast treaty Indian tribes allocations and projected catch, projected research catch, deductions for fishing mortality in non-groundfish fisheries, and deductions for EFPs from the ACL or ACT.

[c] Yelloweye rockfish. The 66 mt ACL is based on the current rebuilding plan with a target year to rebuild of 2029 and an SPR harvest rate of 65 percent. 10.7 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.12 mt), research catch (2.92 mt), and incidental open access mortality (2.66 mt) resulting in a fishery HG of 55.3 mt. The non-trawl HG is 50.9 mt. The combined non-nearshore/nearshore HG is 10.7 mt. Recreational HGs are: 13.2 mt (Washington); 11.7 mt (Oregon); and 15.3 mt (California). In addition, the non-trawl ACT is 39.9, and the combined non-nearshore/nearshore ACT is 8.4 mt. Recreational ACTs are: 10.4 mt (Washington), 9.2 (Oregon), and 12.0 mt (California).

[d] Arrowtooth flounder. 2,094.98 mt is deducted from the ACL to accommodate the Tribal fishery (2,041 mt), research catch (12.98 mt) and incidental open access mortality (41 mt), resulting in a fishery HG of 12,083 mt.

[e] Big skate. 59.8 mt is deducted from the ACL to accommodate the Tribal fishery (15 mt), research catch (5.49 mt), and incidental open access mortality (39.31 mt), resulting in a fishery HG of 1,207.2 mt.

[f] Black rockfish (California). 2.26 mt is deducted from the ACL to accommodate EFP fishing (1.0 mt), research catch (0.08 mt), and incidental open access mortality (1.18 mt), resulting in a fishery HG of 326.6 mt.

[g] Black rockfish (Washington). 18.1 mt is deducted from the ACL to accommodate the Tribal fishery (18 mt) and research catch (0.1 mt), resulting in a fishery HG of 270.5 mt.

[h] Bocaccio south of 40°10′ N lat. Bocaccio are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 48.12 mt is deducted from the ACL to accommodate EFP fishing (40 mt), research catch (5.6 mt), and incidental open access mortality (2.52 mt), resulting in a fishery HG of 1,779.9 mt. The California recreational fishery south of 40°10′ N lat. has an HG of 749.7 mt.

[i] Cabezon (California). 1.63 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (0.02 mt), and incidental open access mortality (0.61 mt), resulting in a fishery HG of 169.4 mt.

[j] California scorpionfish south of 34°27prime; N lat. 3.89 mt is deducted from the ACL to accommodate research catch (0.18 mt) and incidental open access mortality (3.71 mt), resulting in a fishery HG of 248 mt.

[k] Canary rockfish. 68.91 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), EFP fishing (6 mt), research catch (10.08 mt), and incidental open access mortality (2.83 mt), resulting in a fishery HG of 1,198.1 mt. The combined nearshore/non-nearshore HG is 119.4 mt. Recreational HGs are: 40.8 mt (Washington); 61.4 mt (Oregon); and 110.2 mt (California).

[l] Chilipepper rockfish south of 40°10′ N lat. Chilipepper are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 97.7 mt is deducted from the ACL to accommodate EFP fishing (70 mt), research catch (14.04 mt), incidental open access mortality (13.66 mt), resulting in a fishery HG of 2,023.4 mt.

[m] Cowcod south of 40°10′ N lat. Cowcod are managed with stock-specific harvest specifications south of 40°10′ N lat. and within the Minor Shelf Rockfish complex north of 40°10′ N lat. 11.17 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (10 mt), and incidental open access mortality (0.17 mt), resulting in a fishery HG of 67.8 mt.

[n] Darkblotched rockfish. 23.76 mt is deducted from the ACL to accommodate the Tribal fishery (5 mt), EFP fishing (0.5 mt), research catch (8.46 mt), and incidental open access mortality (9.8 mt) resulting in a fishery HG of 726.2 mt.

[o] Dover sole. 1,597.11 mt is deducted from the ACL to accommodate the Tribal fishery (1,497 mt), research catch (50.84 mt), and incidental open access mortality (49.27 mt), resulting in a fishery HG of 48,402.9 mt.

[p] English sole. 259.52 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), research catch (17 mt), and incidental open access mortality (42.52 mt), resulting in a fishery HG of 8,700.5 mt.

[q] thnsp;Lingcod north of 40°10′ N lat. 279.63 mt is deducted from the ACL for the Tribal fishery (250 mt), research catch (17.71 mt), and incidental open access mortality (11.92 mt) resulting in a fishery HG of 3,574.4 mt.

[r] Lingcod south of 40°10′ N lat. 15.5 mt is deducted from the ACL to accommodate EFP fishing (4 mt), research catch (3.19 mt), and incidental open access mortality (8.31 mt), resulting in a fishery HG of 706.5 mt.

[s] Longnose skate. 251.3 mt is deducted from the ACL to accommodate the Tribal fishery (220 mt), and research catch (12.46 mt), and incidental open access mortality (18.84 mt), resulting in a fishery HG of 1,408.7 mt.

[t] Longspine thornyhead north of 34°27′ N lat. 53.71 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (17.49 mt), and incidental open access mortality (6.22 mt), resulting in a fishery HG of 2,108.3 mt.

[u] Longspine thornyhead south of 34°27′ N lat. 2.24 mt is deducted from the ACL to accommodate research catch (1.41 mt) and incidental open access mortality (0.83 mt), resulting in a fishery HG of 680.8 mt.

[v] Pacific cod. 506 mt is deducted from the ACL to accommodate the Tribal fishery (500 mt), research catch (5.47 mt), and incidental open access mortality (0.53 mt), resulting in a fishery HG of 1,094 mt.

[w] Pacific ocean perch north of 40°10′ N lat. Pacific ocean perch are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Slope Rockfish complex south of 40°10′ N lat. 145.48 mt is deducted from the ACL to accommodate the Tribal fishery (130 mt), EFP fishing, research catch (5.39 mt), and incidental open access mortality (10.09 mt), resulting in a fishery HG of 3,297.5 mt.

[x] Pacific whiting. Pacific whiting are assessed annually. The final specifications will be determined consistent with the U.S.-Canada Pacific Whiting Agreement and will be announced after the Council's April 2024 meeting.

[y] Petrale sole. 386.24 mt is deducted from the ACL to accommodate the Tribal fishery (350 mt), EFP fishing (1 mt), research catch (24.14 mt), and incidental open access mortality (11.1 mt), resulting in a fishery HG of 2,898.8 mt.

[z] Sablefish north of 36° N lat. The sablefish coastwide ACL value is not specified in regulations. The sablefish coastwide ACL value is apportioned north and south of 36° N lat., using the rolling 5-year average estimated swept area biomass from the NMFS NWFSC trawl survey, with 78.4 percent apportioned north of 36° N lat. and 21.6 percent apportioned south of 36° N lat. The northern ACL is 7,780 mt and is reduced by 778 mt for the Tribal allocation (10 percent of the ACL north of 36° N lat.). The 778 mt Tribal allocation is reduced by 1.7 percent to account for discard mortality. Detailed sablefish allocations are shown in Table 1c.

[aa] Sablefish south of 36° N lat. The ACL for the area south of 36° N lat. is 2,143 mt (21.6 percent of the calculated coastwide ACL value). 27.4 mt is deducted from the ACL to accommodate research catch (2.40 mt) and the incidental open access fishery (25 mt), resulting in a fishery HG of 2,115.6 mt.

[bb] Shortspine thornyhead north of 34°27′ N lat. 78.3 mt is deducted from the ACL to accommodate the Tribal fishery (50 mt), research catch (10.48 mt), and incidental open access mortality (17.82 mt), resulting in a fishery HG of 1,249.7 mt for the area north of 34°27′ N lat.

[cc] Shortspine thornyhead south of 34°27′ N lat. 6.71 mt is deducted from the ACL to accommodate research catch (0.71 mt) and incidental open access mortality (6 mt), resulting in a fishery HG of 695.3 mt for the area south of 34°27′ N lat.

[dd] Spiny dogfish. 351.48 mt is deducted from the ACL to accommodate the Tribal fishery (275 mt), EFP fishing (1 mt), research catch (41.85 mt), and incidental open access mortality (33.63 mt), resulting in a fishery HG of 1,055.5 mt.

[ee] Splitnose rockfish south of 40°10′ N lat. Splitnose rockfish in the north is managed in the Slope Rockfish complex and with stock-specific harvest specifications south of 40°10′ N lat. 18.42 mt is deducted from the ACL to accommodate EFP fishing (1.5 mt), research catch (11.17 mt), and incidental open access mortality (5.75 mt), resulting in a fishery HG of 1,534.3 mt.

[ff] Starry flounder. 48.28 mt is deducted from the ACL to accommodate the Tribal fishery (2 mt), research catch (0.57 mt), and incidental open access mortality (45.71 mt), resulting in a fishery HG of 343.7 mt.

[gg] Widow rockfish. 238.32 mt is deducted from the ACL to accommodate the Tribal fishery (200 mt), EFP fishing (18 mt), research catch (17.27 mt), and incidental open access mortality (3.05 mt), resulting in a fishery HG of 11,243.7 mt.

[hh] Yellowtail rockfish north of 40°10′ N lat. Yellowtail rockfish are managed with stock-specific harvest specifications north of 40°10′ N lat. and within the Minor Shelf Rockfish complex south of 40°10′ N lat. 1,027.55 mt is deducted from the ACL to accommodate the Tribal fishery (1,000 mt), research catch (20.55 mt), and incidental open access mortality (7 mt), resulting in a fishery HG of 4,532.5 mt.

[ii] Black rockfish/Blue rockfish/Deacon rockfish (Oregon). 1.82 mt is deducted from the ACL to accommodate research catch (0.08 mt), and incidental open access mortality (1.74 mt), resulting in a fishery HG of 592.2 mt.

[jj] Cabezon/kelp greenling (Washington). 2 mt is deducted from the ACL to accommodate the Tribal fishery, resulting in a fishery HG is 15 mt.

[kk] Cabezon/kelp greenling (Oregon). 0.79 mt is deducted from the ACL to accommodate research catch (0.05 mt) and incidental open access mortality (0.74 mt), resulting in a fishery HG of 179.2 mt.

[ll] Nearshore Rockfish north of 40°10′ N lat. 3.27 mt is deducted from the ACL to accommodate the Tribal fishery (1.5 mt), research catch (0.47 mt), and incidental open access mortality (1.31 mt), resulting in a fishery HG of 87.7 mt. State-specific HGs are 17.2 mt (Washington), 30.9 mt (Oregon), and 39.9 mt (California). The ACT for copper rockfish (California) is 6.99 mt. The ACT for quillback rockfish (California) is 0.96 mt.

[mm] Nearshore Rockfish south of 40°10′ N lat. 4.54 mt is deducted from the ACL to accommodate research catch (2.68 mt) and incidental open access mortality (1.86 mt), resulting in a fishery HG of 886.5 mt. The ACT for copper rockfish is 87.73 mt. The ACT for quillback rockfish is 0.97 mt.

[nn] Other Fish. The Other Fish complex is comprised of kelp greenling off California and leopard shark coastwide. 21.24 mt is deducted from the ACL to accommodate research catch (6.29 mt) and incidental open access mortality (14.95 mt), resulting in a fishery HG of 201.8 mt.

[oo] Other Flatfish. The Other Flatfish complex is comprised of flatfish species managed in the PCGFMP that are not managed with stock-specific OFLs/ABCs/ACLs. Most of the species in the Other Flatfish complex are unassessed and include: butter sole, curlfin sole, flathead sole, Pacific sanddab, rock sole, sand sole, and rex sole. 220.79 mt is deducted from the ACL to accommodate the Tribal fishery (60 mt), research catch (23.63 mt), and incidental open access mortality (137.16 mt), resulting in a fishery HG of 4,653.2 mt.

[pp] Shelf Rockfish north of 40°10′ N lat. 70.94 mt is deducted from the ACL to accommodate the Tribal fishery (30 mt), research catch (15.32 mt), and incidental open access mortality (25.62 mt), resulting in a fishery HG of 1,207.1 mt.

[qq] Shelf Rockfish south of 40°10′ N lat. 132.77 mt is deducted from the ACL to accommodate EFP fishing (50 mt), research catch (15.1 mt), and incidental open access mortality (67.67 mt) resulting in a fishery HG of 1,336.2 mt.

[rr] Slope Rockfish north of 40°10′ N lat. 65.39 mt is deducted from the ACL to accommodate the Tribal fishery (36 mt), research catch (10.51 mt), and incidental open access mortality (18.88 mt), resulting in a fishery HG of 1,450.6 mt.

[ss] Slope Rockfish south of 40°10′ N lat. 38.94 mt is deducted from the ACL to accommodate EFP fishing (1 mt), research catch (18.21 mt), and incidental open access mortality (19.73 mt), resulting in a fishery HG of 658.1 mt. Blackgill rockfish has a stock-specific HG for the entire groundfish fishery south of 40°10′ N lat. set equal to the species' contribution to the 40–10-adjusted ACL. Harvest of blackgill rockfish in all groundfish fisheries south of 40°10′ N lat. counts against this HG of 169.9 mt.

TABLE 2b. TO PART 660, SUBPART C—2024, AND BEYOND, ALLOCATIONS BY SPECIES OR SPECIES GROUP

[Weight in metric tons]

Stocks/stock complexes	Area	Fishery HG or ACT	Trawl		Non-trawl	
			%	Mt	%	Mt
YELLOWEYE ROCKFISH[a]	Coastwide	55.3	8	4.4	92	50.9
Arrowtooth flounder	Coastwide	12,083	95	11,478.9	5	604.2
Big skate[a]	Coastwide	1,207.2	95	1,146.8	5	60.4
Bocaccio[a]	S of 40°10′ N lat	1,779.9	39.04	694.9	60.96	1,085
Canary rockfish[a]	Coastwide	1,198.1	72.3	866.2	27.7	331.9
Chilipepper rockfish	S of 40°′ N lat	2,023.4	75	1,517.6	25	505.9
Cowcod[a b]	S of 40°10′ N lat	67.8	36	24.4	64	43.4
Darkblotched rockfish	Coastwide	726.2	95	689.9	5	36.3
Dover sole	Coastwide	48,402.9	95	45,982.7	5	2,420.1
English sole	Coastwide	8,700.5	95	8,265.5	5	435
Lingcod	N of 40°10′ N lat	3,574.4	45	1,608.5	55	1,965.9
Lingcod[a]	S of 40°10′ N lat	706.5	40	282.6	60	423.9
Longnose skate[a]	Coastwide	1,408.7	90	1,267.8	10	140.9
Longspine thornyhead	N of 34°27′ N lat	2,108.3	95	2,002.9	5	105.4
Pacific cod	Coastwide	1,094	95	1,039.3	5	54.7
Pacific ocean perch	N of 40°10′ N lat	3,297.5	95	3,132.6	5	164.9
Pacific whiting[c]	Coastwide	TBD	100	TBD	0	0
Petrale sole[a]	Coastwide	2,898.8		2,868.8		30
Sablefish	N of 36° N lat	NA	See Table 2c			
Sablefish	S of 36° N lat	2,115.6	42	888.6	58	1,227
Shortspine thornyhead	N of 34°27′ N lat	1,249.7	95	1,187.2	5	62.5
Shortspine thornyhead	S of 34°27′ N lat	695.3		50		645.3
Splitnose rockfish	S of 40°10′ N lat	1,534.3	95	1,457.6	5	76.7
Starry flounder	Coastwide	343.7	50	171.9	50	171.9
Widow rockfish[a]	Coastwide	11,243.7		10,843.7		400
Yellowtail rockfish	N of 40°10′ N lat	4,532.5	88	3.988.6	12	543.9
Other Flatfish	Coastwide	4,653.2	90	4,187.9	10	465.3
Shelf Rockfish[a]	N of 40°10′ N lat	1,207.1	60.2	726.7	39.8	480.4
Shelf Rockfish[a]	S of 40°10′ N lat	1,336.2	12.2	163	87.8	1,173.2
Slope Rockfish	N of 40°10′ N lat	1,450.6	81	1,175	19	275.6
Slope Rockfish[a]	S of 40°10′ N lat	658.1	63	414.6	37	243.5

[a] Allocations decided through the biennial specification process.

[b] The cowcod non-trawl allocation is further split 50:50 between the commercial and recreational sectors. This results in a sector-specific ACT of 21.7 mt for the commercial sector and 21.7 mt for the recreational sector.

[c] Consistent with regulations at § 660.55(i)(2), the commercial harvest guideline for Pacific whiting is allocated as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N lat. before the start of the primary Pacific whiting season north of 42° N lat.

TABLE 2c. TO PART 660, SUBPART C—SABLEFISH NORTH OF 36° N LAT. ALLOCATIONS, 2024 AND BEYOND

[Weights in metric tons]

Year	ACL	Set-asides		Recreational estimate	EFP	Commercial HG	Limited entry HG		Open access HG	
		Tribal [a]	Research				Percent	mt	Percent	mt [b]
2024	7,780	778	30.7	6	1	6,964	90.6	6,309	9.4	665
Year	LE all	Limited entry trawl [c]				Limited entry fixed gear [d]				
		All trawl	At-sea whiting	Shorebased IFQ		All FG	Primary		DTL	
2024	6,309	3,659	100	3,559		2,650	2,252		397	

[a] The tribal allocation is further reduced by 1.7 percent for discard mortality resulting in 764.8 mt in 2024.
[b] The open access HG is taken by the incidental OA fishery and the directed OA fishery.
[c] The trawl allocation is 58 percent of the limited entry HG.
[d] The limited entry fixed gear allocation is 42 percent of the limited entry HG.

* * * * *

■ 12. In § 660.111, revise the definition of ''Block area closures or BACs'' to read as follows:

§ 660.111 Trawl fishery—definitions.

* * * * *

Block area closures or *BACs* are a type of groundfish conservation area, defined at § 660.11, bounded on the north and south by commonly used geographic coordinates, defined at § 660.11, and on the east and west by the EEZ, and boundary lines approximating depth contours, defined with latitude and longitude coordinates at §§ 660.71 through 660.74 (10 fm through 250 fm), and § 660.76 (700 fm). BACs may be implemented or modified as routine management measures, per regulations at § 660.60(c). BACs may be implemented in the EEZ seaward of Washington, Oregon and California for vessels using limited entry bottom trawl and/or midwater trawl gear. BACs may be implemented within tribal Usual and Accustomed fishing areas but may only apply to non-tribal vessels. BACs may close areas to specific trawl gear types (*e.g.,* closed for midwater trawl, bottom trawl, or bottom trawl unless using selective flatfish trawl) and/or specific programs within the trawl fishery (*e.g.,* Pacific whiting fishery or MS Coop Program). BACs may vary in their geographic boundaries and duration. Their geographic boundaries, applicable gear type(s) and/or specific trawl fishery program, and effective dates will be announced in the **Federal Register**. BACs may have a specific termination date as described in the **Federal Register**, or may be in effect until modified. BACs that are in effect until modified by Council recommendation and subsequent NMFS action are set out in Tables 1 (North) and 1 (South) of this subpart.

* * * * *

■ 13. In § 660.140, revise paragraphs (c)(3)(iii) and (iv), and Table 1 to paragraph (d)(1)(ii)(D) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(c) * * *

(3) * * *

(iii) For IFQ species listed in the trawl/non-trawl allocation table, specified at § 660.55(c), subpart C, allocations are determined by applying the trawl column percent to the fishery harvest guideline minus any set-asides for the mothership and C/P sectors for that species.

(iv) The remaining IFQ species (canary rockfish, bocaccio, cowcod, yelloweye rockfish, darkblotched rockfish, POP, widow rockfish, minor shelf rockfish N of 40°10′ N lat., and minor shelf rockfish S of 40°10′ N lat., and minor slope rockfish S of 40°10′ N lat.) are allocated through the biennial specifications and management measures process minus any set-asides for the mothership and C/P sectors for that species.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(D) * * *

TABLE 1 TO PARAGRAPH (d)(1)(II)(D)—SHOREBASED TRAWL ALLOCATIONS FOR 2023 AND 2024

IFQ species	Area	2023 Shorebased trawl allocation (mt)	2024 Shorebased trawl allocation (mt)
YELLOWEYE ROCKFISH	Coastwide	4.42	4.42
Arrowtooth flounder	Coastwide	15,640.17	11,408.87
Bocaccio	South of 40°10′ N lat	700.33	694.87
Canary rockfish	Coastwide	842.50	830.22
Chilipepper	South of 40°10′ N lat	1,563.80	1517.60
Cowcod	South of 40°10′ N lat	24.80	24.42
Darkblotched rockfish	Coastwide	646.78	613.53
Dover sole	Coastwide	45,972.75	45,972.75
English sole	Coastwide	8,320.56	8,265.46
Lingcod	North of 40°10′ N lat	1,829.27	1,593.47
Lingcod	South of 40°10′ N lat	284.20	282.60
Longspine thornyhead	North of 34°27′ N lat	2,129.23	2,002.88

TABLE 1 TO PARAGRAPH (d)(1)(II)(D)—SHOREBASED TRAWL ALLOCATIONS FOR 2023 AND 2024—Continued

IFQ species	Area	2023 Shorebased trawl allocation (mt)	2024 Shorebased trawl allocation (mt)
Pacific cod	Coastwide	1,039.30	1,039.30
Pacific halibut (IBQ) [a]	North of 40°10′ N lat	TBD	TBD
Pacific ocean perch	North of 40°10′ N lat	2,956.14	2,832.64
Pacific whiting [a]	Coastwide	TBD	TBD
Petrale sole	Coastwide	3,063.76	2,863.76
Sablefish	North of 36° N lat	3,893.50	3,559.38
Sablefish	South of 36° N lat	970.00	889.00
Shortspine thornyhead	North of 34°27′ N lat	1,146.67	1,117.22
Shortspine thornyhead	South of 34°27′ N lat	50	50
Splitnose rockfish	South of 40°10′ N lat	1,494.70	1,457.60
Starry flounder	Coastwide	171.86	171.86
Widow rockfish	Coastwide	11,509.68	10,367.68
Yellowtail rockfish	North of 40°10′ N lat	3,761.84	3,668.56
Other Flatfish complex	Coastwide	4,142.09	4,152.89
Shelf Rockfish complex	North of 40°10′ N lat	694.70	691.65
Shelf Rockfish complex	South of 40°10′ N lat	163.02	163.02
Slope Rockfish complex	North of 40°10′ N lat	894.43	874.99
Slope Rockfish complex	South of 40°10′ N lat	417.1	414.58

[a] Managed through an international process. These allocation will be updated when announced.

* * * * *

■ 14. In § 660.150, revise paragraph (c)(1) to read as follows:

§ 660.150 Mothership (MS) Co-op Program.

* * * * *

(c) * * *—(1) *MS Co-op Program species.* All species other than Pacific whiting are managed with set-asides for the MS and C/P Co-op Programs, as described in the biennial specifications.

* * * * *

■ 15. In § 660.160, revise paragraph (c)(1)(ii) to read as follows:

§ 660.160 Catcher/processor (C/P) Co-op Program.

* * * * *

(c) * * *

(1) * * *

(ii) Species with set-asides for the MS and C/P Programs, as described in the biennial specifications.

* * * * *

■ 16. In § 660.213, revise paragraph (d)(2) to read as follows:

§ 660.213 Fixed gear fishery—recordkeeping and reporting.

* * * * *

(d) * * *

(2) For participants in the sablefish primary season, the cumulative limit period to which this requirement applies is April 1 through December 31 or, for an individual vessel owner, when the tier limit for the permit(s) registered to the vessel has been reached, whichever is earlier.

* * * * *

■ 17. In § 660.230, revise (c)(2)(i) through (iii) and add paragraph (d)(11)(v) to read as follows:

§ 660.230 Fixed gear fishery—management measures.

* * * * *

(c) * * *

(2) * * *

(i) *Coastwide*—arrowtooth flounder, big skate, black rockfish, blue/deacon rockfish, canary rockfish, darkblotched rockfish, Dover sole, English sole, lingcod, longnose skate, longspine thornyhead, petrale sole, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, other fish, other flatfish, Pacific cod, Pacific whiting, rougheye/blackspotted rockfish, sablefish, shortbelly rockfish, shortraker rockfish, shortspine thornyhead, spiny dogfish, starry flounder, widow rockfish, and yelloweye rockfish;

(ii) *North of 40°10′ N lat.*—cabezon (California), copper rockfish (California), Oregon cabezon/kelp greenling complex, POP, quillback rockfish (California), Washington cabezon/kelp greenling complex, yellowtail rockfish; and

(iii) *South of 40°10′ N lat.*—blackgill rockfish, bocaccio, bronzespotted rockfish, cabezon, California scorpionfish, chilipepper rockfish, copper rockfish, cowcod, minor shallow nearshore rockfish, minor deeper nearshore rockfish, Pacific sanddabs, quillback rockfish, splitnose rockfish, and vermilion rockfish.

(d) * * *

(11) * * *

(v) It is lawful to fish within the non-trawl RCA seaward of Oregon and California (between 46°16′ N lat. and the U.S./Mexico border) with open access non-bottom contact hook-and-line gear configurations as specified at § 660.330(b)(3)(i) through (ii), subject to applicable crossover provisions at § 660.60(h)(7), and provided that a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE.

* * * * *

■ 18. In § 660.231, revise paragraphs (b)(1), (b)(3)(i), and (b)(3)(iv) to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *—(1) *Season dates.* North of 36° N lat., the sablefish primary season for the limited entry, fixed gear, sablefish-endorsed vessels begins at 12 noon local time on April 1 and closes at 12 noon local time on December 31, or closes for an individual vessel owner when the tier limit for the sablefish endorsed permit(s) registered to the vessel has been reached, whichever is earlier, unless otherwise announced by the Regional Administrator through the routine management measures process described at § 660.60(c).

* * * * *

(3) * * *

(i) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. During the primary season, each vessel authorized to fish in that season under paragraph (a) of this section may take, retain, possess, and land sablefish, up to the cumulative limits for each of the permits registered for use with that vessel (*i.e.,* stacked permits). If multiple

limited entry permits with sablefish endorsements are registered for use with a single vessel, that vessel may land up to the total of all cumulative limits announced in this paragraph for the tiers for those permits, except as limited by paragraph (b)(3)(ii) of this section. Up to 3 permits may be registered for use with a single vessel during the primary season; thus, a single vessel may not take and retain, possess or land more than 3 primary season sablefish cumulative limits in any one year. A vessel registered for use with multiple limited entry permits is subject to per vessel limits for species other than sablefish, and to per vessel limits when participating in the daily trip limit fishery for sablefish under § 660.232. In 2023, the following annual limits are in effect: Tier 1 at 72,904 lb (33,069 kg), Tier 2 at 33,138 lb (15,031 kg), and Tier 3 at 18,936 lb (8,589 kg). In 2024 and beyond, the following annual limits are in effect: Tier 1 at 66,805 lb (30,302 kg), Tier 2 at 30,366 lb (13,774 kg), and Tier 3 at 17,352 lb (7,871 kg).

* * * * *

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30′ N lat.). From April 1 through the closure date set by the International Pacific Halibut Commission for Pacific halibut in all commercial fisheries, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N lat.) may possess and land up to 150 lb (68 kg) dressed weight of Pacific halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two additional Pacific halibut in excess of the 150-lbs-per-1,000-pound limit per landing. NMFS publishes the International Pacific Halibut Commission's regulations setting forth annual management measures, including the closure date for Pacific halibut in all commercial fisheries, in the **Federal Register** by March 15 each year, 50 CFR 300.62. ''Dressed'' Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

■ 19. Revise Table 2 (North) to part 660, subpart E, to read as follows:

BILLING CODE 3510–22–P

Table 2 (North) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area (RCA)[1/]:							
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).							
State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.							
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	8,000 lb/ 2 months					
4	**Pacific ocean perch**	3,600 lb/ 2 months					
5	**Sablefish**	2,400 lb/ week, not to exceed 4,800 lb /2 months					
6	**Longspine thornyhead**	10,000 lb/ 2 months					
7	**Shortspine thornyhead**	2,000 lb/ 2 months			2,500 lb/ 2 months		
8 9 10	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/7/]**	10,000 lb/ month					
11	**Whiting**	10,000 lb/ trip					
12	**Minor Shelf Rockfish[2/]**	800 lb/ month					
13	**Widow rockfish**	4,000 lb/ 2 months					
14	**Yellowtail rockfish**	3,000 lb/ month					
15	**Canary rockfish**	3,000 lb/ 2 months					
16	**Yelloweye rockfish**	CLOSED					
17	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish[4/]**						
18	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish[3/]					
19	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
20	42°00' N. lat. - 40°10' N. lat. Black Rockfish	7,000 lb/ 2 months					
21	**Lingcod[5/]**						
22	North of 42°00' N. lat.	5,000 lb/ 2 months					
23	42°00' N. lat. - 40°10' N. lat.	2,000 lb/ 2 months					
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Longnose skate**	Unlimited					
27	**Other Fish[6/] & Cabezon in California**	Unlimited					
28	**Oregon Cabezon/Kelp Greenling**	Unlimited					
29	**Big skate**	Unlimited					

TABLE 2 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lb or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ LEFG vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 20. Revise Table 2 (South) to part 660, subpart E, to read as follows:

BILLING CODE 3510–22–C

Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. la

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope rockfish[2/] & Darkblotched rockfish**	40,000 lb/ 2 months, of which no more than 6,000 lb may be blackgill rockfish					
5	**Splitnose rockfish**	40,000 lb/ 2 months					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	2,400 lb/ week, not to exceed 4,800 lb/ 2 months					
8	South of 36°00' N. lat.	2,500 lb/ week					
9	**Longspine thornyhead**	10,000 lb/ 2 months					
10	**Shortspine thornyhead**						
11	40°10' N. lat. - 34°27' N. lat.	2,000 lb/ 2 months			2,500 lb/ 2 months		
12	South of 34°27' N. lat.	3,000 lb/ 2 months					
13	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	10,000 lb/ month					
14							
15							
16	**Whiting**	10,000 lb/ trip					
17	**Minor Shelf Rockfish[2/]**						
18	40°10' N. lat. - 34°27' N. lat.	8,000 lb/ 2 months, of which no more than 500 lb may be vermilion					
19	South of 34°27' N. lat.	5,000 lb/ 2 months, of which no more than 3,000 lb may be vermilion					
20	**Widow**						
21	40°10' N. lat. - 34°27' N. lat.	10,000 lb/ 2 months					
22	South of 34°27' N. lat.	8,000 lb/ 2 months					
23	**Chilipepper**						
24	40°10' N. lat. - 34°27' N. lat.	10,000 lb. / 2 months					
25	South of 34°27' N. lat.	8,000 lb. / 2 months					
26	**Canary rockfish**	3,500 lb/ 2 months					
27	**Yelloweye rockfish**	CLOSED					
28	**Cowcod**	CLOSED					
29	**Bronzespotted rockfish**	CLOSED					
30	**Bocaccio**	6,000 lb/ 2 months					
31	**Minor Nearshore Rockfish**						
32	Shallow nearshore[4/]	2,000 lb/ 2 months					
33	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
34	**California Scorpionfish**	3,500 lb/ 2 months					
35	**Lingcod[6/]**	1,600 lb / 2 months					
36	**Pacific cod**	1,000 lb/ 2 months					
37	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
38	**Longnose skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					
40	**Big Skate**	Unlimited					

TABLE 2 (South)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for Minor Slope Rockfish. Blackgill rockfish have a species specific trip sub-limit within the Minor Slope Rockfish cumulative limit. Yellowtail rockfish are included in the trip limits for Minor Shelf Rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other Flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other Fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

8/ LEFG vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.230 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 22. In § 660.330:

■ a. Add paragraph (b)(3);

■ b. Revise paragraphs (c)(2)(i) through (iii); and

■ c. Add paragraph (d)(12)(v).

The additions and revisions read as follows:

§ 660.330 Open access fishery—management measures.

* * * * *

(b) * * *

(3) *Non-trawl RCA gear.* Inside the non-trawl RCA, only legal non-bottom contact hook-and-line gear configurations may be used for target fishing for groundfish by vessels that participate in the directed open access sector as defined at § 660.11. Legal non-bottom contact hook-and-line gear means stationary vertical jig gear attached to the vessel and not anchored to the bottom, and groundfish troll gear, subject to the specifications below.

(i) *Stationary vertical jig gear.* The following requirements apply to stationary vertical jig gear:

(A) Must be a minimum of 50 feet between the bottom weight and the lowest fishing hook;

(B) No more than 4 vertical mainlines may be used in the water at one time with no more than 25 hooks on each mainline;

(C) No more than 100 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel; and

(D) Natural bait or weighted hooks may not be used nor be on board the

vessel. Artificial lures and flies are permitted.

(ii) *Groundfish troll gear.* The following requirements apply to groundfish troll gear:

(A) Must be a minimum of 50 feet between the bottom weight and the troll wire's connection to the horizontal mainline;

(B) No more than 1 mainline may be used in the water at one time;

(C) No more than 500 hooks may be in the water at one time, with no more than 25 extra hooks on board the vessel;

(D) Hooks must be spaced apart by a visible maker (*e.g.,* floats, line wraps, colored line splices), with no more than 25 hooks between each marker and no more than 20 markers on the mainline; and

(E) Natural bait or weighted hooks may not be used nor be on board the vessel. Artificial lures and flies are permitted.

* * * * *

(c) * * *

(2) * * *

(i) *Coastwide*—arrowtooth flounder, big skate, black rockfish, blue/deacon rockfish, canary rockfish, darkblotched rockfish, Dover sole, English sole, lingcod, longnose skate, longspine thornyhead, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, other fish, other flatfish, Pacific cod, Pacific sanddabs, Pacific whiting, petrale sole, shortbelly rockfish, shortraker rockfish, rougheye/blackspotted rockfish, sablefish, shortspine thornyhead, spiny dogfish, starry flounder, widow rockfish, and yelloweye rockfish;

(ii) *North of 40°10′ N lat.*—cabezon (California), copper rockfish (California), Oregon cabezon/kelp greenling complex, POP, quillback rockfish (California), Washington cabezon/kelp greenling complex, yellowtail rockfish; and

(iii) *South of 40°10′ N lat.*—blackgill rockfish, bocaccio, bronzespotted rockfish, cabezon, chilipepper rockfish, copper rockfish, cowcod, minor shallow nearshore rockfish, minor deeper nearshore rockfish, quillback rockfish, splitnose rockfish, and vermilion rockfish.

(d) * * *

(12) * * *

(v) Target fishing for groundfish off Oregon and California (between 46°16′ N lat. and the U.S./Mexico border) is allowed within the non-trawl RCA for vessels participating in the directed open access sector as defined at § 660.11, subject to the gear restrictions at § 660.330(b)(3)(i–ii), and provided a valid declaration report as required at § 660.13(d) has been filed with NMFS OLE.

* * * * *

■ 23. Revise Table 3 (North) to part 660, subpart F, to read as follows:

Table 3 (North) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears North of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table

1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	North of 46°16' N. lat.	shoreline - 100 fm line[1/]					
2	46°16' N. lat. - 40°10' N. lat.	30 fm line[1/] - 100 fm line[1/]					
	See §§660.60, 660.330 and 660.333 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Bank, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
3	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	2,000 lb/ month					
4	**Pacific ocean perch**	100 lb/ month					
5	**Sablefish**	2,000 lb/ week, not to exceed 4,000 lb/ 2 months					
6	**Shortpine thornyheads**	50 lb/ month					
7	**Longspine thornyheads**	50 lb/ month					
8 9 10	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/ 7/]**	5,000 lb/ month					
11	**Whiting**	300 lb/ month					
12	**Minor Shelf Rockfish[2/]**	800 lb/ month					
13	**Widow rockfish**	2,000 lb/ 2 months					
14	**Yellowtail rockfish**	1,500 lb/ month					
15	**Canary rockfish**	1,000 lb/ 2 months					
16	**Yelloweye rockfish**	CLOSED					
17	**Minor Nearshore Rockfish, Oregon black/blue/deacon rockfish, & black rockfish**						
18	North of 42°00' N. lat.	5,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black rockfish or blue/deacon rockfish [4/]					
19	42°00' N. lat. - 40°10' N. lat. Minor Nearshore Rockfish	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
20	42°00' N. lat. - 40°10' N. lat. Black rockfish	7,000 lb/ 2 months					
21	**Lingcod[5/]**						
22	North of 42°00' N. lat.	2,500 lb/ month					
23	42°00' N. lat. - 40°10' N. lat.	1,000 lb/ month					
24	**Pacific cod**	1,000 lb/ 2 months					
25	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
26	**Longnose skate**	Unlimited					
27	**Big skate**	Unlimited					
28	**Other Fish[6/] & Cabezon in California**	Unlimited					
29	**Oregon Cabezon/Kelp Greenling**	Unlimited					
30	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish and lingcod, as described below)*						
31	North	*Salmon trollers may retain and land up to 500 lb of yellowtail rockfish per month as long as salmon is on board, both within and outside of the RCA. Salmon trollers may retain and land up to 1 lingcod per 2 Chinook per trip, plus 1 lingcod per trip, up to a trip limit of 10 lingcod, on a trip where any fishing occurs within the RCA. The lingcod limit only applies during times when lingcod retention is allowed, and is not "CLOSED." Theses limits are within the per month limits described in the table above, and not in addition to those limits. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.*					
32	**PINK SHRIMP NON-GROUNDFISH TRAWL** *(not subject to RCAs)*						
33	North	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/month (minimum 24 inch size limit); sablefish 2,000 lb/month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

TABLE 3 (North)

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Bocaccio, chilipepper and cowcod rockfishes are included in the trip limits for Minor Shelf Rockfish. Splitnose rockfish is included in the trip limits for Minor Slope Rockfish.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ For black rockfish north of Cape Alava (48°09.50' N. lat.), and between Destruction Is. (47°40' N. lat.) and Leadbetter Pnt. (46°38.17' N. lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

5/ The minimum size limit for lingcod is 22 inches (56 cm) total length North of 42° N. lat. and 24 inches (61 cm) total length South of 42° N. lat.

6/ "Other fish" are defined at § 660.11 and include kelp greenling off California and leopard shark.

7/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

■ 24. Revise Table 3 (South) to part 660, subpart F, to read as follows:

Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. lat.

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
1	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
2	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
3	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
	State trip limits and seasons may be more restrictive than Federal trip limits or seasons, particularly in waters off Oregon and California.						
4	**Minor Slope Rockfish[2/] & Darkblotched rockfish**	10,000 lb/ 2 months, of which no more than 2,500 lb may be blackgill rockfish					
5	**Splitnose rockfish**	200 lb/ month					
6	**Sablefish**						
7	40°10' N. lat. - 36°00' N. lat.	2,000 lb/ week, not to exceed 4,000 lb/ 2 months					
8	South of 36°00' N. lat.	2,000 lb/ week, not to exceed 6,000 lb/ 2 months					
9	**Shortpine thornyheads**						
10	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
11	**Longspine thornyheads**						
12	40°10' N. lat. - 34°27' N. lat.	50 lb/ month					
13	**Shortpine thornyheads and longspine thornyheads**						
14	South of 34°27' N. lat.	100 lb/ day, no more than 1,000 lb/ 2 months					
15 16 17	**Dover sole, arrowtooth flounder, petrale sole, English sole, starry flounder, Other Flatfish[3/8/]**	5,000 lb/ month					
18	**Whiting**	300 lb/ month					
19	**Minor Shelf Rockfish[2/]**						
20	40°10' N. lat. - 34°27' N. lat.	4,000 lb/ 2 months, of which no more than 400 lb may be vermilion					
21	South of 34°27' N. lat.	3,000 lb/ 2 months, of which no more than 1,200 lb may be vermilion					
22	**Widow rockfish**						
23	40°10' N. lat. - 34°27' N. lat.	6,000 lb/ 2 months					
24	South of 34°27' N. lat.	4,000 lb/ 2 months					
25	**Chilipepper**						
26	40°10' N. lat. - 34°27' N. lat.	6,000 lb/ 2 months					
27	South of 34°27' N. lat.	4,000 lb/ 2 months					
22	**Canary rockfish**	1,500 lb/ 2 months					
23	**Yelloweye rockfish**	CLOSED					
24	**Cowcod**	CLOSED					
25	**Bronzespotted rockfish**	CLOSED					
26	**Bocaccio**	4,000 lb/ 2 months					
30	**Minor Nearshore Rockfish**						
31	Shallow nearshore[4/]	2,000 lb/ 2 months					
32	Deeper nearshore[5/]	2,000 lb/ 2 months, of which no more than 75 lb may be quillback rockfish, and of which no more than 75 lb may be copper rockfish					
33	**California Scorpionfish**	3,500 lb/ 2 months					
34	**Lingcod[6/]**	700 lb / month					
35	**Pacific cod**	1,000 lb/ 2 months					
36	**Spiny dogfish**	200,000 lb/ 2 months		150,000 lb/ 2 months	100,000 lb/ 2 months		
37	**Longnose skate**	Unlimited					
38	**Big skate**	Unlimited					
39	**Other Fish[7/] & Cabezon in California**	Unlimited					

TABLE 3 (South)

Table 3 (South) Continued

Other limits and requirements apply -- Read §§660.10 through 660.399 before using this table 1/1/2023

		JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area (RCA)[1/]:						
40	40°10' N. lat. - 38°57.5' N. lat.	40 fm line[1/] - 125 fm line[1/]					
41	38°57.5' N. lat. -34°27' N. lat.	50 fm line[1/] - 125 fm line[1/]					
42	South of 34°27' N. lat.	100 fm line[1/] - 150 fm line[1/] (also applies around islands)					
	See §§660.60 and 660.230 for additional gear, trip limit and conservation area requirements and restrictions. See §§660.70-660.74 and §§660.76-660.79 for conservation area descriptions and coordinates (including RCAs, YRCAs, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).						
43	**SALMON TROLL** *(subject to RCAs when retaining all species of groundfish, except for yellowtail rockfish, as described below)*						
44	South of 40°10' N. lat.	Salmon trollers may retain and land up to 1 lb of yellowtail rockfish for every 2 lb of Chinook salmon landed, with a cumulative limit of 200 lb/month, both within and outside of the RCA. This limit is within the 4,000 lb per 2 month limit for minor shelf rockfish between 40o10' and 34o27' N lat., and not in addition to that limit. All groundfish species are subject to the open access limits, seasons, size limits and RCA restrictions listed in the table above, unless otherwise stated here.					
45	**RIDGEBACK PRAWN AND, SOUTH OF 3857.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL**						
46	**NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:**						
47	*40°10' N. lat. - 38°00' N. lat.*	*100 fm line[1/] - 200 fm line[1/]*		*100 fm line[1/] - 150 fm line[1/]*			*100 fm line[1/] - 200 fm line[1/]*
48	*38°00' N. lat. - 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
49	*South of 34°27' N. lat.*	*100 fm line[1/] - 150 fm line[1/]*					
50		Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 29).					
51	**PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)*						
52	South	Effective April 1 - October 31: Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/ day and 1,500 lb/ trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary rockfish, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/ trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed.					

Table 3 (South) Continued

1/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

2/ Minor Shelf and Slope Rockfish complexes are defined at § 660.11. Pacific ocean perch is included in the trip limits for minor slope rockfish. Blackgill rockfish have a species specific trip sub-limit within the minor slope rockfish cumulative limits. Yellowtail rockfish is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

4/ "Shallow Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*1*).

5/ "Deeper Nearshore" are defined at § 660.11 under "Groundfish" (7)(i)(B)(*2*).

6/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

7/ "Other fish" are defined at § 660.11 and includes kelp greenling off California and leopard shark.

8/ Open access vessels may be allowed to fish inside groundfish conservation areas using hook and line only. See § 660.330 (d) of the regulations for more information.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 25. Amend § 660.360 by:

■ a. Adding paragraphs (c)(3)(iv)(A) through (D);

■ b. Revising Table 1 to paragraph (c)(1)(i)(D), paragraphs (c)(1)(ii), (c)(2)(i)(B), (c)(2)(iii)(D), (c)(3) introductory text, (c)(3)(i)(A), (c)(3)(i)(B), (c)(3)(ii), (c)(3)(ii)(A)(*1*) through (*5*), (c)(3)(iii)(A)(*1*) through (*5*), (c)(3)(iv), and (c)(3)(v)(A).

The additions and revisions read as follows:

§ 660.360 Recreational fishery—management measures.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(D) * * *

Table 1 To Paragraph (C)(1)(i)(d)—Washington Recreational Fishing Season Structure

Marine Area	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
3 and 4 (North Coast)	Closed			Open		Open < 20 fm June 1-July 31 a/ b/ g/		Open			Closed	
2 (South Coast)	Closed			Open c/d/ g/		Open d/ g/					Closed	
1 (Columbia River)	Closed			Open e/ f/ g/							Closed	

a/ Retention of Pacific cod, sablefish, lingcod, bocaccio, silvergray rockfish, canary rockfish, widow rockfish, and yellowtail rockfish allowed >20 fm on days when recreational Pacific halibut is open.
b/ Retention of yellowtail and widow rockfish is allowed > 20 fm in July.
c/ From May 1 through May 31 lingcod retention prohibited > 30 fathoms except on days that the primary Pacific halibut season is open.
d/ When lingcod is open, retention is prohibited seaward of line drawn from Queets River (47°31.70' N. Lat. 124°45.00' W. Long.) to Leadbetter Point (46° 38.17' N. Lat. 124°30.00' W. Long.), except on days open to the primary halibut fishery and, June 1 – 15 and September 1 - 30.
e/ Retention of flatfish, sablefish, Pacific cod, yellowtail rockfish, widow rockfish, canary rockfish, redstriped rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, and blue/deacon rockfish allowed during the all-depth Pacific halibut fishery. Lingcod retention is only allowed north of the WA-OR border with halibut on board.
f/ Retention of lingcod is prohibited seaward of a line drawn from Leadbetter Point (46° 38.17' N. Lat. 124°21.00' W. Long.) to 46° 33.00' N. Lat. 124°21.00' W. Long. year round except lingcod retention is allowed from June 1 - June 15 and Septembert 1 - September 30.
g/ Retention of copper rockfish, quillback rockfish, and vermilion rockfish is prohibited from May 1 through July 31.

(ii) *Rockfish.* In areas of the EEZ seaward of Washington (Washington Marine Areas 1–4) that are open to recreational groundfish fishing, there is a 7 rockfish per day bag limit. Taking and retaining yelloweye rockfish is prohibited in all Marine Areas. Taking and retaining copper rockfish, quillback rockfish, and vermilion rockfish is prohibited in all Marine Areas during May, June and July.

* * * * *

(2) * * *

(i) * * *

(B) *Recreational rockfish conservation area (RCA).* Fishing for groundfish with recreational gear is prohibited within the recreational RCA, a type of closed area or groundfish conservation area, except with long-leader gear (as defined at § 660.351). It is unlawful to take and retain, possess, or land groundfish taken with recreational gear within the recreational RCA, except with long-leader gear (as defined at § 660.351). A vessel fishing in the recreational RCA may not be in possession of any groundfish unless otherwise stated. [For example, if a vessel fishes in the recreational salmon fishery within the recreational RCA, the vessel cannot be in possession of groundfish while within the recreational RCA. The vessel may, however, on the same trip fish for and retain groundfish shoreward of the recreational RCA on the return trip to port.] Off Oregon, from January 1 through December 31, recreational fishing for groundfish is allowed in all depths. Coordinates approximating boundary lines at the 10-fm (18-m) through 100-fm (183-m) depth contours can be found at § 660.71 through § 660.73.

* * * * *

(iii) * * *

(D) *In the Pacific halibut fisheries.* Retention of groundfish is governed in part by annual management measures for Pacific halibut fisheries, which are published in the **Federal Register**. Between the Columbia River and Humbug Mountain, during days open to the ''all-depth'' sport halibut fisheries, when Pacific halibut are onboard the vessel, no groundfish, except sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed, except with long-leader gear (as defined at § 660.351). ''All-depth'' season days are established in the annual management measures for Pacific halibut fisheries, which are published in the **Federal Register** and are announced on the NMFS Pacific halibut hotline, 1–800–662–9825.

* * * * *

(3) *California.* Seaward of California, for groundfish species not specifically mentioned in this paragraph, fishers are subject to the overall 20-fish bag limit for all species of finfish, of which no more than 10 fish of any one species may be taken or possessed by any one person. Petrale sole, Pacific sanddab, and starry flounder are not subject to a bag limit. Recreational spearfishing for all federally-managed groundfish, is exempt from closed areas and seasons, consistent with Title 14 of the California Code of Regulations. This exemption applies only to recreational vessels and divers provided no other fishing gear, except spearfishing gear, is on board the vessel. California state law may provide regulations similar to Federal regulations for kelp greenlings. Retention of cowcod, yelloweye rockfish, and bronzespotted rockfish, is

prohibited in the recreational fishery seaward of California all year in all areas. Retention of species or species groups for which the season is closed is prohibited in the recreational fishery seaward of California all year in all areas, unless otherwise authorized in this section. For each person engaged in recreational fishing in the EEZ seaward of California, the following closed areas, seasons, bag limits, and size limits apply:

(i) * * *

(A) *Recreational rockfish conservation areas.* The recreational RCAs are areas that are closed to recreational fishing for certain groundfish. Fishing for the California rockfish, cabezon, greenling complex (RCG Complex), as defined in paragraph (c)(3)(ii) of this section, and lingcod with recreational gear is prohibited within the recreational RCA. It is unlawful to take and retain, possess, or land the RCG Complex and lingcod taken with recreational gear within the recreational RCA, unless otherwise authorized in this section. A vessel fishing in the recreational RCA may not be in possession of any species prohibited by the restrictions that apply within the recreational RCA. For example, if a vessel fishes in the recreational salmon fishery within the recreational RCA, the vessel cannot be in possession of the RCG Complex and lingcod while in the recreational RCA. The vessel may, however, on the same trip fish for and retain rockfish shoreward of the recreational RCA on the return trip to port. If the season is closed for a species or species group, fishing for that species or species group is prohibited both within the recreational RCA and outside of the recreational RCA, unless otherwise authorized in this section. In times and areas where a recreational RCA is closed shoreward of a recreational RCA line (*i.e.,* when an ''off-shore only'' fishery is active in that management area) possession or retention of nearshore rockfish (defined as black rockfish, blue rockfish, black and yellow rockfish, brown rockfish, China rockfish, copper rockfish, calico rockfish, gopher rockfish, kelp rockfish, grass rockfish, olive rockfish, quillback rockfish, and treefish), cabezon, and greenlings is prohibited in all depths throughout the area; and possession and retention of all rockfish, cabezon, greenlings, and lingcod is prohibited shoreward of the recreational RCA boundary line, except that vessels may transit through waters shoreward of the recreational RCA line with no fishing gear in the water. Coordinates approximating boundary lines at the 30 fm (55 m) through 100 fm (183 m) depth contours can be found at § 660.71 through § 660.73. The recreational fishing season structure and RCA depth boundaries seaward of California by management area and month are as follows:

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14, is open at all depths from May 15 through October 15, and is closed October 16 through December 31.

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14; prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through July 15 (seaward of 50 fm is open), and is open at all depths from July 16 through December 31.

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through May 14; is prohibited in the EEZ shoreward of the boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from May 15 through July 15 (seaward of 50 fm is open), and is open at all depths from July 16 through December 31. Closures around Cordell Bank (see paragraph (c)(3)(i)(C) of this section) also apply in this area.

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through April 30, is open at all depths from May 1 through September 30; and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour along the mainland coast and along islands and offshore seamounts from October 1 through December 31 (seaward of 50 fm is open).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex and lingcod is closed from January 1 through March 31, open at all depths from April 1 through September 15; and is prohibited in the EEZ shoreward of a boundary line approximating the 50 fm (91 m) depth contour from September 16 through December 31 along the mainland coast and along islands and offshore seamounts (seaward of 50 fm is open), except in the CCAs where fishing is prohibited seaward of the 40 fm (73 m) depth contour when the fishing season is open (see paragraph (c)(3)(i)(B) of this section).

(B) *Cowcod conservation areas.* The latitude and longitude coordinates of the Cowcod Conservation Areas (CCAs) boundaries are specified at § 660.70. Recreational fishing for all groundfish is prohibited within the CCAs, except as specified in this paragraph. Fishing for California scorpionfish, petrale sole, starry flounder, and ''Other Flatfish'' is permitted within the CCAs as specified in paragraphs (c)(3)(iv) and (c)(3)(v) of this section. Recreational fishing for the following species is permitted shoreward of the boundary line approximating the 40 fm (37 m) depth contour when the season, as specified in paragraphs (c)(3)(ii)(A)(*5*) and (c)(3)(iii)(A)(*5*) of this section, for those species is open south of 34°27′ N lat.: Minor nearshore rockfish, cabezon, kelp greenling, lingcod, and shelf rockfish. Retention of all groundfish except California scorpionfish, petrale sole, starry flounder, and ''Other Flatfish'', is prohibited within the CCA. Coordinates for the boundary line approximating the 40 fm (73 m) depth contour are listed in § 660.71. It is unlawful to take and retain, possess, or land groundfish taken within the CCAs, except for species authorized in this section.

* * * * *

(ii) *RCG complex.* The California rockfish, cabezon, greenling complex (RCG Complex) includes all rockfish, kelp greenling, rock greenling, and cabezon. This category does not include California scorpionfish, also known as ''sculpin''.

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (North Management Area), recreational fishing for the RCG complex is open from May 15 through October 15 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14, and October 16 through December 31).

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for the RCG Complex is open from May 15 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14).

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for the RCG complex is open from May 15 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through May 14).

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for the RCG complex is open from May 1 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through April 30).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for the RCG Complex is open from April 1 through December 31 (*i.e.,* recreational fishing for the RCG complex is closed from January 1 through the March 31).

* * * * *

(iii) * * *

(A) * * *

(*1*) Between 42° N lat. (California/Oregon border) and 40°10′ N lat. (Northern Management Area), recreational fishing for lingcod is open from May 15 through October 15 (*i.e.,* recreational fishing for lingcod is closed from January 1 through May 14, and October 16 through December 31).

(*2*) Between 40°10′ N lat. and 38°57.50′ N lat. (Mendocino Management Area), recreational fishing for lingcod is open from May 15 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through May 14).

(*3*) Between 38°57.50′ N lat. and 37°11′ N lat. (San Francisco Management Area), recreational fishing for lingcod is open from May 15 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through May 14).

(*4*) Between 37°11′ N lat. and 34°27′ N lat. (Central Management Area), recreational fishing for lingcod is open from May 1 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through April 30).

(*5*) South of 34°27′ N lat. (Southern Management Area), recreational fishing for lingcod is open from April 1 through December 31 (*i.e.,* recreational fishing for lingcod is closed from January 1 through March 31)

* * * * *

(iv) ''*Other Flatfish,*'' *petrale sole, and starry flounder.* ''Other Flatfish'' are defined at § 660.11, and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

(A) *Seasons.* Recreational fishing for ''Other Flatfish,'' petrale sole, and starry flounder is open from January 1 through December 31. When recreational fishing for ''Other Flatfish,'' petrale sole, and starry flounder is open, it is permitted both outside and within the recreational RCAs described in paragraph (c)(3)(i) of this section and the CCAs described in paragraph (c)(3)(i)(B) of this section.

(B) *Bag limits, hook limits.* In times and areas where the recreational season for ''Other Flatfish,'' petrale sole, and starry flounder is open, ''Other Flatfish'' are subject to the overall 20-fish bag limit for all species of finfish, of which there may be no more than 10 fish of any one species; there is no daily bag limit for petrale sole, starry flounder and Pacific sanddab.

(C) *Size limits.* There are no size limits for ''Other Flatfish,'' petrale sole, and starry flounder.

(D) *Dressing/Filleting.* ''Other Flatfish,'' petrale sole, and starry flounder may be filleted at sea. Fillets may be of any size, but must bear intact a one-inch (2.6 cm) square patch of skin.

(v) * * *

(A) *Seasons.* When recreational fishing for California scorpionfish is open, it is permitted both outside of and within the recreational RCAs described in paragraph (c)(3)(i) of this section. Recreational fishing for California scorpionfish is open from January 1 through December 31.

* * * * *

[FR Doc. 2022–26904 Filed 12–14–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 241
Friday, December 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1648; Project Identifier MCAI–2022–00894–T]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2020–26–07, which applies to all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. AD 2020–26–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2020–26–07, the FAA has determined that a new airworthiness limitation is necessary. This proposed AD would continue to require the actions in AD 2020–26–07 and would require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 30, 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* under Docket No. FAA–2022–1648; 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.

Material Incorporated by Reference:

- For material that is proposed for IBR in this NPRM, 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.* It is also available at *regulations.gov* under Docket No. FAA–2022–1648.
- 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.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *tom.rodriguez@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–2022–1648; Project Identifier MCAI–2022–00894–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 this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *tom.rodriguez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2020–26–07, Amendment 39–21362 (85 FR 82901, December 21, 2020) (AD 2020–26–07), for all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. AD 2020–26–07 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2020–0115, dated May 20, 2020 (EASA AD 2020–0115) (which corresponds to FAA AD 2020–26–07), to correct an unsafe condition.

AD 2020–26–07 requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–

26–07 to address reduced structural integrity of the airplane. AD 2020–26–07 also specifies that accomplishing the revision required by that AD terminates certain requirements of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05). This proposed AD would therefore continue to allow that terminating action.

Actions Since AD 2020–26–07 Was Issued

Since the FAA issued AD 2020–26–07, EASA superseded AD 2020–0115 and issued EASA AD 2022–0137, dated July 6, 2022 (EASA AD 2022–0137) (referred to after this as the MCAI), for all Dassault Aviation Model MYSTERE–FALCON 900 airplanes. The MCAI states that since issuance of EASA AD 2020–0115, a new maintenance task for eddy current inspections of the flap tracks 2 and 5 has been introduced.

The FAA is proposing this AD to address reduced structural integrity of the airplane. You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1648.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0137. This service information specifies a new airworthiness limitation for eddy current inspections of the flap tracks 2 and 5.

This proposed AD would also require EASA AD 2020–0115, which the Director of the Federal Register approved for incorporation by reference as of January 25, 2021 (85 FR 82901, December 21, 2020).

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 **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2020–26–07. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate a new airworthiness limitation, which is specified in EASA AD 2022–0137 already described, as proposed for incorporation by reference. Any differences with EASA AD 2022–0137 are identified as exceptions in the regulatory text of this AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this proposed 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, the FAA proposes to retain the IBR of EASA AD 2020–0115 and incorporate EASA AD 2022–0137 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2020–0115 and EASA AD 2022–0137 through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2020–0115 or EASA AD 2022–0137 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 2020–0115 or EASA AD 2022–0137. Service information required by EASA AD 2020–0115 and EASA AD 2022–0137 for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1648 after the FAA final rule 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) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 151 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–26–07 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 proposed 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

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:

■ a. Removing Airworthiness Directive (AD) 2020–26–07, Amendment 39–21362 (85 FR 82901, December 21, 2020); and

■ b. Adding the following new AD:

Dassault Aviation: Docket No. FAA–2022–1648; Project Identifier MCAI–2022–00894–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 30, 2023.

(b) Affected ADs

(1) This AD replaces AD 2020–26–07, Amendment 39–21362 (85 FR 82901, December 21, 2020) (AD 2020–26–07).

(2) This AD affects AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010) (AD 2010–26–05).

(c) Applicability

This AD applies to all Dassault Aviation Model MYSTERE–FALCON 900 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 airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity 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 (i) of AD 2020–26–07, with no changes. 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 2020–0115, dated May 20, 2020 (EASA AD 2020–0115). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2020–0115, With No Changes

This paragraph restates the exceptions specified in paragraph (j) of AD 2020–26–07, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0115 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0115 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2020–0115 within 90 days after January 25, 2021 (the effective date of AD 2020–26–07).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0115 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2020–0115, or within 90 days after January 25, 2021 (the effective date of AD 2020–26–07), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0115 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2020–0115 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions or Intervals, With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2020–26–07, with a new exception. Except as required by paragraph (j) of this AD, after the 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 2020–0115.

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

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0137, dated July 6, 2022 (EASA AD 2022–0137). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0137

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0137 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0137 specifies revising ''the approved 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.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0137 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0137, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0137 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2022–0137 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the

''Ref. Publications'' section of EASA AD 2022–0137.

(m) Terminating Actions for Certain Requirements in AD 2010–26–05

Accomplishing the actions required by paragraph (g) or (j) of this AD terminates the requirements of paragraph (g)(1) of AD 2010–26–05, for Dassault Aviation Model MYSTERE–FALCON 900 airplanes only.

(n) 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 (o) 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 Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Additional Information

For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3226; email *tom.rodriguez@faa.gov.*

(p) 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 [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) European Union Aviation Safety Agency (EASA) AD 2022–0137, dated July 6, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR on January 25, 2021 (85 FR 82901, December 21, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0115, dated May 20, 2020.

(ii) [Reserved]

(5) For EASA ADs 2022–0137 and 2020–0115, 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 these EASA ADs on the EASA website at *ad.easa.europa.eu.*

(6) 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.

(7) 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 December 12, 2022.

Christina Underwood,

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

[FR Doc. 2022–27293 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1646; Project Identifier MCAI–2022–01135–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This proposed AD was prompted by a report that the passenger door functional test engineering requirements (FTERs) were not fully accomplished on several airplanes. This proposed AD would require measuring the passenger door steps, passenger door gaps, and passenger door stops rigging, and re-adjusting the door 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 30, 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 r*egulations.gov* under Docket No. FAA–2022–1646; 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.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.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.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services 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:

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–2022–1646; Project Identifier MCAI–2022–01135–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 this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services 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.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued AD CF–2022–48, dated September 1, 2022 (Transport Canada AD CF–2022–48) (also referred to as the MCAI), to correct an unsafe condition for certain Bombardier, Inc., Model BD–700–2A12 airplanes. The MCAI states that non-conformities have been reported involving the passenger door FTERs. It has been found that the FTER was not fully accomplished on several airplanes with the assembled airplane in the weight-on-wheel condition, which could affect the rigging of the passenger door. Door mis-rigging could result in higher loads on the passenger door stops that could initiate cracks before the intended design service goal, and an in-flight opening of the passenger door.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1646.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–52–7511, dated July 22, 2022. This service information specifies procedures for measuring the passenger door steps and gaps, rigging of the passenger door stops, and corrective actions if the measurements are not within the specified 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 **ADDRESSES**.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 29 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 4 work-hours × $85 per hour = $340	$0	$340	$9,860

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 30 work-hours × $85 per hour = $3,400	$0	$3,400

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

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2022–1646; Project Identifier MCAI–2022–01135–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 30, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70006 through 70061 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code: 52, Doors.

(e) Unsafe Condition

This AD was prompted by a report that the passenger door functional test engineering requirements (FTERs) were not fully accomplished on several airplanes. The FAA is issuing this AD to ensure that the passenger door is properly rigged. The unsafe condition, if not addressed, could result in higher loads on the passenger door stops that could initiate cracks before the intended design service goal, and an in-flight opening of the passenger door.

(f) Compliance

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

(g) Requirements

Within 72 months after the effective date of this AD, measure the passenger door steps and gap values on each lateral side of the door at 8 points, and on the lower and upper sides of the door at 4 points, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 700–52–7511, dated July 22, 2022. Then accomplish the actions specified by paragraph (g)(1) or (2) of this AD, as applicable.

(1) If any measurement is not within the specified limits, before further flight, re-adjust the passenger door steps and gaps to obtain the acceptable (necessary) values in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 700–52–7511, dated July 22, 2022.

(2) If all of the measurements are within the specified limits, before further flight, with the door in the closed position, measure the passenger door stops gaps in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 700–52–7511, dated July 22, 2022. If any passenger door stops gaps measurement is not within the specified limits, before further flight, re-adjust the passenger door stops to obtain the acceptable (necessary) values in accordance with Part D of the Accomplishment Instructions of Bombardier Service Bulletin 700–52–7511, dated July 22, 2022.

(h) No Reporting Requirement

Although Bombardier Service Bulletin 700–52–7511, dated July 22, 2022, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(i) Additional 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; or Bombardier Inc.'s Transport Canada Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–48, dated August 18, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1646.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services 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.*

(k) 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.

(i) Bombardier Service Bulletin 700–52–7511, dated July 22, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.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 December 12, 2022.

Christina Underwood,

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

[FR Doc. 2022–27294 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1448; Airspace Docket No. 21–AWP–58]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Hanford Municipal Airport, CA

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace extending upward from 700 feet above the surface at Hanford Municipal Airport, CA. These actions will support the safety and management of instrument flight rule (IFR) operations at the airport.

DATES: Comments must be received on or before January 30, 2023.

ADDRESSES: Send comments on this proposal to the U.S. DOT, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify ''FAA Docket No. FAA–2022–1448; Airspace Docket No. 21–AWP–58,'' at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, 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: Raphell P. Taylor, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (405) 666–1176.

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 (U.S.C.). 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 Class E airspace at Hanford Municipal Airport, CA, to support IFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1448; Airspace Docket No. 21–AWP–58.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, 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 Proposal

The FAA is proposing an amendment to 14 CFR part 71 by modifying the Class E airspace extending upward from 700 feet above the surface at Hanford Municipal Airport, CA. A 2.8-mile circular radius of the airport should be added to properly contain circling maneuvers. The airspace extension east of the airport should be removed. The Visalia very high frequency omnidirectional range/distance measuring equipment (VOR/DME) navigational aid was decommissioned and the airspace is no longer necessary to contain its associated instrument approach procedure. The airspace extensions to the north and southeast of the airport should be modified. These modifications would more adequately contain arriving IFR operations below 1,500 feet above the surface on the Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 32 and RNAV (GPS)-B RWY 32 approaches, and departing IFR operations until they reach 1,200 feet above the surface at the airport.

The Class E5 airspace designation is published in paragraph 6005 of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 19, 2022, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11, which is published yearly and becomes effective on September 15.

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

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current, is non-controversial, and unlikely to result in adverse or negative comments. It therefore: (1) is not a ''significant regulatory action'' under Executive Order (E.O.) 12866; (2) is not a ''significant rule'' under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Hanford, CA [Amended]

Hanford Municipal Airport, CA
(Lat. 36°19′00″ N, long. 119°37′40″ W)

That airspace extending upward from 700 feet above the surface within a 2.8-mile radius of the airport, and within 2.4 miles each side of the 142° bearing from the airport extending from the 2.8-mile radius to 7 miles southeast of the airport, and within 2.4 miles each side of the 345° bearing from the airport extending from the 2.8-mile radius to 7 miles north of the airport.

* * * * *

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

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–27252 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1455; Airspace Docket No. 21–AWP–42]

RIN 2120–AA66

Proposed Amendment of Class D and E Airspace; Lemoore Naval Air Station (NAS) (Reeves Field), CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class D and E surface airspace at the airport, remove the Class E airspace designated as an extension to a Class D or E surface area, remove the Class E airspace extending from 1,200 feet above the surface, modify the Class E airspace extending from 700 feet above the surface of the earth, and it will also propose several administrative changes to update the airport's legal description. This action would support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Comments must be received on or before January 30, 2023.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify Docket No. FAA–2022–1455; Airspace Docket No. 21–AWP–42, at the beginning of your comments. You may also submit comments through the internet at *www.regulations.gov.*

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, 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: Raphell P. Taylor, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (405) 666–1176.

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 (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class D and E airspace at Lemoore NAS, CA, to support the safety and management of IFR and VFR operations at the airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Persons wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2022–1455; Airspace Docket No. 21–AWP–42.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive

public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *www.regultions.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend 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 Proposal

The FAA is proposing an amendment to Title 14 CFR part 71 that would modify the Class D and E surface areas, remove the Class E airspace area designated as an extension to a Class D or Class E surface area, remove the Class E airspace extending upward from 1,200 feet above the surface, and modify the Class E airspace extending upward from 700 feet above the surface at Lemoore NAS.

The radius of the Class D surface airspace should be increased to 5.4 miles (previously 5.2 miles), which would more appropriately contain IFR departure operations while between the surface and the base of adjacent controlled airspace.

The Class E2 airspace should be modified to be coincident with the Class D airspace legal description.

The Class E4 airspace at the airport should be removed. The proposed lateral boundaries of the Class D and E2 surface areas are sufficient to contain IFR aircraft on instrument approaches when less than 1,000 feet above the surface.

The north and southeast extensions to the Class E5 airspace extending upward from 700 feet above the surface are no longer needed and should be removed. A Class E5 area extending upward from 700 feet above the surface within a 7.9-mile radius airspace area about the airport is sufficient to contain IFR arrivals descending below 1,500 feet above the surface and IFR departures to 1,200 feet above the surface.

The Class E5 airspace extending upward from 1,200 feet above the surface at the airport should be removed as the area is already contained within the Sacramento Class E domestic en route airspace, and duplication is not necessary.

Additionally, the FAA proposes administrative modifications to the airport's legal descriptions. The term ''NAS'' is not associated with the correct city information in the first line of the text header in the Class D and E2 legal descriptions, and it should be removed. The terms ''Notice to Airmen'' and ''Airport/Facility Directory'' in the Class D and E2 airspace descriptions should be updated to read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to match the FAA's current nomenclature. The airport name in the second line of the legal description text headers should be corrected. The name ''LeMoore'' should be replaced with ''Lemoore,'' to more accurately describe the airport. The third line of the text header currently references the Lemoore NAS Tactical Air Navigation (TACAN) navigational aid, but should list the airport's geographic coordinates instead, as it simplifies the airspace's legal description. This line should read ''(lat. 36°19′59″ N, long. 119°57′08″ W).'' and the reference to the Lemoore NAS TACAN should be removed, as it is no longer needed to describe the airspace.

Class D, E2, E4, and E5 airspace designations are published in paragraphs 5000, 6002, 6004, and 6005, 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, which is published yearly and becomes effective on September 15. FAA Order JO 7400.11, Airspace Designations and Reporting Points is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 20122 is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Lemoore, CA [Amended]

Lemoore NAS (Reeves Field), CA
(Lat. 36°19′59″ N, long. 119°57′08″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.4-mile radius 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.

* * * * *

AWP CA E2 Lemoore, CA [Amended]

Lemoore NAS (Reeves Field), CA
(Lat. 36°19′59″ N, long. 119°57′08″ W)

That airspace extending upward from the surface within a 5.4-mile radius 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 Surface Area.

* * * * *

AWP CA E4 Lemoore NAS, CA [Removed]

Lemoore NAS (Reeves Field), CA
(Lat. 36°19′59″ N, long. 119°57′08″ W)

Lemoore TACAN
(Lat. 36°20′39″ N, long. 119°57′59″ W)

That airspace extending upward from the surface within 1.8 miles each side of the Lemoore TACAN 335° and 357° radials, extending from the 5.2-mile radius of Lemoore NAS (Reeves Field) to 7 miles northwest and north of the TACAN, and within 1.8 miles each side of the Lemoore TACAN 155° radial, extending from the 5.2-mile radius to 7 miles southeast of the TACAN.

* * * * *

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

* * * * *

AWP CA E5 Lemoore, CA [Amended]

Lemoore NAS (Reeves Field), CA
(Lat. 36°19′59″ N, long. 119°57′08″ W)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of the airport.

* * * * *

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

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–27250 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice: 11801]

RIN 1400–AF26

International Traffic in Arms Regulations: Amendment to the Definition of Activities That Are Not Exports, Reexports, Retransfers, or Temporary Imports

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State proposes to add two new entries to the International Traffic in Arms Regulations (ITAR) to expand the definition of ''activities that are not exports, reexports, retransfers, or temporary imports.'' First, subject to certain conditions, the taking of defense articles outside a previously approved country by the armed forces of a foreign government or United Nations personnel on a deployment or training exercise is not an export, reexport, retransfer, or temporary import. Second, a foreign defense article that enters the United States, either permanently or temporarily, and that is subsequently exported from the United States pursuant to a license or other approval under this subchapter, is not subject to the reexport and retransfer requirements of this subchapter, provided it has not been modified, enhanced, upgraded, or otherwise altered or improved or had a U.S.-origin defense article integrated into it.

DATES: Send comments on or before February 14, 2023.

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

- *Email: DDTCPublicComments@state.gov* with the subject line, ''ITAR Amendment—120.54 Additions.''
- *Internet:* at *www.regulations.gov,* search for this notice, Docket DOS–2022–0031.

Comments received after that date may be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not desire to be made public or any information for which a claim of confidentiality is asserted, because comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Control website at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may submit comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

FOR FURTHER INFORMATION CONTACT: Dilan Wickrema, Office of Defense Trade Controls Policy, U.S. Department of State, telephone (202) 634–4981, or email *DDTCCustomerService@state.gov.* ATTN: Regulatory Change, ITAR 120.54 additions.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). The items subject to the jurisdiction of the ITAR, *i.e.,* defense articles and defense services, are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). The ITAR imposes license requirements for exports and reexports of controlled items.

On March 25, 2020, the Department added a new ITAR section (§ 120.54) to clarify and consolidate activities that do not require authorization from the Department (84 FR 70887). This proposed rule would add to ITAR § 120.54 two activities that are not controlled events (defined herein, and in the previous rule, to mean ''an export, reexport, retransfer, or temporary import'') and therefore do not require authorization from the Department. While previously not specified in the ITAR, the Department's long-standing policy is that these two proposed activities are not controlled events.

The first of the two new proposed additions to ITAR § 120.54 is a new paragraph (a)(6) making explicit that the taking of defense articles outside a previously approved country by the armed forces of a foreign government or United Nations personnel on a deployment or training exercise is not a controlled event, provided there is no change in end-use or end-user. The Department proposes this new provision to ensure interoperability between and among the United States and partner countries' armed forces when deployed and to provide assurances to partner countries that have requested a clearer statement of the long-standing Department policy articulated in this proposed rule. This policy is noted in DDTC's ''Guidelines for Preparing Agreements'' and this proposed provision would codify this long-standing understanding in the ITAR.

The second addition to ITAR § 120.54 would state in a new paragraph (a)(7) that the transfer of a foreign defense

article originally imported into the United States that has since been exported out of the United States, is not a controlled event, unless certain enumerated circumstances have occurred.

The Department proposes this new provision to eliminate any misperception that foreign defense articles which originally entered the United States and have since been exported out of the United States always will require Department authorization for subsequent transfers. The Department assesses this proposed provision will address concerns raised by partners and allies and avoid the need for unnecessary requests for authorization on the part of domestic and foreign defense companies.

Request for Comments: The Department welcomes public comment on any of the proposed changes set forth in this rule. In particular, we invite comments from foreign government end-users on the application of these provisions.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States government and rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA), pursuant to 5 U.S.C. 553(a)(1). Notwithstanding the assertion of the foreign affairs exemption, the Department is solicitating comment on this proposed rule.

Regulatory Flexibility Act

Notwithstanding the Department's publication of this rulemaking as a proposed rule, this rule is exempt from the notice-and-comment rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function. Therefore, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Orders 12372 and 13132

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess 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, distributed impacts, and equity). This rule's scope does not impose additional regulatory requirements or obligations; therefore, the Department believes costs associated with this rule will be minimal. Although the Department cannot determine based on available data how many fewer licenses will be submitted as a result of this rule, the amendments to the definition of activities that are not exports, reexports, retransfers, or temporary imports will relieve licensing burdens for some exporters. This rule is consistent with Executive Order 13563, which 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,'' although not economically significant, by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State has reviewed the proposed rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

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

Paperwork Reduction Act

This proposed rule does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

For the reasons set forth above, the Department of State proposes to amend title 22, chapter I, subchapter M, part 120 as follows:

PART 120—PURPOSE AND DEFINITIONS

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

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

■ 2. Amend § 120.54 by adding paragraphs (a)(6) and (7) to read as follows:

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

(a) * * *

(6) The taking of a defense article subject to the reexport or retransfer requirements of this subchapter on a deployment or training exercise outside a previously approved country, provided:

(i) the defense article is transported by and remains in the possession of the armed forces of a foreign government or United Nations personnel; and

(ii) there is no change in end-use or end-user with respect to the subject defense article.

(7) The transfer of a foreign defense article previously imported into the United States that has since been exported from the United States pursuant to a license or other approval under this subchapter, provided:

(i) the foreign defense article was not modified, enhanced, upgraded or otherwise altered or improved in a manner that changed the basic performance of the item prior to its return to the country from which it was imported or a third country; and

(ii) a U.S.-origin defense article was not incorporated into the foreign defense article.

* * * * *

Bonnie Jenkins,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2022–27156 Filed 12–15–22; 8:45 am]

BILLING CODE 4710–25–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 8

[CG Docket No. 22–2; FCC 22–86; FR ID 116786]

Empowering Broadband Consumers Through Transparency

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on additional proposals to implement the Infrastructure Investment and Jobs Act (Infrastructure Act). Specifically, the Commission seeks comment on refining broadband consumer labels to include more comprehensive information on pricing, bundled plans, label accessibility, performance characteristics, service reliability, cybersecurity, network management and privacy issues, the availability of labels in multiple languages, and whether the labels should be interactive or otherwise formatted differently so the information contained in them is clearer and conveyed more effectively.

DATES: Comments are due on or before January 17, 2023, and reply comments are due on or before February 14, 2023.

ADDRESSES: Interested parties may submit comments, identified by CG Docket No. 22–2, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy,* Public Notice, DA 20–304 (March 19, 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon of the Consumer and Governmental Affairs Bureau at (202) 418–0346 or *Erica.McMahon@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking (*FNPRM*), in CG Docket No. 22–2, FCC 22–86, adopted on November 14, 2022 and released on November 17, 2022. The full text of the document is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice).

This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Initial Paperwork Reduction Act of 1995 Analysis

The *FNPRM* proposes rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Public Law 104–13; 44 U.S.C. 3501–3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Public Law 107–198; 44 U.S.C. 3506(c)(4).

Synopsis

1. In 2021, the President signed into law the Infrastructure Act, which, in relevant part, directs the Commission ''[n]ot later than 1 year after the date of enactment of th[e] Act, to promulgate regulations to require the display of broadband consumer labels, as described in the Public Notice of the Commission issued on April 4, 2016 (DA 16–357), to disclose to consumers information regarding broadband internet access service plans.'' *See* Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, section 60504(a) (2021) (Infrastructure Act).

2. In a Report and Order released on November 17, 2022 (FCC 22–86) (*Broadband Label Order*), and published elsewhere in this issue of the **Federal Register**, the Commission adopted a new broadband label to help consumers comparison shop among broadband services, thereby implementing section 60504 of the Infrastructure Act. Specifically, the Commission required broadband internet service providers (ISPs or providers) to display, at the point of sale, a broadband consumer label containing critical information about the provider's service offerings, including information about pricing, introductory rates, data allowances, performance metrics, and whether the provider participates in the Affordable Connectivity Program (ACP). The Commission required that ISPs display the label for each stand-alone broadband internet access service they currently offer for purchase, and that the label link to other important information such as network management practices, privacy policies, and other educational materials.

3. In the proceeding, commenters offered certain suggestions for the labels that were not adopted because the record requires additional development on such issues. The Commission therefore seeks further comment in this *FNPRM* on issues related to accessibility and languages, performance characteristics, service reliability, cybersecurity, network management and privacy, formatting, and whether ISPs should submit label information to the Commission.

A. Accessibility and Languages

4. In the *Broadband Label Order,* the Commission explained that all consumers, including those with disabilities, need broadband service for access to emergency services, telehealth services, and video conferencing, as well as to news and entertainment. Several commenters suggested additional ways to improve accessibility of the broadband label. For example, the American Council of the Blind proposed that video relay service and video calling service be made available to provide customer service in American Sign Language for broadband labelling information, irrespective of whether the broadband label information is provided in hard copy or digitally. The City of New York proposed that the Commission require Braille or a Quick Response (QR) code with a tactile indicator for blind or visually impaired consumers.

5. In the *Broadband Label Order,* the Commission required ISPs to post information on their websites in an accessible format, and the Commission strongly encouraged them to use the most current version of the Web Content Accessibility Guidelines (WCAG). *See* WC3 Web Accessibility Initiative, Web Content Accessibility Guidelines (WCAG) 2.1, *https://www.w3.org/TR/WCAG21/.* The Commission did not specify which WCAG sections would be relevant to the broadband label in the *Broadband Label Order.* The Commission seeks comment on whether to adopt specific criteria, based on the WCAG standard. For example, the WCAG 2.1 suggests providing text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, Braille, speech, symbols, or simpler language. The WCAG also suggests providing definitions of words or phrases used in an unusual or restricted way, including idioms and jargon and abbreviations. The Commission seeks comment on whether to mandate specific WCAG suggestions for the broadband label. Commenters should cite to the specific WCAG sections they propose the Commission adopt.

6. In the *Broadband Label Order,* the Commission required ISPs to make the labels available in English and any other languages in which they market their services in the United States. The Commission seeks further comment on whether ISPs should be required to make the label available in languages other than those in which they market their services, such as Spanish, Simplified Chinese, Traditional Chinese, Korean, Vietnamese, and Tagalog. Should ISPs base the languages available on the consumer or network location? For example, should a provider offering services in an area with a significant Spanish-speaking population be required to provide a label in Spanish even if it does not provide its marketing materials in Spanish, while a provider serving a region with a significant Vietnamese population be required to provide the label in Vietnamese? Should the languages available comport with the Census Bureau's American Community Survey data or another identifiable metric? Should providers be required to translate their labels into other languages upon the request of any consumer considering purchase of the provider's service? Or would providing information on the Commission's planned glossary web page in additional languages, including translated label templates, resolve any language barrier problems? What are the burdens, if any, associated with requiring providers to make the label available in languages in which they do not market their services?

B. Price Information

7. In the *Broadband Label Order,* the Commission adopted a requirement that labels display the base monthly ''retail'' price for standalone broadband, *i.e.,* the price a provider offers broadband to consumers before applying any discounts such as those for paperless billing, autopay, or any other discounts, along with one-time and recurring monthly fees. The Commission did not require providers to display additional information that affects the bottom line price consumers pay each month, such as discounts for paperless billing and for bundling broadband with other services. The Commission seeks comment on whether to require providers to display these discounts and other variables (such as location-specific taxes) in future versions of the label. Should such a requirement include all potential discounts and other price variables, or just those that reflect most consumer purchases or providers' most popular packages? If the Commission were to adopt a more comprehensive set of labels, how can it best ensure that additional point-of-sale labels do not overwhelm consumers with too much information, thus rendering comparison shopping too difficult for the average consumer?

8. The Commission seeks specific comment on pricing information for bundles. Would a label requirement for bundled services, with a single price for the entire bundle, help consumers? Do so many consumers purchase broadband in a bundle that requiring labels for bundles makes sense? If the Commission were to adopt such a requirement, would the Commission need to define ''bundled services'' for these purposes? If yes, the Commission proposes to use the definition that the Commission adopted for purposes of the *ACP Data Collection Order* (FCC 22–87) and seeks comment on that approach. *See Affordable Connectivity Program,* WC Docket No. 21–450, Fourth Report and Order and Further Notice of Proposed Rulemaking (FCC 22–87), adopted on November 15, 2022 and released on November 23, 2022. Are there any specific services that should be included or excluded from such a requirement? The Commission seeks comment on these and any other issues relevant to bundled services.

C. Performance Information

9. *Speed.* Broadband speed is measured in megabits per second, or Mbps; generally, the higher the speed, the faster a user can download and upload files and stream videos. In the *Broadband Label Order,* the Commission adopted a typical usage measurement requirement, explaining that, at a minimum, ISPs must list on the label the typical download and upload speeds for fixed and mobile broadband services. The Commission also noted that many providers describe their mobile service offerings in standards-based and marketing terms such as LTE, 4G, 5G, 5G UC, or 5G UWB service (instead of providing the typical speeds associated with the offer).

10. The Commission recognized that the speed a customer will experience can vary depending on the consumer's equipment, how many devices are operating in the household, network congestion, network usage of nearby customers, and the distance to a cell site (for wireless broadband). Given these variables, the Commission seeks comment on whether there are more appropriate ways to measure speed and latency other than ''typical'' for purposes of the label disclosure such as average or peak speed and latency. Should the Commission require providers to add another speed metric to the label in addition to typical speed? As discussed in the *Broadband Label Order,* some commenters offered alternatives to typical speed measurements. The Commission seeks comment on whether any of these proposals, or another metric, would be more useful, and on any burdens on providers of implementing such proposals.

11. Commenters should discuss alternative methodologies that would be useful for consumers. As the

Commission explained in the *Broadband Label Order,* it is important that providers measure and disclose speeds consistently in order to ensure that consumers can compare options when selecting a service provider or a service offering.

12. *Reliability.* Service reliability is an additional performance measure that is extremely difficult for consumers to discern when shopping for a broadband service, yet can factor greatly into their purchase decisions. Service reliability has taken on increased importance in light of increased reliance on consumer broadband services to support telework and virtual schooling. The record in the proceeding evidenced support for providing service reliability information to consumers.

13. To what extent would adding a reliability measure to the label improve the availability of that information to consumers? How would this information assist consumers with their purchasing decisions? If the Commission required a reliability measure to be provided to consumers, how should reliability be represented on a broadband label? Would a metric such as ''Network availability = XX.XX% (Y minutes unavailable per month)'' be appropriate? The Commission anticipates that a metric such as this would be easily comprehensible and uniformly applicable across fixed and mobile broadband networks. In addition, it should be relatively straightforward for ISPs to measure availability in terms of the percentage of time/minutes per month that their service is ''hard-down'' (meaning that service quality is not simply degraded but unavailable) and is likely already captured at peering points. The Commission seeks comment on this metric, as well as on any alternatives that would be easy for consumers to understand and compare when shopping for broadband service. If this metric is adopted, how should it be calculated to ensure that it can be compared across service providers? For example, would a reliability metric need to be expressed in a way that is specific to a geographic area or specific to certain networks within a service package? Should calculation of a reliability metric account for conditions that might be considered as outside of the provider's control (*e.g.,* customer power outages, mobile devices outside of the service provider's geographic coverage area with/out roaming), and if so, how should it account for them?

14. Would including the FCC SpeedTest app through a link on the label assist consumers in determining whether ''they are getting what they paid for'' (*i.e.,* whether their service is available in a particular instance)? Should the Commission take steps to confirm the accuracy of information on reliability, and if so, what steps should the Commission take?

15. *Cybersecurity.* Consumers may find it relevant when comparison shopping whether the broadband service that they are considering is reasonably secure. Should ISPs be required to disclose at the point of sale information about their cybersecurity practices? What standards or best practices should be used to benchmark a broadband service's security posture? How should broadband labels describe or depict the security of a broadband service to make that information as easy as possible for consumers to understand? Should broadband labels warn consumers if an ISP has left certain cyber risks unmitigated by reasonable security measures? If this information is to be made available to consumers, would including a link on the label to direct consumers to the provider's website be sufficient?

16. *Other Service Characteristics.* The Commission seeks comment on whether there are other service characteristics, beyond speed and latency, and possibly reliability and cybersecurity, that ISPs should display on the label. For any such performance characteristics, do ISPs currently measure them and, if so, do they measure them in a reasonably unform way? As the Commission considers additions to the label, it seeks to balance the consumer benefits against the costs to ISPs.

D. Network Management and Privacy

17. *Network Management Practices.* In the *Broadband Label Order,* the Commission adopted a requirement that the broadband label link to the ISP's website for more information on network management practices, rather than including such practices in detail on the label. The Commission seeks further comment on whether a link to the network management practices is sufficient or if the label should include more specific disclosures about whether the provider engages in blocking, throttling, and paid prioritization. The Commission notes that, under the *2017 Restoring Internet Freedom* Order, 83 FR 7852 (Feb. 22, 2018), ISPs are required to disclose any blocking, throttling, affiliated prioritization, paid prioritization, or security practices in which they engage. Commenters should discuss whether these disclosures should be added to the label or whether a link to the provider's network management practices is sufficient. Additionally, the Commission seeks comment on whether network management practices, either in the label or linked, should be written in a way that is clear and understandable for non-technical audiences.

18. *Privacy Policies.* The Commission observed in the *Broadband Label Order* that several commenters discuss issues related to privacy, such as whether an ISP discloses consumer data to third parties and whether ISPs collect and retain data about consumers (*e.g.,* the websites the consumer visits). These commenters urge the Commission to add certain privacy elements to the new label, such as disclosures about user data collection, retention, and tracking. Other commenters argue that, due to the limitations on the amount of information that may be included in a concise label, expansive privacy disclosures on a label are impractical.

19. The Commission seeks comment on whether to continue to include a link to the service provider's current privacy policy in the label instead of including any detailed privacy information in the label itself. Commenters should discuss whether the Commission should require providers to affirmatively state, in addition to providing their privacy policy, whether the provider collects or uses consumer data for reasons other than providing broadband service, and if this is shared with third parties.

E. Format Issues

20. *Interactive Labels and Drop-Down Menus.* The broadband label the Commission adopted does not include interactive options or expanded labels with additional information. Consumers may, however, find an interactive label helpful. For example, customers may be able to input their household internet activity and see additional information that would estimate their internet experience under each plan. Alternatively, interactive labels can also be used to reveal additional information that may be important to a small subset of consumers but might be confusing to the average consumer. The Commission seeks comment on whether to require ISPs to provide additional information in an interactive label.

21. An interactive label could also include an ''expand'' option that would provide more detailed information on specific categories of information, such as pricing. For example, such a tool could provide monthly pricing totals for the options a consumer selects. Alternatively, ISPs could provide this additional information in a chart or table on their websites to assist consumers in determining what services will best meet their needs. Further, the Commission seeks comment on how to

provide this same information in dissimilar sales contexts such as in-store and over-the-phone settings. Commenters should discuss these options and any burdens associated with implementing these proposals. Commenters should also address how proposed interactive labels must be machine readable as well as accessible and translated in languages other than those in which they market their services.

22. *Focus Groups and Surveys.* The Commission notes that, in both initially drafting and then updating its fuel economy labels, the United States Environmental Protection Agency (EPA) used consumer feedback from surveys and focus groups. The Commission seeks comment on whether it would be useful for the Commission to similarly employ focus groups, surveys, or subject-matter experts to provide feedback on future refinements to the broadband labels.

23. *Style Guides and Implementation Tools.* The broadband label the Commission adopted is a tool for comparison shopping and works best when it is standardized across the industry. The record in the proceeding shows that other federal agencies, namely the EPA and United States Food and Drug Administration (FDA), have published compliance tools for entities that must comply with their fuel economy and nutrition labels. For example, the FDA published a style guide showcasing how a label should appear in various settings; it included an annotated template that assisted a product's design team with the creation of the label. Everything from font size, kerning, line width, and color was explained in detail. The Commission seeks comment on whether a similar set of tools would be appropriate to ease the burden on providers of creating labels and to enhance consistency in the marketplace, or whether having templates in the form of fillable PDFs on the Commission's website serves that purpose. If an additional style guide would be helpful, the Commission seeks comment on what should be included in it, with particular attention to accessibility concerns and point-of-sale scenarios both online and in retail storefront situations.

F. Labels Submitted to the Commission

24. In the *Broadband Label Order,* the Commission required ISPs to provide broadband labels at the point of sale and to archive their labels for two years. Several commenters proposed that the Commission give ISPs the option of submitting labels directly to the Commission instead. The Commission seeks comment on whether it should allow ISPs to do so and whether it should maintain a database of labels and post them on the Commission's website. Alternatively, should the Commission allow providers to seek a hardship waiver from the requirement to display labels on their websites, and only if such waiver is granted, permit them to submit their labels to the Commission? In either case, how long should the labels remain on the Commission's website? Commenters should discuss whether the entire label should be submitted to the Commission or whether only the data disclosed in the label, such as the pricing information and typical speeds, should be provided to the Commission in spreadsheet form. In addition, commenters should address any burdens on ISPs of providing labels to the Commission, and any concerns about the possible burdens on consumers with this proposed approach.

Initial Regulatory Flexibility Analysis

25. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *FNPRM.* Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided.

A. Need for, and Objectives of, the Proposed Rules

26. In the *Broadband Label Order,* the Commission required broadband internet service providers (ISPs or providers) to provide, at the point of sale, labels for fixed and mobile broadband services that contain information about prices, introductory rates, data allowances, and broadband speeds, and to provide links to other information about broadband services on their websites.

27. In the *FNPRM,* the Commission seeks comment on additional issues based on commenters' feedback and suggestions in response to the *Empowering Broadband Consumers Through Transparency NPRM,* 87 FR 6827 (Feb. 7, 2022). Specifically, the *FNPRM* seeks comment on issues related to: (i) accessibility and languages, (ii) performance characteristics, including reliability and cybersecurity; (iii) network management and privacy, (iv) formatting, and (v) whether ISPs should submit label information to the Commission.

28. In order to improve and enhance accessibility for people with disabilities, the *FNPRM* seeks comment on whether the Commission should require broadband label information to be provided in Braille, large print, audibly, and in American Sign Language, as well as other formats. The *FNPRM* seeks comment on whether the Commission should adopt specific criteria, based on the Web Content Accessibility Guidelines (WCAG), section 2.1. This section suggests providing text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, braille, speech, symbols or simpler language. The WCAG also suggests providing definitions of words or phrases used in an unusual or restricted way, including idioms and jargon and abbreviations.

29. The *Broadband Label Order* required that the labels be provided in English and in other languages in which the provider markets its services. The *FNPRM* seeks comment on whether ISPs should be required to make the labels available in other languages, such as Spanish, Simplified Chinese, Traditional Chinese, Korean, Vietnamese, and Tagalog, or whether they should be required to translate the labels into other languages upon a consumer's request.

30. The *Broadband Label Order* required ISPs to disclose in the labels their typical download and upload speed measurements for each broadband service offering. The *FNPRM* seeks comment on whether the Commission should use a different metric, such as average speed, or require ISPs to disclose speeds for certain time periods. The *FNPRM* also seeks comment on additional performance characteristics that the Commission should consider requiring in the label.

31. In the *Broadband Label Order,* the Commission adopted a requirement that ISPs include a link in their broadband labels to additional information about their network management practices. In the *FNPRM,* the Commission seeks comment on whether a link to the network management practices is sufficient or if the labels should include more specific disclosures about whether the provider engages in blocking, throttling, and paid prioritization. The *FNPRM* also seeks comment on whether the Commission should continue to require that the labels contain a link to the service provider's current privacy policy or whether they should include more detailed privacy information in the label itself. The *FNPRM* also requests that commenters address whether the label should state if the provider collects or uses consumer data

for reasons other than providing broadband service, and if such information is shared with third parties.

32. In addition, the *FNPRM* seeks comment on whether the Commission should require ISPs to provide an interactive label or a drop-down menu, with more detailed information about their service offerings. The *FNPRM* also seeks comment on whether the Commission should employ focus groups, surveys, or subject experts to provide feedback on further refinements to the broadband labels. In addition, the *FNPRM* seeks comment on whether the Commission should create and post a style guide to assist providers with compliance and if so, what should be included in a style guide. The *FNPRM* also seeks comment on whether the Commission should require ISPs to provide labels for their bundled service offerings. Finally, the *FNPRM* seeks comment on whether the Commission should permit providers to submit their labels to the Commission, and whether the Commission should maintain a database of all required broadband labels, and post them on the Commission's website.

B. Legal Basis

33. The proposed rules are authorized under sections 4(i), 4(j), 13, 201(b), 254, 257, 301, 303, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 163, 201(b), 254, 257, 301, 303, 316, 332, section 60504 of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), and section 904 of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 (2020).

C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

34. The *FNPRM* seeks comment on specific proposals to refine the broadband labels adopted in the *Broadband Label Order.* These proposals could result in additional reporting and compliance requirements for ISPs.

35. The *FNPRM* seeks comment on whether to require that broadband label information be provided in Braille, large print, audibly, and in American Sign Language, as well as other formats in order to make the labels more accessible to people with disabilities. The *FNPRM* also seeks comment on whether ISPs should be required to provide the labels in languages other than those in which they market their services, such as Spanish, Simplified Chinese, Traditional Chinese, Korean, Vietnamese, and Tagalog. In addition the *FNPRM* seeks comment on whether to require providers to translate the labels into other languages upon a consumer's request. If additional language requirements are adopted, ISPs would be required to make the labels available in those languages.

36. The *FNPRM* seeks comment on whether there are more appropriate ways to measure speed and latency other than ''typical'' for purposes of the label disclosure such as average or peak speed and latency. The Commission asks whether it should require providers to add another speed metric to the label in addition to typical speed. During the proceeding, some commenters offered alternatives to typical speed measurements. The *FNPRM* seeks comment on whether any of these proposals, or another metric, would be more useful, and on any burdens on providers of implementing such proposals. In addition, in the *FNPRM,* the Commission considers requiring additional information in the label on service reliability and cybersecurity practices. If adopted, these proposals would alter the metrics ISPs would be required to report on the broadband labels and will result in alternative recordkeeping requirements.

37. In the *FNPRM,* the Commission seeks comment on whether a link to the network management practices is sufficient or if the labels should include more specific disclosures about whether the provider engages in blocking, throttling, and paid prioritization. The Commission also seeks comment on whether network management practices, either in the label or linked, should be written in a way that is clear and understandable for non-technical audiences. If the Commission adopts requirements for disclosing network management and privacy policies beyond links to the ISP's website (as is required in the *Broadband Label Order*), ISPs will be required to display additional information in the labels, resulting in alternative reporting requirements.

38. In addition, the *FNPRM* seeks comment on whether to require ISPs to provide additional information in an interactive label, which could also include an expand option that would provide more detailed information on specific categories of information, such as pricing. Alternatively, the *FNPRM* seeks comment on whether ISPs should provide this additional information in a chart or table on their websites to assist consumers in determining what services will best meet their needs. Further, the Commission seeks comment on how to provide this same information in dissimilar sales contexts such as in-store and over-the-phone settings. If adopted, these proposals would require ISPs to comply with additional label requirements.

39. The *FNPRM* also seeks comment on whether the Commission should require ISPs to display discounts and other variables in the labels. In addition, the *FNPRM* seeks comment on whether the Commission should require ISPs to provide labels for their bundled service offerings that include broadband internet access services. If adopted, this would require ISPs to display labels in addition to the ones required for the stand-alone broadband internet access service.

40. Finally, several commenters proposed that the Commission give ISPs the option of submitting labels directly to the Commission instead of displaying them at the point of sale. The Commission seeks comment on whether to allow ISPs to do so and whether to maintain a database of labels and post them on the Commission's website. Alternatively, the Commission considers whether to allow providers to seek a hardship waiver from the requirement to display labels on their websites, and only if such waiver is granted, permit them to submit their labels to the Commission. Allowing providers to submit labels to the Commission may result in some additional reporting requirements for those providers who opt to do so.

D. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

42. The Commission will evaluate the economic impact on small entities, as identified in comments filed in response to the *FNPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

43. None.

List of Subjects in 47 CFR Part 8

Cable television, Common carriers, Communications common carriers, Reporting and recordkeeping requirements, Satellites, Telecommunications, Telephone, Radio.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–26853 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 232, and 252

[Docket DARS–2022–0029]

RIN 0750–AJ46

Defense Federal Acquisition Regulation Supplement: Payment Instructions (DFARS Case 2017–D036)

AGENCY: Defense Acquisition Regulation System, Department of Defense (DoD)

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide payment instructions for certain contracts based on the type of item acquired and the type of payment.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 14, 2023, to be considered in the formation of a final rule.

ADDRESSES: Submit comments in response to DFARS Case 2017–D036 by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2017–D036''. Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2017–D036'' on any attached document.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2017–D036 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulation.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to provide payment instructions for certain contracts based on the type of payment and item acquired. The proposed rule would require separate progress payment requests in order to segregate foreign military sales (FMS) and U.S. line items in progress payment requests. In addition, the proposed rule provides procedures for structuring progress payment requests for contracts with multiple production lots.

The proposed rule consists of clarifications that require no additional effort by large or small entities. The rule provides contracting officers and contractors clearer instruction on information to include in payment instructions and payment requests for multiple lot purchases and combined FMS/U.S. acquisitions.

II. Discussion and Analysis

A review of Procurement Data Standard validation results has shown that contracting officers are not consistently inserting required payment instructions into contracts. Further, the Defense Finance and Accounting Service (DFAS) reported that the payment instructions, if inserted, are often not appropriate for the given contract. Upon review, DoD found that the appropriate accounting treatment for payments can be determined by the type of payment and item acquired. In addition, DoD recognized the need to establish procedures for structuring progress payment requests for contracts with multiple production lots.

DFARS 204.7109, Contract clauses, and the clause at DFARS 252.204–7006, Billing Instructions, are being amended to change the applicability of contractor cost vouchers to cost-reimbursable, time-and-material, and labor-hour contracts. The clause applicability was revised to align with payment instruction procedures provided in DFARS Procedures, Guidance, and Information 204.7108(b)(3). DFARS 252.204–7006, Billing Instructions, clause title is also revised to ''Billing Instructions-Cost Vouchers''.

The following revisions have been made to simplify the contracting officer's instructions to the payment office for progress payment funding allocations: DFARS 232.502–4–70, Additional clauses, and the new clause at 252.232–70XX, Progress Payments-Multiple Lots, provide the procedures for submitting progress payments for contracts with multiple production lots. In addition, DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, is revised to clarify the requirement for submitting separate progress payment requests for FMS and U.S. contract line items.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

The proposed rule clarifies payment instructions for certain contracts based on the type of item acquired and the type of payment by amending DFARS 252.204–7006 and 252.232–7002, and adding a new clause at 252.232–70XX. DoD plans to apply all three clauses to solicitations and contracts at or below the SAT. This rule does not apply to commercial services or commercial products, including COTS items.

IV. Expected Impact of the Rule

Currently, payment instructions are being entered manually into DoD's payment systems due to a lack of clarity in the DFARS with regard to payment instructions. This proposed rule clarifies the payment instruction language in the DFARS. The clarifications in this proposed rule will reduce data errors and inoperability problems throughout DoD's business processes created by manual entry of payment instructions in the payment systems, as well as reducing the cost of data entry.

V. Executive Order 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of this proposed rule is to provide clarifications on payment instructions for certain contracts based on the type of item acquired and the type of payment. DoD has found that the payment instructions often are not inserted when required and that payment instructions, if inserted, are often not appropriate for the contracts in question. An analysis of the issue showed that the appropriate accounting treatment for payments can be derived from the type of item acquired and the type of payment. In addition, the analysis highlighted the need to establish procedures for structuring progress payment requests for contracts with multiple production lots. The clarifications in this proposed rule will promote consistency with generally accepted accounting principles and reduce data errors created by manual entry of payment instructions in the payment systems.

The objective of the proposed rule is to clarify payment instructions. The proposed rule includes clarifications to procedures for billing instructions when submitting cost vouchers and progress payment requests. The proposed rule clarifies instructions to contractors in the clauses at DFARS 252.204–7006, Billing Instructions, and 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions. The proposed rule also includes a new contract clause at 252.232–70XX, Progress Payments—Multiple Lots. The legal basis for the rule is 41 U.S.C. 1707.

The proposed rule will apply to all small entities that will be awarded cost-reimbursement, time-and-material, or labor-hour contracts. However, the proposed rule requires negligible additional effort by contractors, including small entities, and it simply clarifies the identification and use of payment information elements in payment requests. According to data from the Federal Procurement Data System for fiscal years 2017 through 2019, approximately 446,845 cost-reimbursement, time-and-material, and labor-hour contracts (60 percent of all awards) are awarded to 29,022 small businesses (60 percent of all awardees) each year. This proposed rule also applies to contracts that use multiple accounting classifications or that involve progress payments for multiple production lots. DoD cannot accurately quantify the number of contracts subject to the multiple-lot progress payments clause, but such contracts are likely few in number.

The rule does not contain any new reporting, recordkeeping, or other compliance requirements for small entities.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known, significant, alternative approaches to the proposed rule that would meet the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2017–D036), in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule regarding new DFARS clause 252.232–70XX, Progress Payments—Multiple Lots. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget (OMB) Control Number 9000–0010, titled Progress Payments, SF 1443.

The rule affects information collection requirements in DFARS 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, currently approved under OMB Control Number 0704–0321, titled DFARS Part 232, Contract Financing, and the Clause at 252.232–7002, Progress Payments for Foreign Military Sales Acquisition. The impact, however, is negligible because the changed reporting requirement is not anticipated to increase the estimate of total burden hours; rather the requirement to submit separate payment requests by rate is merely replaced by a requirement to submit separate payment requests for FMS and U.S. line items in the contract.

List of Subjects in 48 CFR Parts 204, 232, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 232, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 232, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Amend section 204.7109 by revising paragraph (b) to read as follows:

204.7109 Contract clauses.

* * * * *

(b) Use the clause at 252.204–7006, Billing Instructions—Cost Vouchers, in solicitations and contracts when a cost-reimbursement contract, a time-and-materials contract, or a labor-hour contract is contemplated.

PART 232—CONTRACT FINANCING

■ 3. Amend section 232.502–4–70 by adding paragraph (c).

The addition reads as follows:

232.502–4–70 Additional clauses.

* * * * *

(c) Use the clause at 252.232–70XX, Progress Payments—Multiple Lots, to authorize separate progress payment requests for multiple lots.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Amend section 252.204–7006—

■ a. By revising the section heading, clause title, and clause date; and

■ b. In the clause introductory text, removing ''payment'' and adding ''payment using a cost voucher'' in its place.

The revisions read as follows:

252.204–7006 Billing Instructions—Cost Vouchers.

* * * * *

Billing Instructions—Cost Vouchers (Date)

* * * * *

■ 5. Revise section 252.232–7002 to read as follows:

252.232–7002 Progress Payments for Foreign Military Sales Acquisitions.

As prescribed in 232.502–4–70(a), use the following clause:

Progress Payments for Foreign Military Sales Acquisitions (Date)

If this contract includes foreign military sales (FMS) requirements, the Contractor shall—

(a) Submit a separate progress payment request for the FMS and U.S. line items in the contract;

(b) Submit a supporting schedule showing the amount of each request distributed to each country's requirements;

(c) Identify in each progress payment request the contract requirements to which it applies (*i.e.,* FMS or U.S.);

(d) Calculate each request on the basis of the prices, costs (including costs to complete), subcontractor progress payments, and progress payment liquidations of the contract requirements to which it applies; and

(e) Distribute costs among the countries in a manner acceptable to the Administrative Contracting Officer.

(End of clause)

■ 6. Add section 252.232–70XX to read as follows:

252.232–70XX Progress Payments—Multiple Lots.

As prescribed in 232.502–4–70(c), use the following clause:

Progress Payments—Multiple Lots (Date)

(a) *Definitions.* As used in this clause—

Lot means one or more fixed price deliverable line items or deliverable subline items representing a single, severable group where the sum of the costs for each group is segregated and a single progress payment rate is used.

Multiple lots means more than one lot on a single contract where progress payment proration is performed on a lot-wide, versus contract-wide, basis.

(b) When submitting progress payment requests under the billing instructions in Federal Acquisition Regulation (FAR) clause 52.232–16, Progress Payments, or Defense Federal Acquisition Regulation Supplement clause 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, of this contract, the Contractor shall—

(1) Submit separate progress payment requests for each lot identified in the contract;

(2) Identify the contract price for the lot as the sum of all fixed-priced line items identified to the lot, in accordance with FAR 32.501–3;

(3) Identify the lot on each progress payment request to which the request applies;

(4) Calculate each request on the basis of the price, costs (including the cost to complete), subcontractor progress payments, and progress payment liquidations of the lot to which it applies; and

(5) Distribute costs among lots in a manner acceptable to the Administrative Contracting Officer.

(c) Submit a separate progress payment request for U.S. and FMS requirements in accordance with the clause 252.232–7002, Progress Payments for Foreign Military Sales Acquisitions, of this contract.

(End of clause)

[FR Doc. 2022–26691 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS–2022–0030]

RIN 0750–AL67

Defense Federal Acquisition Regulation Supplement: Update of Challenge Period for Validation of Asserted Restrictions on Technical Data and Computer Software (DFARS Case 2022–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: DoD is seeking information that will assist in the development of a revision to the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2012, which addresses the validation of proprietary data restrictions. In addition to the request for written comments on this advance notice of proposed rulemaking, DoD will hold a public meeting to hear the views of interested parties.

DATES: Comments on the advance notice of proposed rulemaking should be submitted in writing to the address shown below on or before February 14, 2023, to be considered in the formation of a proposed rule.

Public Meeting: A virtual public meeting will be held on January 26, 2023, from 1:00 p.m. to 5:00 p.m., Eastern time. The public meeting will end at the stated time, or when the discussion ends, whichever comes first.

Registration: Registration to attend the public meeting must be received no later than close of business on January 19, 2023. Information on how to register for the public meeting may be found under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES:

Public Meeting: A virtual public meeting will be held using Zoom video conferencing software.

Submission of Comments: Submit comments identified by DFARS Case 2022–D016, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2022–D016.'' Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2022–D016'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2022–D016 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202–913–5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is seeking information from experts and interested parties in the Government and the private sector that will assist in the development of a revision to the DFARS to implement section 815(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112–81). This statute applies to DoD only; it does not impact other Federal agencies. Section 815(b) amended 10 U.S.C. 2321 (redesignated as 10 U.S.C. 3782) by increasing the validation period for asserted restrictions from three years to six years. Section 815(b) also amended 10 U.S.C. 2321 to provide an exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction.

DoD previously published proposed DFARS revisions to implement these statutory revisions as part of DFARS Case 2012–D022 on June 16, 2016, at 81 FR 39481. That case was suspended during the pendency of the Government-Industry Advisory Panel on Technical Data Rights (the 813 Panel) pursuant to section 813 of the NDAA for FY 2016. As part of the resumption and reorganization of the DFARS data rights cases after the conclusion of the 813 Panel, this statutory subject matter has been broken out in this separate case due to the distinct subject matter and limited nature of the statutory revisions.

II. Public Meeting

DoD is interested in continuing a dialogue with experts and interested parties in the Government and the private sector regarding amending the DFARS to implement section 815(b) of the NDAA for FY 2012.

Registration: Individuals wishing to participate in the virtual meeting must register by January 19, 2023, to facilitate entry to the meeting. Interested parties may register for the meeting by sending the following information via email to *osd.dfars@mail.mil* and including ''Public Meeting, DFARS Case 2022–D016'' in the subject line of the message:

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.
- Whether the individual desires to make a presentation.

Pre-registered individuals will receive instructions for connecting using the Zoom video conferencing software not more than one week before the meeting is scheduled to commence.

Presentations: Presentations will be limited to 5 minutes per company or organization. This limit may be subject to adjustment, depending on the number of entities requesting to present, in order to ensure adequate time for discussion. If you wish to make a presentation, please submit an electronic copy of your presentation via email to *osd.dfars@mail.mil* no later than the registration date for the specific meeting. Each presentation should be in PowerPoint to facilitate projection during the public meeting and should include the presenter's name, title, organization affiliation, telephone number, and email address on the cover page.

Correspondence, Comments, and Presentations: Please cite ''Public Meeting, DFARS Case 2022–D016'' in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be the only record of the public meeting and will be posted to the following website at the conclusion of the public meeting: *https://www.acq.osd.mil/dpap/dars/technical_data_rights.html.*

III. Discussion and Analysis

An initial draft of the proposed DFARS revisions is available in the Federal eRulemaking Portal at *https://www.regulations.gov,* by searching for ''DFARS Case 2022–D016'' and viewing the ''Supporting & Related Material''. The strawman is also available at *https://www.acq.osd.mil/dpap/dars/change_notices.html* under the publication notice for DFARS Case 2022–D016. The following is a summary of DoD's proposed approach and the feedback DoD is seeking from industry and the public.

A. Validation Period for Asserted Restrictions

Consistent with 10 U.S.C. 2321(d)(2) (redesignated as 10 U.S.C. 3782(b)), DoD is proposing to revise the contract clause at DFARS 252.227–7037, Validation of Restrictive Markings on Technical Data. In particular, the proposed revisions to DFARS 252.227–7037(i) provide that the validation period for asserted restrictions is six years (rather than the three-year period in the current clause) from final payment on a contract or delivery of the technical data to the Government, whichever is later. The proposed revisions to paragraph (i) of the clause at 252.227–7037 also add the new statutory exception to the prescribed time limit for validation of asserted restrictions if the technical data involved are the subject of a fraudulently asserted use or release restriction. Technical corrections to the numbering of the revised paragraphs are also proposed.

Consistent with long-standing DFARS implementation of the procedures for validation of asserted restrictions, the proposed revisions required by statute for technical data have also been proposed for the analogous clause covering noncommercial computer software at DFARS 252.227–7019, Validation of Asserted Restrictions—Computer Software.

B. Seeking Public Comment on Additional Topics

In addition to seeking public comment on the substance of the draft DFARS revisions, DoD is also seeking information regarding any corresponding change in the burden, including associated costs or savings, resulting from contractors and subcontractors complying with the draft revised DFARS implementation. More specifically, DoD is seeking information regarding any anticipated increase or decrease in such burden and costs relative to the burden and costs associated with complying with the current DFARS implementing language.

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–26692 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 87, No. 241
Friday, December 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

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 17, 2023 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Partnerships and Public Engagement

Title: USDA 1994 Tribal Scholars Program.

OMB Control Number: 0503–0016.

Summary of Collection: The purpose of the U.S. Department of Agriculture 1994 Tribal Scholars Program is to strengthen the long-term partnership between USDA and the 1994 Land-Grant Institutions to increase the number of students studying and graduating in food, agricultural, natural resources, and other related fields of study, and to develop a pool of scientists and professionals to annually fill 50,000 jobs in the food, agricultural, and natural resources system. The USDA 1994 Tribal Scholars Program is an annual joint human capital initiative between USDA and the Nation's 1994 Land-Grant Institutions, also known as 1994 Tribal Colleges and Universities. This program offers a combination of paid work experience with a USDA sponsoring agency through an appointment under the Fellowship Experience Program. USDA Tribal Scholarship recipients are required to study in the food, and agricultural, and related sciences, as defined by the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103 (8)).

Need and Use of the Information: Information will be collected to determine the eligibility of applicants to the USDA Tribal Scholars Program. Each applicant to the program will be required to submit the following: An essay, resume, two letters of recommendation, and transcripts. The collected information is needed for identifying and tracking capital needs of USDA agencies and the hiring of students from 1994 Land-Grant Institutions through a paid training program and associated scholarship with the objective of preparing the student to complete for placement into USDA's workforce.

Description of Respondents: Individuals or households.

Number of Respondents: 170.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 663.

Ruth Brown,
Departmental Information Collection Clearance Officer.

[FR Doc. 2022–27365 Filed 12–15–22; 8:45 am]
BILLING CODE 3412–88–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0069]

Notice of Request for Extension of Approval of an Information Collection; Phytosanitary Export Certification

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the issuance of phytosanitary certificates for plants or plant products being exported to foreign countries.

DATES: We will consider all comments that we receive on or before February 14, 2023.

You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0069 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0069, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for phytosanitary export certification for plants and plant products being exported to foreign countries, contact Mr. Christian Dellis, Deputy Director, Phytosanitary Issues Management, PPQ, PHP, APHIS, 4700 River Road Unit 131, Riverdale, MD 20737; (301) 851–2154; *christian.b.dellis@usda.gov.* For information about the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator; (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Phytosanitary Export Certification.

OMB Control Number: 0579–0052.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to certify as to the freedom of plants, plant products, or biological control organisms from plant pests or noxious weeds, or the exposure of plants, plant products, or biological control organisms to plant pests or noxious weeds, according to the phytosanitary or other requirements of the countries to which the plants, plant products, or biological control organisms may be exported.

The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country. Our regulations do not require that we engage in export certification activities. However, we perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

The export certification regulations in 7 CFR part 353 describe the procedures for obtaining certification for plants and plant products offered for export or re-export. To request that we perform a phytosanitary inspection, an exporter must complete and submit an Application for Inspection and Certification of Plants and Plant Products for Export. After assessing the condition of the plants or plant products intended for export (*i.e.,* after conducting a phytosanitary inspection), an inspector (who may be an APHIS employee or a State or county plant regulatory official) will issue an internationally recognized phytosanitary certificate or a phytosanitary certificate for re-export. All of these forms are critical to our ability to certify plants and plant products for export. Without them, we would be unable to conduct an export certification program.

In addition, APHIS uses the following information collection activities, such as recordkeeping, a compliance agreement for State inspectors, requests for APHIS to negotiate with national plant protection organizations for industry-issued certificates or documentation, memorandum of understanding with industry for inspection and use of International Standards for Phytosanitary Measures Guidelines for Regulating Wood Packaging Material in International Trade (ISPM 15), and the application of an ISPM 15 mark.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.007 hours per response.

Respondents: State, local, and county plant regulatory officials, U.S. growers, shippers, and exporters.

Estimated annual number of respondents: 9,101.

Estimated annual number of responses per respondent: 6,162.

Estimated annual number of responses: 56,080,454.

Estimated total annual burden on respondents: 401,228 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of December 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–27283 Filed 12–15–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0071]

Notice of Request for Extension of Approval of an Information Collection; Case-Control Study on Highly Pathogenic Avian Influenza in Turkeys

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the case-control study on highly pathogenic avian influenza in U.S. commercial turkey flocks.

DATES: We will consider all comments that we receive on or before February 14, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0071 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0071, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the HPAI in turkeys

study, contact Dr. Victoria Fields, Veterinary Medical Officer, Center for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B, Fort Collins, CO 80526; (970) 286–1514; *Victoria.Fields@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Case-Control Study on Highly Pathogenic Avian Influenza in Turkeys.

OMB Control Number: 0579–0484.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of livestock, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, poultry, and aquaculture, and for eradicating such diseases within the United States when feasible. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS).

Highly pathogenic avian influenza (HPAI) is an infectious and fatal disease of poultry. Between February and September 2022, APHIS mobilized over 1,300 employees to respond to outbreaks of HPAI within the United States. As of the end of May 2022, nearly $800 million in Federal expenditures had been authorized to support emergency response work in relation to HPAI, which affected over 45 million birds. Commercial turkey farms comprise the highest percentage of affected commercial farms in the 2022 outbreak. In fact, over 70 percent of all affected commercial farms are turkey farms.

As the risk of a resurgence of new infections increases, it is critical to identify current risk factors to mitigate future outbreaks. Avian influenza viruses vary in transmissibility and ability to cause disease symptoms. Evidence suggests that the predominance of infections in 2022 have been due to independent wild bird introductions.

APHIS initiated an HPAI in turkey flocks study in 2022 and is seeking approval to continue it as needed to generate up-to-date information for determining current risk factors for infection with this environmentally hardy foreign animal disease pathogen. Current information on risk factors is critical for science-based updates to prevention and control recommendations.

The information collection activity associated with this study consists of a multi-question survey administered to commercial turkey producers.

APHIS requested and was granted emergency approval by the Office of Management and Budget (OMB) to use this information collection activity for 6 months. We are asking OMB to approve our use of this information collection activity for an additional 3 years so that we may continue collecting relevant data during unanticipated future outbreaks.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.40 hours per response.

Respondents: State agricultural officials and turkey producers.

Estimated annual number of respondents: 920.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 920.

Estimated total annual burden on respondents: 364 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 13th day of December 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–27282 Filed 12–15–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #RBS–22–BUSINESS–0029]

Notice of Solicitation of Applications for the Rural Energy for America Program for Fiscal Year 2023

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (the Agency) Notice of Solicitation of Applications (NOSA) announces the acceptance of grant, guaranteed loan, and combined grant and guaranteed loan applications under the Rural Energy for America Program (REAP). The REAP program helps agricultural producers and rural small businesses reduce energy costs and consumption and helps meet the Nation's critical energy needs. Applications for REAP may be submitted at any time throughout the year. This notice announces the deadlines, dates, and times that applications must be received in order to be considered for federal Fiscal Year (FY) 2023 REAP funds. The NOSA is being issued prior to passage of a final appropriations act for FY 2023 to allow potential applicants time to submit applications for financial assistance under the program and to give the Agency time to process applications within the current FY. All REAP applications competing for FY 2023 funding will be evaluated and scored according to the provisions listed in this Notice, unless otherwise amended via a subsequent FY 2023 Notice. Applicants who have already filed REAP applications for FY 2023 will be allowed to modify their application to revise the amount of grant requested and project budget and to provide additional information if necessary for application evaluation and scoring; the modification will not be treated as a new application, nor will it alter the submission date of record if there are no changes to the scope of the project. A planned second notice for FY 2023 is expected to address such matters as additional application deadlines, dates, and times, scoring modifications, as well as additional funding, including technical assistance and an amendment to the Federal grant portion not to exceed 50 percent of total eligible project costs per Inflation Reduction Act language.

DATES: Application deadline dates and times are as outlined in 7 CFR 4280.122 and 4280.156(a). Renewable Energy Systems and Energy Efficiency

Improvements (RES/EEI) and Energy Efficient Equipment and Systems (EEE) guaranteed loan applications are competed on an ongoing basis in accordance with 7 CFR 5001.315. See Section G.2. for details on REAP competitions.

ADDRESSES: You are encouraged to contact your United States Department of Agriculture (USDA) Rural Development (RD) State Energy Coordinator well in advance of the application deadline to discuss your project and ask any questions about the application process. Contact information for Energy Coordinators can be found at *https://rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf*.

Program guidance and application forms may be obtained at *https://rd.usda.gov/programs-services/all-programs/energy-programs.* To submit an electronic application via *grants.gov,* follow the instructions for the REAP funding announcement located at *https://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: Jonathan Burns, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 774–678–7238 or email *CPgrants@usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: USDA, Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Energy for America Program (REAP).

Announcement Type: Notice of Solicitation of Applications.

Funding Opportunity Number: RDBCP–REAP–RES–EEI–2023.

Assistance Listing: 10.868.

Type of Instrument: Grant, guaranteed loan, and grant and guaranteed loan combined funding.

Approximate Number of Awards: The estimated number of awards is 3,000 based on the anticipated level of funding as noted in *Federal Award Information, Total Funding* in Section B of this notice. The number of awards will depend on the actual amount of funds made available and on the number of eligible applicants participating in this program.

Administrative: The Agency encourages applicants to consider projects that will advance the key priorities below:

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure.
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. *Purpose of the program.* See Summary Section of this Notice.

2. *Statutory and Regulatory Authority.* REAP is authorized under 7 U.S.C. 8107 and is implemented by 7 CFR part 4280 subpart B and 7 CFR 5001. The Inflation Reduction Act (IRA) of 2022 provides additional authorities for REAP Public Law 117–169 section 22002.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 4280.103 and 7 CFR 5001.3.

B. Federal Award Information

Type of Award: Competitive grants and guaranteed loans.

Fiscal Year Funds: FY 2023.

Available Funds: Total approximate budget authority made available under this notice is as follows:

Source	Available funds
Agriculture Improvement Act of 2018 (Farm Bill)	$50,000,000
2022 Inflation Reduction Act	250,000,000
Total funds available	300,000,000

The Agency may, at its discretion, increase the total level of funding available in this funding round (or in any category in this funding round) from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts:

Maximum Award: See *Funding Restrictions* in Section F of this notice.

Minimum Award: See *Funding Restrictions* in Section F of this notice.

Anticipated Award Date: Prior to September 30, 2023.

Performance Period: Up to 24 months for grants. Guaranteed loans are governed by the loan terms.

C. Available Funds Information

Program Level Funds. This Notice is announcing mandatory Farm Bill and partial discretionary IRA funding. The Agency intends to issue a second notice to announce additional discretionary IRA funding. This notice is announcing deadline times and dates for applications to be submitted for REAP funds that may be received from the congressional enactment of a full-year appropriation for FY 2023. Based on FY 2022 appropriated funding, the Agency estimates that approximately $12.5 million may be available for FY 2023 in addition to the Farm Bill and IRA funding. Expenses incurred in developing applications will be at the applicant's risk.

Source, Type, and Allocation of Funds. REAP funding is sourced via the Farm Bill and the IRA for the purposes as outlined in 7 CFR 4280.101.

The following outlines the types of REAP funding available, deadlines, and a summary of how funds are allocated:

Type of funds	Competition	Application deadline
Energy Audit and Renewable Energy Development Assistance (EA/REDA) Grant funds.		January 31, 2023.
RES/EEI Grant funds	20K or less	October 31, 2022.
RES/EEI Grant funds	Unrestricted	March 31, 2023.
RES/EEI/EEE Guaranteed Loan		Ongoing Competition.

1. *EA/REDA grant funds.* The amount of funds available for EA/REDA will be at least 4 percent of FY mandatory Farm Bill funds. Funds will be competed at the National Office and obligations of EA/REDA funds will take place through March 31, 2023.

2. *RES/EEI grant funds.* IRA funds will be available to fund requests that do not exceed 40 percent of total eligible project costs. Farm Bill funds and FY2023 appropriated funds, if any, will be available to fund requests that do not exceed 25 percent of total eligible project costs.

(i) To ensure that small projects have a fair opportunity to compete for the funding and consistent with the requirements set forth in the 7 U.S.C. 8107(e)(1), the Agency will set aside not less than 20 percent of the Farm Bill and IRA funds until June 30, 2023, to fund grant requests of $20,000 or less. Each

RD State Office will receive a set-aside allocation of IRA funds for grant requests of $20,000 or less, which includes combination grant and guaranteed loan requests where the grant amount requested is $20,000 or less. Complete grant applications requesting $20,000 or less, including the grant portion of a combined grant and guaranteed loan request, received by October 31, 2022, will compete for approximately 50 percent of the state's set-aside allocation, and those received by March 31, 2023, will compete for the second 50 percent (approximately) of the state's set-aside allocation. Any unobligated balance of funds remaining in state set-aside accounts will be pooled to the National Office for a national set-aside competition. Obligation of set-aside grant funds will take place through June 30, 2023.

(ii) Each RD State Office will also receive allocations of unrestricted FY2023 Farm Bill funds and IRA grant funds that can be used to fund any RES/EEI grant application regardless of the amount of grant requested, including the grant portion of a combination grant and guaranteed loan request, that is received by March 31, 2023. Any unobligated balance of funds remaining in state unrestricted accounts will be pooled to the National Office for a national competition of funds. Obligation of unrestricted grant funds will take place through September 30, 2023.

3. *RES/EEI and EEE loan guarantee funds.* RD's National Office will maintain a reserve of Farm Bill guaranteed loan funds to fund guaranteed loan only requests or the loan portion of a combined funding request. EEE guaranteed loans for agricultural production and processing shall not exceed 15 percent of the funds available to the program. Applications will be reviewed and processed when received. Those applications that meet the Agency's underwriting requirements and are credit worthy will compete in national competitions for guaranteed loan funds periodically. If funds remain after the final guaranteed loan-only national competition, the Agency may elect to utilize budget authority to fund additional grant-only applications. For FY 2023, the guarantee fee rates, the annual renewal fee, the maximum percentage of guarantee and the maximum portion of guarantee authority available for a reduced guarantee fee will be published in a separate notice. Obligation of guaranteed loan funds will take place through September 30, 2023.

4. *RES/EEI combined grant and guaranteed loan funds.* Funding availability for combined grant and guaranteed loan applications is outlined in Sections B and C of this notice. Combination funding requests are scored using RES/EEI grant scoring criteria. If the combined application is ranked high enough to receive state allocated grant funds, the state will request funding for the guaranteed loan portion of the request from the National Office guaranteed loan reserve and no further competition will be required. If not funded by the state allocation of funds, combined grant and guaranteed loan applications may be submitted to the National Office to compete in the appropriate National Office competition. Obligation of these funds will take place through September 30, 2023.

D. Eligibility Information

The eligibility requirements for the applicant, borrower, lender, and project (as applicable) are clarified in 7 CFR 4280 Subpart B and in 7 CFR 5001 and are summarized in this notice. Failure to meet the eligibility criteria by the time of the competition window will preclude the application from competing until all eligibility criteria have been met.

1. *Eligible Applicants.* Grant applicants must meet the requirements specified in 7 CFR 4280.110. An applicant must also meet the requirements specified at: 7 CFR 4280.112 for RES/EEI grant; 7 CFR 4280.137 for RES/EEI combined grant and guarantee; and 7 CFR 4280.149 for EA/REDA grant.

2. *Eligible Borrowers and Lenders.* To be eligible for the guaranteed loan portion of the program, borrowers must meet the eligibility requirements in 7 CFR 5001.126 and lenders must meet the eligibility requirements in 7 CFR 5001.130.

3. *Eligible Projects.* To be eligible for the program a project must meet the eligibility requirements specified in: 7 CFR 4280.113 for RES/EEI grant; 7 CFR 4280.150 for EA/REDA grant; 7 CFR 4280.137 for RES/EEI combined grant and guarantee; and 7 CFR 5001.106 through 5001.108, as applicable, for RES/EEI/EEE loan guarantees.

4. *Other.*

(i). *Ineligible project costs* are defined at: 7 CFR 4280.115(d) for RES/EEI grant and combined grant and guaranteed loans; 7 CFR 4280.152(c) for EA/REDA grant; and 7 CFR 5001.122 for RES/EEI/EEE loan guarantees.

(ii) *Other compliance requirements.* The USDA Departmental Regulations and Laws that contain other compliance requirements are referenced in Section E.5. of this notice. Applicants who have been found to be in violation of applicable Federal statutes will be ineligible.

(iii) *Hemp production.* The Agriculture Improvement Act of 2018, Public Law 115–334, (the 2018 Farm Bill) requires USDA to promulgate regulations and guidelines to establish and administer a program for the production of hemp in the United States.

In determining eligibility for the applicant, project or use of funds, any project applying for funding under the REAP program and proposing to produce, procure, supply or market any component of the hemp plant or hemp related by-products, or provide technical assistance related to such products, must have a valid license from an approved state, Tribal or Federal plan pursuant to section 10113 of the 2018 Farm Bill, be in compliance with regulations published by the Agricultural Marketing Service at 7 CFR 990, and meet any applicable US Food and Drug Administration and U.S. Drug Enforcement Administration regulatory requirements. Verification of valid hemp licenses will occur prior to award. In addition, all projects proposing to use biomass feedstock from any part of the hemp plant must demonstrate assurance of an adequate supply of the feedstock.

E. Application Submission Information

1. *Address to Request Application Package.* Application materials may be obtained by contacting the RD Energy Coordinator for the state where the proposed project will be located, as identified via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf*. In addition, for grant applications, applicants may obtain electronic grant applications for REAP from *www.grants.gov*.

2. *Content and Form of Application Submission.* Applicants seeking to participate in this program must submit applications in accordance with this notice, 7 CFR part 4280 subpart B and 7 CFR 5001, as applicable. Applicants must submit complete applications by the dates identified in section E.4., of this notice, containing all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation, as applicable, in order to be considered. The Agency encourages the Applicant to reach out to their Energy Coordinator to determine application status. The Applicant bears all risk should they incur project costs or commence construction activities prior to Agency notification of a complete and eligible application and

the completion of an environmental review.

Applicants who have already filed REAP applications for FY 2023 will be allowed to modify their application to revise the amount of grant requested and project budget and to provide additional information necessary to meet updated provisions, for determining eligibility, and application scoring. The modification will not be treated as a new application, nor will it alter the submission date of record as noted in 7 CFR 4280.110(d) if there are no changes to the scope of the project. If the scope of the project has changed, the applicant must withdraw the existing application and may refile a new application reflecting the new project scope, constituting a new application submission date of record.

3. *Submission.* Applicants must submit one original, hardcopy or electronic application to the appropriate RD Energy Coordinator for the State where the applicant's proposed project will be located. For grant applications, submission may be via *www.grants.gov*. A list of USDA RD Energy Coordinators is available via the following link: *https://www.rd.usda.gov/files/RBS_StateEnergyCoordinators.pdf*.

4. *Submission Dates and Times.* Grant applications, guaranteed loan-only applications, and combined grant and guaranteed loan applications for financial assistance may be submitted at any time on an ongoing basis. Application competition deadlines are outlined in 7 CFR 4280.122 for RES/EEI grants and 7 CFR 4280.156 for EA/REDA grants and competition deadlines are summarized in the table below. RES/EEI/EEE guaranteed loans will be reviewed and processed when received for periodic competitions. In order to be considered for funds under this notice, complete applications must be received by the appropriate USDA RD State Office Energy Coordinator or via *www.grants.gov* by 4:30 p.m. local time on the competition deadline. The complete application date is the date the Agency receives the last piece of information that allows the Agency to determine eligibility and to score, rank, and compete the application for funding. The Agency encourages the applicant to reach out to their Energy Coordinator to determine application status. The applicant bears all risk should they incur project costs or commence construction activities prior to Agency notification of a complete and eligible application and the completion of an environmental review.

When an application window closes, the next application window opens on the following day. An application received after the competition date will be considered with other complete applications received in the next application window.

Application	Application window opening dates	Application window closing dates/ competition deadlines
EA/REDA	February 1, 2022	January 31, 2023.*
RES/EEI—$20,000 or less set-aside Grant only request or a combination grant and guaranteed loan where the grant request is $20,000 or less, competing for up to approximately 50 percent of state set-aside funds.	April 1, 2022	October 31, 2022.
RES/EEI—$20,000 or less set-aside Grant only request or a combination grant and guaranteed loan where the grant request is $20,000 or less competing for the remaining state set-aside funds.	November 1, 2022	March 31, 2023.*
RES/EEI—Unrestricted grants Grant only request or a combination grant and guaranteed loan regardless of the amount of grant request.	April 1, 2022	March 31, 2023.*
RES/EEI/EEE Guaranteed Loans	Continuous application cycle.	Continuous application cycle.

* Unless subsequent deadlines are published via a Notice, applications received after this date will be considered for the next funding cycle in the subsequent FY.

5. *Other Submission Requirements.* The following are applicable for all REAP applications:

(i) *Environmental information.* For the Agency to consider an application, the application must address all environmental considerations specific to the project in accordance with 7 CFR 1970 and provide supporting documentation as necessary. An environmental review must be completed prior to approval of the application and obligation of funds. Applicants are advised to contact the Agency as soon as possible and prior to commissioning a project to determine environmental requirements and ensure adequate review time.

(ii) *Transparency Act Reporting.* All recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance with 2 CFR 170. If an applicant does not have an exception under 2 CFR 170.110(b), the applicant must then ensure that they have the necessary processes and systems in place to comply with the reporting requirements to receive funding.

(iii) *Race, ethnicity, and gender.* The Agency is requesting that each applicant provide race, ethnicity, and gender information about the applicant. The information will allow the Agency to evaluate its outreach efforts to under-served and under-represented populations. Applicants are encouraged to furnish this information with their application but are not required to do so. An applicant's eligibility or the likelihood of receiving an award will not be impacted by furnishing or not furnishing this information.

F. Funding Restrictions

The following funding limitations apply to applications submitted under this Notice.

1. RES/EEI/EEE Applications

(i) Applicants can compete and be awarded only one RES grant and one EEI grant in a FY, which includes the grant portion of a combined funding request. The maximum amount of grant assistance to an entity will not exceed $1,500,000 in a FY.

(ii) Modification is being made via this Notice to the Federal grant portion noted in 7 CFR 4280.115(a). The Federal grant portion of a project utilizing Inflation Reduction Act funds cannot exceed 40 percent of total eligible project costs. The Federal grant portion of a project utilizing Farm Bill funds or FY 2023 appropriated funds, if any, cannot exceed 25 percent of total eligible project costs. Sources of REAP

grant funds cannot be combined to fund a project. The Agency reserves the right to further amend the Federal grant portion via a subsequent Notice not to exceed 50 percent of total eligible project costs per IRA language.

(iii) For RES grants, the minimum grant is $2,500 and the maximum is being increased from $500,000 to $1,000,000. For EEI grants, the minimum grant is $1,500 and the maximum grant is being increased from $250,000 to $500,000. These minimum and maximum limits also apply to the grant portion of a combined funding request.

(iv) For RES/EEI/EEE loan guarantees or the loan guarantee portion of a combined funding request, the minimum REAP guaranteed loan amount is $5,000 and the maximum amount of a guaranteed loan to be provided to a borrower is $25 million. Guaranteed loan requests will not exceed 75 percent of total eligible project costs, with any Federal grant portion, as applicable, not to exceed 25 or 40 percent of total eligible project costs, as applicable to the source of grant funds as outlined in further detail above.

2. EA/REDA Applications

(i) Applicants may submit only one EA grant application and one REDA grant application in a FY. Separate applications must be submitted for EA funding and REDA funding. If an application is submitted for both EA and REDA funding or if an application's scope of work includes both EA and REDA activities, it will be determined ineligible for competition. The maximum aggregate amount of EA and REDA grant awards to any one recipient cannot exceed $100,000 in a FY.

(ii) Applicants that have received one or more grants under this program must have made satisfactory progress per 7 CFR 4280.110(a) before being considered for funding.

(iii) The 2018 Farm Bill mandates that the recipient of an EA grant must require the agricultural producer or rural small business receiving the energy audit to pay at least 25 percent of the cost of the energy audit, which shall be retained by the grantee for the cost of the audit.

G. Application Review Information

1. *Scoring.* All complete applications will be scored in accordance with the following: 7 CFR 4280.121 and the following paragraph for RES/EEI grants and RES/EEI combined grant and loan guarantee requests; 7 CFR 4280.155 for EA/REDA grants; and 7 CFR 5001.319 and the following paragraph for RES/EEI/EEE guaranteed loans.

State Director and Administrator priority points can be awarded to applications which help further a Presidential initiative, or a Secretary of Agriculture priority as found in 7 CFR 4280.121(h)(4) for REAP Renewable Energy Systems (RES) and Energy Efficiency Improvement (EEI) grants and 7 CFR 5001.319(g)(4) for REAP RES and EEI and Energy Efficient Equipment and Systems guaranteed loans. For FY 2023, 10 State Director and Administrator priority points will be automatically awarded for applications, which based on location, meet any one of the key priorities as follows: (i) Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure; (ii) Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and (iii) Supporting economic investments in distressed communities. Data sources for the key priorities are found at: *https://www.rd.usda.gov/priority-pointshttps://www.rd.usda.gov/priority-points* and at *https://ruraldevelopment.maps.arcgis.com/apps/webappviewer/index.html?id=06a26a91d074426d944d22715a90311e* for distressed communities. The State Director or Administrator at their discretion may award up to 5 priority points maximum for projects which meet any of the following criteria if a project does not qualify for the 10 priority points under the Administration's priorities or as a distressed community as described above: (i) The application is for an under-represented technology; (ii) selecting the application helps achieve geographic diversity, which may include points based upon the size of the funding request; (iii) the applicant is a member of an unserved or underserved population described as follows: (1) Owned by a veteran, including but not limited to individuals as sole proprietors, members, partners, stockholders, etc., of not less than 20 percent. In order to receive points, applicants must provide a statement in their application to indicate that owners of the project have veteran status; or (2) owned by a member of a socially disadvantaged group, which are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In order to receive points, the application must include a statement to indicate that the owners of the project are members of a socially disadvantaged group; (iv) the proposed project is in a Federally declared major disaster area. Declarations must be within the last 2 calendar years; (v) the proposed project is located in (1) an area where 20 percent or more of its population is living in poverty over the last 30 years, as defined by the United States Census Bureau, (2) an underserved community(ies) or (3) an area that has experienced long-term population decline, or loss of employment. Except for veteran and socially disadvantaged group status, all other priority points are based upon project location specific criteria which will be documented automatically by the Agency. State Director or Administrator priority points for a REAP application cannot exceed 10 points total.

2. *Competitions.* Unless modified in a subsequent notice, the maximum number of competitions a complete and eligible application will be able to compete within the FY is outlined in 7 CFR 4280.122 for RES/EEI grants, 7 CFR 4280.156 for EA/REDA grants, and 7 CFR 5001.315 for guaranteed loans. If the application remains unfunded after the final National Office competition for the FY it must be withdrawn.

3. *Notification of funding determination.* As per 7 CFR 4280.111(c) and 7 CFR 5001.315(b)(2), all applicants will be informed in writing by the Agency as to the funding determination of the application. *https://www.rd.usda.gov/.*

H. Build America, Buy America Act

The Infrastructure Investment and Jobs Act (IIJA), (Public Law 117–58) requires the following Buy America preference:

(1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

(3) All construction materials are manufactured in the United States. This

means that all manufacturing processes for the construction material occurred in the United States.

Awards under this announcement for infrastructure projects to non-federal entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the IIJA, and its implementing regulations. Infrastructure projects include structures, facilities, and equipment that generate, transport, and distribute fuel or energy, including electric vehicle (EV) charging stations. Infrastructure projects also include structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

In accordance with BABAA, however, USDA has determined that de minimis, small grants, and minor components shall be waived from the requirements of BABAA, pursuant to a public interest waiver that was granted to the Department on Sept. 13, 2022. See *https://www.usda.gov/sites/default/files/documents/usda-departmentwide-de-minimis-small-grants-minor-components-waiver-final-approved-09132022.pdf* Under such waiver, small grants below the Simplified Acquisition Threshold, which is currently set at $250,000 shall not be subject to BABAA. Additionally, de minimis and minor components, as described in the Department waiver, are also not subject to BABAA. Applicants and projects that are subject to BABAA may request other specific waivers, pursuant to the requirements posted at the USDA Office of the Chief Financial Office website: *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.*

For-profit entities and other entities not included in the definition of Non-Federal Entities, defined pursuant to 2 CFR 200.1, are not subject to BABAA. EA and REDA grants are not infrastructure projects and are not subject to BABAA.

I. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the programs, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0067.

2. *Nondiscrimination Statement.* In accordance with Federal civil rights law and USDA civil rights regulations and policies, the 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/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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed AD–3027 form or letter must be submitted to USDA by:

(i) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(ii) *Fax:* (833) 256–1665 or (202) 690–7442; or

(iii) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–27359 Filed 12–15–22; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Missouri Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. 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 that the Missouri Advisory Committee (Committee) will hold a meeting on Thursday, January 12, 2023 at 11:30 a.m.–1 p.m. Central time. The Committee will continue orientation and begin identifying potential civil rights topics for their first study of the 2022–2026 term.

DATES: The meeting will take place on Thursday, January 12, 2023 at 11:30 a.m. Central Time.

Public Call Information: Dial: (833) 568–8864, Confirmation Code: 160 064 7633 Zoom Link: *https://www.zoomgov.com/j/1600647633.*

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to this discussion through the above call in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference 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. Individual who is deaf, deafblind and hard of hear 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 call number and confirmation code.

Members of the public are 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, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

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 via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi 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 Unit at the above email or street address.

Agenda

I. Welcome and roll call
II. Introductions
III. Discuss Civil Rights Topics
IV. Public comment
V. Next steps
VI. Adjournment

Dated: December 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–27325 Filed 12–15–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

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 North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 12:00 p.m. ET on Thursday, February 16, 2023, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Thursday, February 16, 2023, from 12:00 p.m.–1:30 p.m. ET.

REGISTRATION LINK (Audio/Visual): https://tinyurl.com/47n34nyw.

TELEPHONE (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 374 5579.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference 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. Per the Federal Advisory Committee Act, members of the public who wish to speak during public comment must provide their name to the Commission; however, if a member of the public wishes to join anonymously, we ask that you please join by phone. 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. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *vmoreno@usccr.gov* at least 10 business 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 Liliana Schiller at *lschiller@usccr.gov*. Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, 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, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: December 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–27328 Filed 12–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

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 North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 12 p.m. ET on Thursday, February 16, 2023, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Thursday, February 16, 2023, from 12 p.m.–1:30 p.m. ET.

Registration Link (Audio/Visual): https://tinyurl.com/47n34nyw

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 374 5579

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the videoconference 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. Per the Federal Advisory Committee Act, members of the public who wish to speak during public comment must provide their name to the Commission; however, if a member of the public wishes to join anonymously, we ask that you please join by phone. 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. Closed captions will be provided for individuals who are deaf, deafblind, or hard of hearing. To request additional accommodations, please email *vmoreno@usccr.gov* at least 10 business 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 Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (202) 809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, 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, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: December 16, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–27326 Filed 12–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Housing Vacancy Survey

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed extension, without change, of the Housing Vacancy Survey, prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before February 14, 2023.

ADDRESSES: Interested persons are invited to submit written comments by email to *dsd.cps@census.gov.* Please reference Housing Vacancy Survey in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0025, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Kyra Linse, Survey Director, Current Population and American Time Use Surveys, by phone at 301–763–3806 or email at *dsd.cps@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance from the Office of Management and Budget (OMB) for the collection of data concerning the Housing Vacancy Survey (HVS) to be conducted in conjunction with the Current Population Survey (CPS). The Census Bureau sponsors the HVS, which collects data from a sample of vacant housing units identified in the monthly CPS sample. There are no changes to the proposed data collection since the previous clearance, which expires June 30, 2023.

Collection of the HVS in conjunction with the Current Population Survey began in 1956 and serves a broad array of data users. The HVS provides the only quarterly statistics on rental vacancy rates and homeownership rates for the United States, the four census regions, the 50 states and the District of Columbia, and the 75 largest metropolitan statistical areas (MSAs). Private and public sector organizations use these rates extensively to gauge and analyze the housing market with regard to supply, cost, and affordability at various points in time.

Policy analysts, program managers, budget analysts, and congressional staff use these data to advise the executive and legislative branches of government with respect to the number and characteristics of units available for occupancy and the suitability of housing initiatives. These data are a component of consumer expenditure statistics. They also are used to project mortgage demand and to measure the adequacy of the supply of rental and homeowner units. In addition, investment firms use the HVS data to analyze market trends and for economic forecasting.

II. Method of Collection

The HVS is collected by both personal visit and telephone interviews in conjunction with the CPS interviewing. The Census Bureau conducts HVS interviews using computer-assisted interviewing with landlords or other knowledgeable people concerning vacant housing units identified in the monthly CPS sample and meeting certain criteria.

III. Data

OMB Control Number: 0607–0179.

Form Number(s): None.

Type of Review: Regular submission, Request for an Extension, without Change, of a Currently Approved Collection.

Affected Public: Individuals who have knowledge of the vacant sample unit (landlords, rental agents, neighbors).

Estimated Number of Respondents: 72,000.

Estimated Time Per Response: 3 minutes.

Estimated Total Annual Burden Hours: 3600.

Estimated Total Annual Cost to Public: $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182; and Title 29, United States Code, Section 1.

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. 2022–27273 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–60–2022]

Foreign-Trade Zone (FTZ) 74—Baltimore, Maryland, Notification of Proposed Production Activity, United Safety Technology Corp. (Medical and Non-medical Disposable Gloves), Sparrows Point, Maryland

United Safety Technology Corp submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Sparrows Point, Maryland, within Subzone 74D. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on December 8, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include seamless gloves, surgical gloves and examination gloves (duty rate ranges from duty-free to 3%).

The proposed foreign-status materials and components include: Nitrile-butadiene rubber (NBR): Latex; Potassium hydroxide; Calcium Nitrate; Nitric Acid; Zinc Oxide; Chlorine; Sodium Hypochlorite; Hydrochloric Acid; Caustic Soda; Polydimethylsiloxane emulsion; Paraffin Wax; Sulphur Dispersion; Zinc dibuthyl dithiocarbamate (ZDBC) Dispersion; Titanium dioxide (TiO2) Dispersion (60%-70% solid); Sodium dioctyl sulfosuccinate (SDBS); Ferric Chloride; Color Pigments, fluid paste, viscous—copper phthalocyanine blue; Color Pigments, fluid paste, viscous—carbazole violet; Sodium Thiosulphate Pentahydrate; Non-ionic surfactant and wetting agent; Powder coagulant additive—calcium stearate; cardboard boxes for packaging gloves (duty rate ranges from duty-free to 6.5%). The request indicates that carbazole violet pigment 23 is subject to antidumping/countervailing duty (AD/CVD) orders if imported from certain countries. The Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (PF) (19 CFR 146.41). The request also indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in PF status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 25, 2023.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Diane Finver at *Diane.Finver@trade.gov.*

Dated: December 12, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–27275 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Temporarily Denying Export Privileges

Boris Livshits, 9V Kuttuzi, Leningrad Oblast, St. Petersburg, Russian Federation;
Svetlana Skvortsova, Yablochinkova 21, Moscow, Russian Federation;
Aleksey Ippolitov, Ozernaya 46, Moscow, Russian Federation;
Advanced Web Services, 417 Brightwater Court, Apt. 6f, Brooklyn, NY 11235;
Strandway, LLC, 99 Wall St., Ste. 148, New York, NY 10005.

Pursuant to section 766.24 of the Export Administration Regulations (the ''Regulations'' or ''EAR''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of: Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, and Strandway, LCC (''Strandway''). OEE's request and related information indicates that these parties are located in the Russian Federation and New York, at the respective addresses listed on the caption page of this order and on page 11, *infra,* and that Livshits, a Russian national, owns or controls Advanced Web Services and Strandway.

I. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations. 15 CFR 766.24(b)(1) and

[1] The Regulations, currently codified at 15 CFR parts 730–774 (2021), originally issued pursuant to the Export Administration Act (50 U.S.C. 4601–4623 (Supp. III 2015) (''EAA''), which lapsed on August 21, 2001. The President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), as extended by successive Presidential Notices, continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)) (''IEEPA''). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders.

766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''[l]ack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. OEE'S Request for a Temporary Denial Order

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage.

As of February 24, 2022, any item classified under any Export Classification Control Number (''ECCN'') in Categories 3 through 9 of the Commerce Control List (''CCL'') required a license to be exported or reexported to Russia. *See* 87 FR 12226 (Mar. 3, 2022). As of April 8, 2022, the license requirements for Russia were expanded to cover all items on the CCL. *See* 87 FR 22130 (Apr. 14, 2022). These rules were codified in Title 15 CFR 746.8, which state, ''a license is required, excluding deemed exports and deemed reexports, to export, reexport, or transfer (in-country) to or within Russia or Belarus any item subject to the EAR and specified in any Export Control Classification Number (ECCN) on the CCL.''

In December 2022, Livshits, Skvortsova, Ippolitov, Yevgeniy Grinin,[2] along with additional co-conspirators, were each indicted on multiple counts in the United States District Court for the Eastern District of New York. The charges include, but are not limited to, conspiring to violate U.S. export control laws in connection with the unlicensed export of electronic signal generator and measurement equipment, among other items, to BIS-listed entities in Russia, including OOO Serniya Engineering (''Serniya''), a wholesale machinery and equipment company located in Moscow, Russia. Serniya headed an illicit procurement network (collectively, the ''Serniya Network'') operating under the direction of Russia's intelligence services to evade U.S. sanctions to acquire sensitive military grade and dual-use technologies, including advanced semiconductors, for the Russian military, defense sector, and research institutions.

On March 3, 2022, Serniya, along with OOO Sertal (''Sertal''), also a Moscow-based machinery and equipment company and part of the Serniya network, were both placed on the BIS Entity List, Section 744.11 and Supplement No. 4 to Part 744 of the Regulations, as a result of their relationships with the Russian government and in response to the Russian invasion of Ukraine beginning in or around February 2022.[3] Specifically, Serniya and Sertal were placed on the Entity List because they ''have been involved in, contributed to, or otherwise supported the Russian security services, military and defense sectors, and military and/or defense research and development efforts.'' 87 FR 13141. As a result of these designations, no item subject to the Regulations may be exported, reexported, or transferred (in-country) to Serniya or Sertal without prior license authorization from BIS and are subject to a policy of denial. *Id.*

In its request, OEE has presented evidence indicating that Livshits and the other above-captioned parties are engaged in unlawfully procuring and shipping military and sensitive dual-use technologies from U.S. manufacturers to Russian end users, including the Serniya Network. These items included advanced electronics and sophisticated testing equipment, some of which can be used in military applications.

A. Misconduct Charged in December 2022 Indictment

The December 2022 indictment charged Livshits, Skvortsova, Ippolitov, Grinin, and additional co-conspirators, with conspiring to violate ECRA, conspiring to violate IEEPA, smuggling, and failure to file electronic export information, among other offenses.[4] The violations charged in the indictment cover conduct occurring between at least January 2017 through October 2022, and it alleges that Livshits, Skvortsova, and Ippolitov were not only aware of U.S. export control laws but also took active steps to conceal their unlawful export-related activities in order to evade detection by law enforcement.

As stated in the indictment, Ippolitov acted as a liaison on behalf of Serniya and Sertal by soliciting orders from Russian end users who sought to acquire a particular item or part from the United States. Ippolitov oversaw the purchase and shipping of the items from U.S. companies through the Serniya Network's front companies and bank accounts by relaying the requests to employees at Sertal and Serniya, including Skortsova, who were tasked with procuring the desired component from U.S. companies. Skvortsova, along with Grinin, decided how to fulfill orders placed by Russian end users, secured funding and shipping for the transactions, and assisted in preparing documents with false and misleading information in furtherance of the scheme. Livshits was then frequently tasked to interface directly with U.S. companies and purchase items requested by Russian end users.

Livshits communicated with the U.S. companies, often misrepresenting and omitting material information, including information about how an item would be used, the various parties involved in the transaction, and the identity of the ultimate Russian end user. Livshits used the alias ''David Wetzky,'' using an email address associated with Advanced Web Services, to communicate in an effort to frustrate due diligence efforts by U.S. companies. On behalf of the Serniya Network, Livshits also created and maintained various shell companies, including Advanced Web Services and Strandway, and associated bank accounts which were used to fund unlawful export activities. For instance, on or about December 12, 2020, Livshits initiated a payment from an account held in his name and the name of Advanced Web Services for an

[2] Grinin is the owner and operator of Photon Pro, LLP (''Photon''), which was placed on the BIS Entity List on March 9, 2022, with a policy of denial for all items subject to the EAR. *See* 87 FR 13141. Grinin and Photon have also both been identified as Specially Designated Nationals (SDNs) by the U.S. Treasury Department, Office of Foreign Assets Control (''OFAC'') pursuant to Executive Order 14024. *See* 87 FR 20505.

[3] On or about March 31, 2022, OFAC, added Serniya, Sertal, and other Serniya-affiliated entities to its Specially Designated Nationals and Blocked Persons List. *See* 87 FR 20505.

[4] Additional charges include money laundering, wire fraud, bank fraud, and conspiring to defraud the United States.

oscilloscope, which was controlled under ECCN 3A992.a for anti-terrorism reasons.

As also referenced in OEE's request and the indictment, Livshits, Skortsova, and Ippolitov worked together not only to engage in unlawful export-related activities, but also to evade detection by law enforcement. For example, on September 4, 2019, Ippolitov inquired about obtaining a ''chip set'' of 45 advanced semiconductors on behalf of the Physics Institute of the Russian Academy of Sciences. The requested items were controlled under ECCN 3A0013a.2.c for national security reasons and required an export license to Russia. Grinin then forwarded the document to Skvortsova and proposed tasking Livshits with helping to fulfill the order. On September 6, 2019, Grinin and Skvortsova contacted Livshits and requested a price quote. Livshits later cautioned that the part required an export license and that ''you need to buy such positions carefully, at 5–10 pieces at a time.''

In another example, on July 16, 2020, Livshits warned his co-conspirators that ''such a large and expensive order would draw unwanted attention and suspicion . . . break up the order into smaller orders over a time period.'' Livshits further advised that ''the U.S. Department of Commerce Bureau of Industry and Security can cause problems and deny the shipment,'' and suggested that he could order the parts from his U.S. companies, as well as entities in Estonia and Finland, over a two- to three-week period.

Additional evidence provided by OEE further demonstrates that Livshits, Skortsova, and Ippolitov were knowledgeable about U.S. export control laws. For example, a June 2020 email exchange between Skvortsova and other Serniya and Sertal employees was titled ''URGENT: Important Announcement about US Export Regulation Changes'' and specifically described the definition of ''military end-users.'' Similarly, on or about March 15, 2022, after Serniya and Sertal were added to the BIS Entity List, Livshits told Skvortsova, ''When ordering in the USA, the price is significantly more expensive . . . [as well as] difficulties with export from there-[the item] is subject to EAR.''

B. Conduct Prior to February 2022 Russian Invasion of Ukraine

As stated in OEE's request, on October 22, 2019, Livshits instructed a co-conspirator stating—''[T]wo large boxes need to be sent . . . to Germany . . . It is necessary to cut off all old labels and remove all invoices and packing lists from the boxes that came with them originally. Leave manuals and other technical documentation.'' Livshits provided shipping labels for a freight company in Hamburg, Germany, as well as numerous falsified invoices and end-use statements. One invoice documented that a U.S.-based company purportedly sent a ''Low Noise Cesium Frequency Synthesizer,'' valued at $44,965, to ''Strandway LLC Attn: David Wetzky'' at a New Hampshire based address. The End-Use Statement listed Strandway, the contact name ''Davide Wetzky,'' and a contact email address ''*david.wetzky[@]awsresearch.net*,'' along with the advisory, ''[e]xport of these products is subject to the United States Government Export Administration Regulation (EAR).''

On or about July 2020, Livshits provided Skvortsova the price quotes for electronic components from a U.S. company. On September 20, 2020, Skvortsova instructed Livshits to bill the front company Photon Pro LLP for the purchase of the quoted items. Subsequently, packages pertaining to the shipment were sent from the U.S. company to an address utilized by Livshits, and then forwarded to a transshipment point in Germany with a declared value of $2,640. The true value of the purchase, however, exceeded $15,000. On November 10, 2020, Ippolitov received the invoice for the order, along with shipping labels reflecting the package's transshipment from Germany to Grinin in Russia. On or about December 9, 2020, Skvortsova emailed Grinin and informed him that the items had been received in Russia by the end user, a major Russian university and scientific research facility that collaborated with Russia's defense sector on research and development projects.

C. Conduct Post-Russian Invasion of Ukraine and Imposition of Sanctions

Between February 2022 and April 2022, Respondents unlawfully engaged in the purchase of a spectrum analyzer from a Florida-based electronics company. Specifically, on February 18, 2022, Livshits contacted the U.S. company to inquire about an E4440A spectrum analyzer, which was classified under ECCN 3A992.a and required a license for shipment to Russia. He subsequently purchased the spectrum analyzer for $14,065 and had it shipped to Strandway.

Subsequently, on or about March 6, 2022, Livshits attempted to have a Hong Kong-based freight forwarder send the spectrum analyzer to Russia, saying, ''I have a logistics task. I need to ship [the spectrum analyzer] with DHL from US to Hong Kong to any company, which can receive it and then ship it via Emirate or Turkish air cargo to Russia—St. Petersburg or Moscow. Can you do this?'' Although the freight forwarder refused his request, citing the sanctions imposed on Russia after the invasion of Ukraine, Livshits directed another individual to ship the spectrum analyzer from New Hampshire to an address in Hamburg, Germany, identified by OEE as a Serniya transshipment point. Evidence presented by OEE demonstrates that Livshits later acknowledged that the spectrum analyzer was ultimately shipped to Russia.

As detailed in OEE's request, on or about April and May 2022, Livshits again utilized the alias ''David Wetzky'' and the front companies Advanced Web Services and Strandway to contact an Illinois-based electronics distributor to inquire about purchasing a variety of oscilloscopes. On or about April 2022, the Illinois-based company sold Livshits a MSO54–BW–100 Mixed Signal Generator for approximately $25,000. Livshits requested that the company list the purchaser as Strandway, LLC and David Wetzky. On May 9, 2022, a package was shipped via DHL from Strandway's New Hampshire location to Hamburg, Germany. The shipment was declared with DHL to be a ''Oscilloscope—Used, No Warr'' with the declared value of $2,482, an amount under the $2,500 threshold which would have required Respondents to file an EEI submission with the U.S. Government.

In July 2022, Livshits attempted to purchase a 3GHz Signal Generator, valued at $15,564, from an Illinois-based company. Livshits requested that the 3GHz Signal Generator be shipped to Strandway, which was identified as the end user on a BIS–711 End-User/End-Use Statement. On August 8, 2022, OEE detained a shipment being exported from Strandway and destined for Lithuania. Although the shipment was declared to be a ''Used Signal Generator'' valued at $2,480, an inspection revealed that the shipment contained the 3GHz Signal Generator procured by Livshits, which was controlled for export under ECCN 3A992.a and required an export license to Russia. Again, OEE has reason believe that Respondents intentionally undervalued the item below $2,500 to avoid the EEI filing requirement set out in Section 758.1 of the Regulations.

D. Ongoing Procurement Attempts

As detailed in OEE's request and related information, Livshits continues to engage in attempts at illicit

procurement, including through the use of Advanced Web Services. OEE's investigation includes a May 23, 2022 purchase from a Texas-based distributor of semi-conductors and electronic components by Advanced Web Services. Moreover, the products at issue were then shipped to Advanced Web Services at an address in New Hampshire used by the Respondents to divert items to Russia. Additionally, following the August 8, 2022 detention of the Signal Generator discussed *supra,* Livshits continued his efforts to procure U.S.-origin electronic components from U.S.-based companies. For instance, in an email exchange between Livshits and an Illinois-based company occurring between on or about August 13, 2022 and August 15, 2022, Livshits inquired about purchasing a signal generator listed for an asking price over $56,000. In another exchange between Livshits and the same company, which occurred between on or about September 5, 2022 and September 14, 2022, Livshits inquired about purchasing an E4440A Spectrum Analyzer and having the item shipped to New Hampshire. On or about September 14, 2022, Livshits informed the company that he required 2 or 3 E4440A units, which are controlled for export under ECCN 3A992.a and would require an export license to Russia.

III. Findings

I find that the evidence presented by BIS demonstrates that a violation of the Regulations by the above-captioned parties is imminent in both time and degree of likelihood. As such, a TDO is needed to give notice to persons and companies in the United States and abroad that they should cease dealing with Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, and Strandway, LCC in export or reexport transactions involving items subject to the EAR. Such a TDO is consistent with the public interest to preclude future violations of the Regulations given the deliberate, covert, and determined nature of the misconduct and clear disregard for complying with U.S. export control laws.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with Section 766.24 and 766.23(b) of the Regulations.

It is therefore ordered:

First, that BORIS LIVSHITS, with an address at 9V Kuttuzi, Leningrad Oblast St. Petersburg, Russian Federation; SVETLANA SKVORTSOVA, with an address at Yablochinkova 21 Moscow, Russian Federation; ALEKSEY IPPOLITOV, with an address at Ozernaya 46 Moscow, Russian Federation; ADVANCED WEB SERVICES, with an address at 417 Brightwater Court, Apt. 6f Brooklyn, NY 11235; and STRANDWAY, LLC, with an address at 99 Wall St., Ste. 148 New York, NY 10005; and when acting for or on their behalf, any successors or assigns, agents, or employees (each a ''Denied Person'' and collectively the ''Denied Persons'') may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the EAR that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, and Strandway, LCC by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

In accordance with the provisions of section 766.24(e) of the EAR, Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, and Strandway, LCC may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. Respondents Boris Livshits, Svetlana Skvortsova, Aleksey Ippolitov, Advanced Web Services, and Strandway, LCC may oppose a request to renew this Order by filing a written submission with the Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be served on each denied person and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–27347 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[[A–520–807]

Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On December 8, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Universal Tube and Plastic Indus., Ltd.* v. *United States,* Court no. 20–03944, sustaining the Department of Commerce (Commerce)'s remand results pertaining to the administrative review of the antidumping duty (AD) order on circular welded carbon-quality steel pipe (CWP) from the United Arab Emirates (UAE) covering the period December 1, 2017, through November 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Universal Tube and Plastic Industries, Ltd. (UTP)/THL Tube and Pipe Industries LLC (THL)/KHK Scaffolding and Formwork LLC (KHK) (collectively, Universal).

DATES: Applicable December 18, 2022.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Luberda, 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) 482–2185.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2020, Commerce published its *Final Results* in the 2017–2018 AD administrative review of CWP from the UAE, in which Commerce calculated a weighted-average dumping margin of 3.79 percent for Universal.[1] After correcting ministerial errors contained in the *Final Results,* on January 5, 2021, Commerce published the *Amended Final Results* and revised the calculated weighted-average dumping margin for Universal to 3.63 percent.[2]

Universal appealed Commerce's *Final Results/Amended Final Results.* On July 15, 2022, the CIT remanded the *Final Results/Amended Final Results* to Commerce, holding that Commerce: (1) failed to demonstrate that its methodology to determine whether to grant a level of trade (LOT) adjustment and/or a constructed export price (CEP) offset achieved a ''fair comparison'' between CEP and normal value; and (2) failed to consider certain record evidence in its final finding that neither an LOT adjustment nor CEP offset was warranted for Universal.[3]

In its final remand redetermination, issued in October 2022, Commerce found that Universal made sales in the home market at two LOTs, and therefore an LOT adjustment was warranted for Universal when comparing its U.S. sales to home market sales made at a more advanced LOT.[4] The CIT sustained Commerce's final redetermination.[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 8, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending the calculated weighted-average dumping margin for Universal as follows:

Exporter/producer	Weighted-average dumping margin (percent)
Universal Tube and Plastic Industries, Ltd. (UTP)/THL Tube and Pipe Industries LLC (THL)/KHK Scaffolding and Formwork LLC	1.18

Cash Deposit Requirements

Because Universal has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and exported by Universal, and were entered, or withdrawn from warehouse, for consumption during the period December 1, 2017, through November 30, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and exported by Universal in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an importer-specific *ad valorem* assessment rate is zero or *de*

[1] *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 77159, 77160 (December 1, 2020) (*Final Results*). In the less-than-fair-value investigation, Commerce found that UTP, Universal Tube and Pipe Industries, LLC, and KHK should be treated as a single entity. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value,* 81 FR 75030 (October 28, 2016). Further, in the 2016–2017 administrative review of this order, we determined that THL is the successor-in-interest to Universal Tube and Pipe Industries, LLC. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 84 FR 44845 (August 27, 2019). Absent information to the contrary, Commerce continued to treat Universal as a single entity for the purposes of the 2017–2018 administrative review of this order. *See Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 7279, 7279 (n. 3) (February 7, 2020), and accompanying Preliminary Decision Memorandum (PDM), unchanged in *Final Results* and *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Amended Final Results of Antidumping Duty Administrative Review,* 86 FR 289 (January 5, 2021) (*Amended Final Results*).

[2] *See Amended Final Results.*

[3] *See Universal Tube and Plastic Indus., Ltd.* v. *United States,* Court No. 20–03944, Slip Op. 22–83 (CIT July 15, 2022).

[4] *See* ''*Universal Tube and Plastic Indus., Ltd.* v. *United States,* Court No. 20–03944, Slip Op. 22–83 (CIT July 15, 2022) Final Results of Redetermination Pursuant to Court Remand,'' issued on October 13, 2022.

[5] *See Universal Tube and Plastic Indus., Ltd.* v. *United States,* Court No. 20–03944, Slip Op. 22–139 (CIT December 8, 2022).

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

[7] *See Diamond Sawblades Mfrs. Coal.* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

minimis,[8] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

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

Dated: December 12, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–27329 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–829]

Stainless Steel Wire Rod From the Republic of Korea: Preliminary Negative Determination of Circumvention of the Antidumping Order and Postponement of Final Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that U.S. imports of stainless steel round wire (SSWire) from the Socialist Republic of Vietnam (Vietnam) are not circumventing the antidumping duty (AD) order on stainless steel wire rod (SSWR) from the Republic of Korea (Korea).

DATES: Applicable December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Byeong-hun You, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3477 or (202) 482–1018, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1998, Commerce published the order on imports of SSWR from Korea.[1] On May 18, 2021, North American Stainless (NAS) requested that Commerce initiate a circumvention inquiry, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), to determine whether SSWire from Vietnam involves a minor alteration to subject merchandise, such that it should be subject to the *Order*.[2] On February 1, 2022, Commerce initiated a country-wide circumvention inquiry to determine whether U.S. imports of SSWire from Vietnam involves a minor alteration to subject merchandise, such that it should be subject to the order on SSWR from Korea.[3]

On March 25, 2022, Commerce selected KOS Vietnam Company Ltd., (KOS Vietnam), Kuang Tai Metal (Vietnam) Company, Ltd. (Kuang Tai Metal) and Tengyuan Wire (Vietnam) Company Limited (Tengyuan Wire), as the mandatory respondents in this circumvention inquiry.[4] In March 2022, Commerce issued questionnaires to the three respondents.[5] In May 2022, all three respondents submitted timely responses.[6]

Between June and August 2022, we issued multiple supplemental questionnaires to KOS Vietnam, Kuang Tai Metal, and Tengyuan Wire and received timely responses.[7]

On September 14, 2022, the domestic interested party, North American Stainless (NAS) filed pre-preliminary comments.[8] On September 20, 2022, Tengyuan Wire submitted pre-preliminary rebuttal comments.[9] On September 23, 2022, KOS Vietnam submitted pre-preliminary rebuttal comments.[10]

Scope of the Order [11]

For a full description of the scope of the *Order, see* the Preliminary Decision Memorandum.[12]

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers SSWire completed in Vietnam using Korea-origin SSWR and subsequently exported from Vietnam to the United States

Statutory and Regulatory Framework

Section 781(c) of the Act, provides that Commerce may find circumvention of an AD or CVD order when merchandise of the same class or kind as subject merchandise has been ''altered in form or appearance in minor respects...whether or not included in the same tariff classification.'' Further, section 781(c)(2) of the Act provides an exception that ''{p}aragraph 1 shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.''

While the Act is silent as to what factors to consider in determining whether alterations are properly considered ''minor,'' the legislative history of this provision indicates that there are certain factors that should be considered before reaching a circumvention determination. In conducting a circumvention inquiry under section 781(c) of the Act, Commerce has generally relied upon ''such criteria as the overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products.'' [13] Concerning the allegation of minor alteration under section 781(c) of the Act, Commerce examines such factors as: (1) overall physical characteristics;

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

[1] *See Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Stainless Steel Wire Rod from Korea,* 63 FR 49331 (September 15, 1998) (*Order*).

[2] *See* NAS's Letter, ''Request for Circumvention Ruling Pursuant to Section 781(c),'' dated May 18, 2021 (Circumvention Allegation).

[3] *See Stainless Steel Wire Rod from the Republic of Korea: Initiation of Circumvention Inquiry of Antidumping Duty Order,* 87 FR 5468 (February 1, 2022).

[4] *See* Memorandum, ''Respondent Selection,'' dated March 25, 2022.

[5] *See* Commerce's Letters, ''Circumvention Inquiry Initial Questionnaire,'' dated March 29, 2022.

[6] *See* Kuang Tai Metal's Questionnaire Response, ''Response to questionnaire dated March 29, 2022,'' submitted on May 13, 2022 (Kuang Tai Metal's Qre Response); *see also* KOS Vietnam's Letter, ''Initial Questionnaire Response,'' dated May 17, 2022 (KOS Vietnam's Qre Response); and Teng Yuan Wire's Questionnaire Response, ''Response to questionnaire dated March 29, 2022,'' dated May 10, 2022 (Teng Yuan Wire's Qre Response).

[7] *See* Kuang Tai's Letter, ''Circumvention Supplemental Questionnaire,'' dated July 06, 2022 (Kuang Tai Metal SQR); *see also* KOS Vietnam's Letter, ''Supplemental Questionnaire Response'' dated July 13, 2022 (KOS Vietnam SQR); Tengyuan Wire's' Letter, ''Circumvention Inquiry Initial Questionnaire,'' dated July 20, 2022 (Tengyuan SQR); Kuang Tai Metal's Letter, ''Circumvention Inquiry 2nd Supplemental Questionnaire,'' dated August 3, 2022 (Kuang Tai Metal 2nd SQR); KOS Vietnam's Letter, ''Second Supplemental Questionnaire Response, dated August 23, 2022 (KOS Vietnam 2nd SQR); and, Tengyuan Wire's Letter, ''Circumvention Inquiry Initial Questionnaire,'' dated August 23, 2022 (Tengyuan Wire 2nd SQR).

[8] *See* NAS' Letter, ''NAS's Pre-Preliminary Comments,'' dated September 15, 2022 (NAS Pre-Prelim Comments).

[9] *See* Tengyuan Wire's Letter, ''Pre-Preliminary Rebuttal Comments,'' dated September 20, 2022 (Tengyuan Wire's Rebuttal Comments).

[10] *See* KOS Vietnam's Letter, ''KOS Vietnam's Pre-Preliminary Rebuttal Comments,'' dated September 26, 2022 (KOS Vietnam's Rebuttal Comments).

[11] *See Order.*

[12] *See* Memorandum, ''Stainless Steel Wire Rod from the Republic of Korea: Preliminary Decision Memorandum for the Circumvention Inquiry on the Antidumping Duty Order,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum) at 3–4.

[13] *See Carbon and Certain Alloy Steel Wire Rod from Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Orde*r, 83 FR 5405 (February 7, 2018) (citing S. rep. No 71, 100th Cong., 1sr Sess. 100 (1987)).

(2) expectations of ultimate users; (3) use of merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.[14] Each inquiry is highly dependent on the facts on the record and must be analyzed in light of those specific facts.[15] Thus, along with the five factors enumerated above, Commerce may also consider the circumstances under which the products enter the United States, including, but not limited to, the timing of the entries and the quantity of merchandise entered during the circumvention review period.[16]

Preliminary Determination

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that the SSWire completed in Vietnam using Korea-origin SSWR and subsequently exported from Vietnam to the United States is not circumventing the *Order* on a country-wide basis. Accordingly, Commerce is making a negative preliminary finding of circumvention of the *Order.*

Methodology

As noted above, Commerce is conducting this circumvention inquiry in accordance with section 781(c) of the Act. For a complete description of the events that followed the initiation of these circumvention inquiries, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

As provided in 19 CFR 351.307, Commerce intends to verify information relied upon in making its final determination.

Public Comment

Because Commerce intends to conduct verification, interested parties will be provided an opportunity to submit written comments (case briefs) at a date to be determined by Commerce and rebuttal comments (rebuttal briefs) within seven days after the time limit for filing case briefs.[17] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[18] Case and rebuttal briefs should be filed electronically via ACCESS.[19] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[20]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined.

Postponement of Final Determination

In accordance with 19 CFR 351.302(b), unless expressly precluded by the statute, Commerce, may, for good cause, extend any time limit. As we indicate above, Commerce intends to conduct verification of information relied upon, pursuant to 19 CFR 351.307, prior to issuing it final determination. As such, Commerce has determined that additional time is necessary to issue the final determination of this circumvention inquiry. Therefore, in accordance with 19 CFR 351.302(b), we are extending the deadline for issuing the final determination of this circumvention inquiry by 120 days, until April 11, 2023.

Notification to Interested Parties

This determination is issued and published in accordance with section 781(c) of the Act and 19 CFR 351.226(g)(1).

Dated: December 12, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–27330 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–DS–P

[14] *Id.; see also Deacero S.A. de C.V.* v. *United States,* 817 F.3d 1332 (Fed. Cir. 2016).

[15] *See, e.g., Certain Uncoated Paper from Australia, Brazil, the People's Republic of China, Indonesia, and Portugal: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 82 FR 26778 (June 9, 2017), and accompanying Preliminary Decision Memorandum, at ''IV. Statutory and Regulatory Framework.''

[16] *Id.; see also Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order on Certain Cut-to-Length Steel Plate from the People's Republic of China,* 74 FR 33991, 33992–93 (July 14, 2009); *Brass Sheet and Strip from West Germany; Negative Final Determination of Circumvention of Antidumping Duty Order,* 56 FR 65884 (December 19, 1991); and *Small Diameter Graphite Electrodes from the People's Republic of China: Initiation of Anticircumvention Inquiry,* 77 FR 37873 (June 25, 2012).

[17] *See* 19 CFR 351.309(c)(l)(ii) and 351.309(d)(l). Interested parties will be notified through ACCESS regarding the deadline for submitting case briefs; see also 19 CFR 351.303 (for general filing requirements).

[18] *See* 19 CFR 351.309(c)(2)(d)(2).

[19] *See* 19 CFR 351.303.

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

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of the 2016 Countervailing Duty Administrative Review; Notice of Amended Final Results

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

SUMMARY: On December 8, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Yama Ribbons and Bows Co.,* v. *United States,* Court No. 19–00047, sustaining the Department of Commerce's (Commerce's) remand results pertaining to the 2016 administrative review of the countervailing duty (CVD) order on

narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rate assigned to Yama Ribbons and Bows Co. (Yama).

DATES: Applicable December 18, 2022.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, 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) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2019, Commerce published its final results of the 2016 CVD administrative review of ribbons from China. [1] In the *Final Results,* Commerce assigned Yama an overall subsidy rate of 23.70 percent based, in part, on adverse facts available (AFA).

Yama appealed Commerce's *Final Results.* On April 30, 2021, the CIT remanded to Commerce its *Final Results* findings that Yama used and benefited from the Export Buyer's Credit program (EBCP) and the Provision of Synthetic Yarn and Caustic Soda for Less-Than-Adequate Remuneration (LTAR) and its inclusion of these subsidies in the overall subsidy rate determined for Yama.[2]

In its remand redetermination issued in August 2021, Commerce reconsidered its decision to apply AFA in evaluating use of the EBCP and determined, under respectful protest, that the EBCP was not used by Yama during the period of review (POR). Commerce also further considered the information on the record and supplemented the record regarding the synthetic yarn and caustic soda inputs for LTAR programs and addressed the ''specificity'' requirement in the statute for them. Upon further examination, Commerce found that: (1) the Provision of Synthetic Yarn and Caustic Soda for LTAR programs met the specificity requirement of the statute and, therefore, were countervailable subsidies; and (2) Yama benefited from these programs during the POR. Accordingly, Commerce calculated a revised subsidy rate for Yama of 13.16 percent.[3] On December 8, 2022, the CIT sustained Commerce's final redetermination.[4]

Timken Notice

In its decision in *Timken,*[5] as clarified by *Diamond Sawblades,*[6] the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 8, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

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

Company	Subsidy rate (%)
Yama Ribbons and Bows Co., Ltd	13.16

Cash Deposit Requirements

Because Yama has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate for Yama.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and exported by Yama and were entered, or withdrawn from warehouse, for consumption during the period January 1, 2016, through December 31, 2016. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, is upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise produced and exported by Yama in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis.* Where an *ad valorem* subsidy rate is zero or *de minimis,*[7] we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

Notification to Interested Parties

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

Dated: December 12, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–27331 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016,* 84 FR 11052 (March 25, 2019) (*Final Results*).

[2] *See Yama Ribbons and Bows Co., LTD.* vs. *United States*, 517 F.Supp.3d 1325 (CIT 2021).

[3] *See* Final Results of Redetermination Pursuant to Court Remand, Consol. Ct. No. 19–00047, Slip Op. 21–50 (August 13, 2021) (Remand Results).

[4] *See Yama Ribbons and Bows Co., Ltd.* vs. *United States*, Consol. Court No 19–00047, Slip Op. 22–138 (CIT December 8, 2022).

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

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

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–124; C–570–125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders—60cc Up To 99cc Engines

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that vertical shaft engines with displacements between 60 cubic centimeters (cc) and up to 99cc produced in the People's Republic of China (China) and exported to the United States are circumventing the antidumping duty (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof, (small vertical engines) from China by means of being merchandise ''altered in form or appearance in minor respects.''

DATES: Applicable December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Luberda, AD/CVD

Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2185.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2022, Commerce published the preliminary determination [1] for the circumvention inquiry of the AD and CVD *Orders* on small vertical engines from China with respect to vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States.[2] A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[3] Commerce conducted this inquiry in accordance with section 781(c) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.225(i). This inquiry was initiated on September 13, 2021,[4] and it is being conducted under the prior version of 19 CFR 351.225, not the version promulgated in *AB10*.[5]

Scope of the Orders

The merchandise subject to the *Orders* is small vertical engines from China. For a complete description of the scope of the *Orders, see* the Issues and Decision Memorandum.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States.

Analysis of Comments Received

All the issues raised in case and rebuttal briefs that were submitted by parties in this inquiry are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached in the Appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Determination

In the *Preliminary Determination,* we determined that vertical shaft engines with displacements between 60cc and up to 99cc and engines with displacements of 99cc up to 225cc are not dissimilar in terms of overall physical characteristics of the merchandise, the expectations of the ultimate users, the use of the merchandise, channels of marketing, and the timing and circumstances under which the Zongshen Companies [6] exported the engines with displacements between 60cc and up to 99cc. Thus, we preliminarily determined that the merchandise subject to this inquiry is not dissimilar to subject merchandise and that the engines at issue constitute merchandise ''altered in form or appearance in minor respects'' from in-scope merchandise, within the meaning of section 781(c) of the Act. We also preliminarily determined that the affirmative circumvention finding should be applied on a countrywide basis.[7]

Our final determination remains unchanged from the *Preliminary Determination.* Accordingly, we determine, pursuant to section 781(c) of the Act and 19 CFR 351.225(i), that imports of vertical shaft engines with displacements between 60cc and up to 99cc, produced in China and exported to the United States, are circumventing the *Orders.* We also continue to find that the affirmative circumvention finding should be applied on a countrywide basis.

Liquidation of Entries

In the *Preliminary Determination,* Commerce stated that it would instruct United States Customs and Border Protection (CBP) to suspend liquidation of, and collect cash deposits on, vertical shaft engines between 60cc and up to 99cc produced in China and exported to the United States that were entered, or withdrawn from warehouse, for consumption on or after September 17, 2021 (*i.e.,* the date of the initiation of this inquiry).[8] On October 26, 2022, Commerce rescinded the administrative review of the AD order for the period July 23, 2020, through April 30, 2022, and the administrative review of the CVD order for the period May 26, 2020, through December 31, 2021.[9] Accordingly, the administrative reviews covering certain entries of inquiry merchandise for which liquidation is suspended have been rescinded.

For any unliquidated entries and entries for which liquidation has not become final of vertical shaft engines with displacements between 60cc and up to 99cc produced in China and exported to the United States that entered as non-AD/CVD type entries (*e.g.,* type 01) that were shipped and/or entered, or withdrawn from warehouse, for consumption in the United States after September 17, 2021, importers should file a Post Summary Correction with CBP, in accordance with CBP's regulations, regarding conversion of such entries from non-AD/CVD case numbers to AD/CVD type entries (*e.g.,* type 01 to type 03). For such shipments, the Post Summary Corrections should be completed as soon as practicable, but not later than 45 days after publication of this notice in the **Federal Register**. Importers should report those AD/CVD type entries of merchandise under the AD/CVD case numbers of the *Orders* on

[1] *See Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders,* 87 FR 54672 (September 7, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 23675 (May 4, 2021) (*Orders*).

[3] *See* Memorandum, ''Final Issues and Decision Memorandum for Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: 60cc Up To 99cc Engines,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Initiation of Anti-Circumvention Inquiry of Antidumping and Countervailing Duty Orders—60cc Up to 99cc Engines,* 86 FR 51866 (September 17, 2021), and accompanying Issues and Decision Memorandum.

[5] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*AB10*).

[6] In the less-than-fair-value investigation, Commerce found that Chongqing Zongshen General Power Machine Co., Ltd.; Chongqing Dajiang Power Equipment Co., Ltd.; and Chongqing Zongshen Power Machinery Co., Ltd. (collectively, the Zongshen Companies) should be treated as a single entity. *See Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof, from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, and Preliminary Affirmative Determination of Critical Circumstances, in Part,* 85 FR 66932 (October 21, 2020), unchanged in *Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances in Part,* 86 FR 14077 (March 12, 2021). Absent information to the contrary, we continue to treat the Zongshen Companies as a single entity for the purposes of this inquiry.

[7] *See Preliminary Determination* PDM.

[8] *See Preliminary Determination,* 87 FR at 54673.

[9] *See Rescission of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 64764 (October 26, 2022).

small vertical engines from China (*i.e.,* A–570–124; C–570–125) or appropriate third-country case numbers (*i.e.,* A–201–996; C–201–997). The importer must pay cash deposits on those entries consistent with the regulations governing post summary corrections that require payment of additional duties.

Commerce intends to instruct CBP to assess AD and/or CVD duties on all appropriate entries of vertical shaft engines with displacements between 60cc and up to 90cc during the periods of review noted above at rates equal to the applicable cash deposit of estimated AD or CVD duties in effect at time of entry, or withdrawal of merchandise from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions no earlier than 35 days after the publication of this notice 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).

Continuation of Suspension of Liquidation

As a result of this determination, and consistent with 19 CFR 351.225(l)(3), we will instruct CBP to continue to suspend the liquidation of all entries of merchandise subject to the inquiry entered, or withdrawn from warehouse, for consumption, under the AD order after April 30, 2022, and all entries entered, or withdrawn from warehouse, for consumption, under the CVD order after December 31, 2021, and to require cash deposits of estimated AD and/or CVD duties at the applicable subject merchandise rates. The suspension of liquidation and cash deposit instructions will remain in effect until further notice.

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to all parties subject to the administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

Notification to Interested Parties

This affirmative final determination of circumvention is issued and published in accordance with section 781(c) of the Act.

Dated: December 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–27276 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Economic Valuation of Natural and Nature-Based Infrastructure

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 22, 2022 (87 FR 57868) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Economic Valuation of Natural and Nature-Based Infrastructure.

OMB Control Number: 0648–0788.

Form Number(s): None.

Type of Request: Revision and extension.

Number of Respondents: Focus groups: 48; Questionnaire: 6,500.

Average Hours per Response: Focus groups: 1 hour; Questionnaire: 20 minutes.

Total Annual Burden Hours: 2,215.

Needs and Uses: Pursuant to H.R. 3684 (Infrastructure Investment and Jobs Act) and the Coastal Zone Management Act (CZMA), this request is for a revision and extension of an information collection. This information collection will focus on a different geographical location (Gulf of Mexico (GoM)). Therefore, this is a request for focus groups to help guide any revisions necessary to the survey instrument. Upon completion of these focus groups, a revision will be submitted for the revised survey instrument. Also, NOAA is revising the title of this collection from Economic Analysis of Shoreline Treatment Options for Coastal New Hampshire to Economic Valuation of Natural and Nature-Based Infrastructure to better describe this collection.''

The National Ocean Service (NOS) proposes to collect data on the opinions, values, and attitudes of GoM residents relative to natural and nature-based infrastructure for the purpose of shoreline stabilization or habitat restoration. Respondents (age 18 years and older) will be randomly sampled from households in GoM coastal counties. This information will be used by NOAA, state and local decision-makers, and others to assess the value, benefits, and perceived efficacy of federal investments in habitat restoration and/or climate adaptation projects that use natural or nature-based infrastructure. NOAA has a vested interest in the potential use of natural and nature-based infrastructure, from many perspectives, including as it relates to the resilience, well-being, and sustainability of coastal communities.

Affected Public: Individuals or households.

Frequency: This is a one-time information collection for this region, although the collection may be deployed to other regions in the future.

Respondent's Obligation: Voluntary.

Legal Authority: H.R. 3684 (Infrastructure Investment and Jobs Act) and the Coastal Zone Management Act (CZMA).

This information collection request may be viewed at *www.reginfo.gov*. Follow the instructions to view the

Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0788.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Department of Commerce.

[FR Doc. 2022–27361 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–JS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC603]

Marine Mammals; File No. 23644

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that Iain Kerr, D.H.L., Ocean Alliance, 32 Horton Street, Gloucester, MA 01930, has applied for an amendment to Scientific Research Permit No. 23644–01.

DATES: Written, telefaxed, or email comments must be received on or before January 17, 2023.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 23644 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23644–02 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Shasta McClenahan, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 23644–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 23644, issued on October 26, 2020 (85 FR 73263, November 17, 2020), authorizes the permit holder to conduct research on 22 cetacean species in U.S. and international waters of the North Atlantic and North Pacific Oceans to study cetacean toxicology, microplastics, acoustics, and behavioral ecology. Researchers may conduct vessel surveys including unmanned aircraft system (UAS) operations, biological sampling, counts, passive acoustics, photo-ID, photograph/video, observations, photogrammetry, and thermal imaging. Cetaceans also may be unintentionally harassed during surveys. Samples collected on the high seas or under other authorizations worldwide may be imported for study. The permit was amended on January 27, 2022 (as No. 23644–01), to authorize additional UAS models and UAS operations at night. For the current amendment, the permit holder requests to add suction-cup tagging by UAS for up to 30 humpback whales (*Megaptera novaeangliae*) each in North Atlantic and North Pacific waters and 30 minke whales (*Balaenoptera acutorostrata*) in North Atlantic waters as part of their behavioral ecology studies. The amendment would be valid for the duration of the permit, until October 31, 2025.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 13, 2022.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–27343 Filed 12–15–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the procurement list.

SUMMARY: The Committee is proposing to delete service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: January 15, 2023.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service Type: Switchboard Operation
Mandatory for: Veterans Affairs Medical Center: 718 Smyth Road, Manchester, NH
Designated Source of Supply: Northern New England Employment Services, Portland, ME
Contracting Activity: Veterans Affairs, Department of, 608–Manchester

Service Type: Mailroom Operation & Administrative Supp
Mandatory for: Veterans Affairs Medical Center: 718 Smyth Road, Manchester, NH
Designated Source of Supply: Northern New England Employment Services, Portland, ME
Contracting Activity: Veterans Affairs, Department of, 608–Manchester

Service Type: Custodial Services
Mandatory for: USDA, APHIS, PPQ, 843 13th

Court, Unit 7, Riviera Beach, FL
Designated Source of Supply: Gulfstream Goodwill Industries, Inc., West Palm Beach, FL
Contracting Activity: Animal and Plant Health Inspection Service, USDA APHIS MRPBS

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–27301 Filed 12–15–22; 8:45 am]

BILLING CODE 6353–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Notice of Availability of Revised Consumer Information Publication

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of availability.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) announces the availability of an updated consumer publication, ''What You Should Know about Home Equity Lines of Credit,'' also known as the HELOC booklet, required by the Truth in Lending Act (TILA), as implemented by Regulation Z. This version of the HELOC booklet is updated to align with the Bureau's educational efforts, to be more concise, and to improve readability and usability.

ADDRESSES: The updated consumer publication is available for download on the Bureau's website at *https://www.consumerfinance.gov/learnmore* and can also be found in the Catalog of U.S. Government Publications (*https://catalog.gpo.gov*), maintained by Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Davida Farrar, Supervisory Attorney Advisor, Consumer Education and External Affairs Division; Laura Schlachtmeyer, Senior Financial Education Content Specialist, Office of Financial Education; *CFPB_reginquiries@cfpb.gov* or (202) 435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: The Bureau is hereby publishing this notice of availability to inform the public of the existence of an updated version of the booklet entitled, ''What You Should Know about Home Equity Lines of Credit.''

Background on the HELOC Booklet

The Truth in Lending Act (TILA) [1] was enacted in part to ensure consumers have clear, accurate information about credit terms and conditions to assist them in comparison shopping. TILA provisions include requirements that lenders give consumers certain disclosures related to a number of credit transactions. The Home Equity Loan Consumer Protection Act of 1988 expanded TILA to require additional disclosures for ''open end consumer credit plans . . . secured by the consumer's principal dwelling.'' [2] The amendments included? a provision for the Board of Governors of the Federal Reserve System to develop consumer pamphlets that provide ''a general description of open end consumer credit plans secured by the consumer's principal dwelling and the terms and conditions under which such loans are generally extended'' and ''a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans.'' [3]

Prior to the Dodd-Frank Act, the Board implemented this requirement in 12 CFR 226.5b(e) and developed and published the HELOC Brochure to consumers with basic information about the features of a home equity line of credit and what to look for and compare when shopping for credit. Under the Dodd-Frank Act, the responsibility for the HELOC Brochure transferred to the CFPB. Under the CFPB's Regulation Z, at the time an application for a HELOC is provided to the consumer, a creditor must provide certain disclosures and ''the home equity brochure entitled 'What You Should Know About Home Equity Lines of Credit' or a suitable substitute. . . .'' [4]

Contents of the Updated Version of the HELOC Booklet

The Bureau is updating the HELOC booklet so that it aligns with the Bureau's educational efforts, to be more concise, and to improve readability and usability. New features include clear instructions on how consumers can use the pamphlet to explore their options, and a comparison table with examples of loans that utilize home equity and other sources of financing consumer might consider, including closed-end credit. To encourage consumers to understand the terms of their HELOC and to shop for the most advantageous offer, the booklet expands the tables for consumers to compare three estimates. The design of the HELOC booklet has a look and feel similar to ''Your Home Loan Toolkit: A Step-By-Step Guide,'' and the ''Consumer Handbook on Adjustable-Rate Mortgages,'' other consumer disclosures that the Bureau is responsible for producing.

In January 2021, CFPB released a statement encouraging financial institutions to make financial products and services available to consumers with limited English proficiency. One of the tenets of that statement is that financial institutions provide consumers with clear disclosures in languages other than English.[5] To further this goal of inclusion, the HELOC booklet is also available in Spanish. The Bureau encourages financial institutions to disseminate these booklets to consumers to expand the availability and understanding of products and services to all consumers.

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[FR Doc. 2022–27324 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0082]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval of an existing information collection titled ''Generic Information Collection Plan to Conduct Cognitive and Pilot Testing of Research Methods, Instruments, and Forms'' approved under OMB Number 3170–0055.

[1] Truth in Lending Act, Public Law 90–321, 82 Stat. 146, 15 U.S.C. 1601 *et seq.* (1968).

[2] Home Equity Loan Consumer Protection Act, Public Law 100–709, 102 Stat. 4725, 15 U.S.C. 1637a (1988).

[3] *Id.* section 4 at 4733.

[4] 12 CFR 1026.40(e). Under certain circumstances, the disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application. *See* 12 CFR 1026.40(b).

[5] *See Statement Regarding the Provision of Financial Products and Services to Consumers With Limited English Proficiency,* 86 FR 6306 (Jan. 1, 2021), *available at https://www.federalregister.gov/documents/2021/01/21/2021-01116/statement-regarding-the-provision-of-financial-products-and-services-to-consumers-with-limited.*

DATES: Written comments are encouraged and must be received on or before January 17, 2023 to be assured of consideration.

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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan to Conduct Cognitive and Pilot Testing of Research Methods, Instruments, and Forms.

OMB Control Number: 3170–0055.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 5,190.

Estimated Total Annual Burden Hours: 5,460.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB is charged with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. In order to improve its understanding of how consumers engage with financial markets, the CFPB seeks to obtain approval for a generic information collection plan to conduct research to improve the quality of data collection by examining the effectiveness of data-collection procedures and processes, including potential psychological and cognitive issues.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on September 8, 2022 (87 FR 54982) under Docket Number: CFPB–2022–0058. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–27320 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0083]

Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the revision of the Office of Management and Budget's (OMB's) approval of an existing information collection titled ''Terms of Credit Card Plans Survey'' approved under OMB Number 3170–0001.

DATES: Written comments are encouraged and must be received on or before January 17, 2023 to be assured of consideration.

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. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Terms of Credit Card Plans Survey.

OMB Control Number: 3170–0001.

Type of Review: Revision of a currently approved collection.

Affected Public: Private sector: businesses or other for-profits institutions.

Estimated Number of Respondents: 665.

Estimated Total Annual Burden Hours: 564.

Abstract: The Bureau intakes different forms of credit card data from credit card issuers, as required by the Truth in Lending Act (TILA), 15 U.S.C. 1601, *et seq.* and implementing regulations:

- The ''Terms of Credit Card Plans Survey'' collects data on credit card pricing and availability from a sample of at least 150 financial institutions that offer credit cards. The data enables the Bureau to present information to the public on terms of credit card plans;
- Sections 204 and 305 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), amending TILA, and 12 CFR 1026.57(d) and 1026.58, require card issuers to submit to the Bureau:
  - Agreements between the issuer and a consumer under a credit card account for an open-end consumer credit plan; and
  - Any college credit card agreements to which the issuer is a party and certain additional information regarding those agreements.

The data collections enable the Bureau to provide Congress and the public with a centralized and searchable repository for consumer and college credit card agreements and information regarding the arrangements between financial institutions and institutions of higher education.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on August 18, 2022 (87 FR 50851) under Docket Number: CFPB–2022–0048. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of

the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–27321 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0081]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) requests the extension of the Office of Management and Budget's (OMB's) approval of an existing information collection titled ''Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials'' approved under OMB Number 3170–0022.

DATES: Written comments are encouraged and must be received on or before January 17, 2023 to be assured of consideration.

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.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Anthony May, Paperwork Reduction Act Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan for the Development and Testing of Disclosures and Related Materials.

OMB Control Number: 3170–0022.

Type of Review: Extension of a currently approved information collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 73,800.

Estimated Total Annual Burden Hours: 25,463.

Abstract: The Bureau will use this generic information collection for the development and testing of consumer financial disclosures and related materials. The research will result in recommendations for the development of and revisions to such disclosures and related materials. The research activities may be conducted by the Bureau or its contractors and will include cognitive psychological testing methods or quantitative evaluations. This approach has been demonstrated to be feasible and valuable by the Bureau and other agencies in developing disclosures and related materials. The Bureau will conduct planned research activities toward the goal of creating effective disclosures and related materials that will help consumers understand the features of consumer financial products and services.

Request for Comments: The Bureau published a 60-day **Federal Register** notice on October 5, 2022 (87 FR 60386) under Docket Number: CFPB–2022–0068. The Bureau is publishing this notice and soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–27274 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0033; OMB Control Number 0750–0001]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Performance-Based Payments—Representation

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0750–0001 through April 30, 2023. DoD proposes that OMB approve an extension of the information collection requirement, to expire three years after the approval date.

DATES: DoD will consider all comments received by February 14, 2023.

ADDRESSES: You may submit comments, identified by OMB Control Number

0750–0001, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

○ *Email: osd.dfars@mail.mil.* Include OMB Control Number 0750–0001 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. David Johnson, at 202–913–5764.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Performance-Based Payments—Representation; OMB Control Number 0750–0001.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Reporting Frequency: On occasion.

Number of Respondents: 144.

Responses per Respondent: 1.

Annual Responses: 144.

Average Burden per Response: 0.1 hour.

Annual Burden Hours: 14.4.

Needs and Uses: This information collection concerns the Defense Federal Acquisition Regulation Supplement (DFARS) solicitation provision at 252.232–7015, Performance-Based Payments—Representation. This provision is prescribed at DFARS 232.1005–70(b) for use in solicitations where the resulting contract may include performance-based payments. This representation will be included in the annual representations and certifications in the System for Award Management. Paragraph (b) of the provision requires the offeror to check a box indicating whether the offeror's financial statements are in compliance with Generally Accepted Accounting Principles. DoD will use this information to decide whether the offeror is eligible for performance-based payments.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–27208 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0138]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is establishing a new Department-wide system of records titled, ''Declared Public Health Emergency Exposure Records,'' DoD–0013. This system of records covers DoD's maintenance of records about individuals necessitated by a declared public health emergency (DPHE) by an appropriate official, including the Secretary of Health and Human Services pursuant to the Public Health Services Act, a DoD official, or other authorized state, local, or other governmental public health official pursuant to applicable law. These records are maintained to assist the DoD in establishing safe environments, identifying and protecting DoD-affiliated individuals at risk of transmission of or contracting the disease or agent at issue, and in supporting mission readiness. Additionally, the DoD is issuing a direct final rule, which is exempting this system of records from certain provisions of the Privacy Act, elsewhere in today's issue of the **Federal Register**.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before January 17, 2023. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is establishing the Declared Public Health Emergency Exposure Records, DoD–0013 as a DoD-wide Privacy Act system of records. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintain the same kind of information about individuals for the same purpose. The establishment of DoD-wide SORNs helps DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public, and create efficiencies in the operation of the DoD privacy program.

DoD prioritizes the safety of its workforce to ensure Department's missions are able to be accomplished successfully at all times in defense of the Nation. To do that, DoD must maintain operationally ready capabilities, including operating within degraded environments such as during a DPHE. Public health emergencies are varied; they may be broad or limited in geographical scope and may be declared by various authorities such as the Secretary of Health and Human Services or the responsible, designated State, local, tribal, or territorial official, or cognizant military commander. Responses to public health emergencies depend on the nature of the emergency, but in some cases the degraded environment created by the public health emergency may require the DoD to collect personal information to ensure a safe and secure workplace for employees and visitors to DoD facilities, and ultimately, to ensure DoD is able to continue to carry out its mission.

DoD Instruction 6200.03, ''Public Health Emergency Management within the DoD,'' establishes DoD policy for DPHE. This includes the authority and responsibilities of DoD commanders and other officials during a DPHE, and various activities that may be required to address the emergency. For example, paragraph 3.1.d(1) provides that DoD

may need to initiate actions to collect and analyze data on the health hazard causing the DPHE, and paragraph 3.1.d(3) provides that DoD may need to act to ensure identification, interview, and tracking of all individuals or groups suspected to have been exposed to the health hazard to characterize the source and spread of the health hazard. In carrying out these and other activities, DoD may collect and maintain information about individuals that is subject to the Privacy Act and therefore requires a SORN, but is not already covered by other DoD SORNs. Examples of the types of data in records that may be uniquely covered by this SORN include contact tracing data, which is the identification and contact information of individuals suspected or confirmed to have contracted a disease or illness, or exposed to an individual suspected or confirmed to have contracted a disease or illness, related to a DPHE; individual circumstances and dates of suspected exposure; and health status information. The data may also include information about individuals exposed to a public health threat other than a communicable disease such as a radiological exposure or the release of a toxin or chemical agents, related to a DPHE. This system of records also supports the sharing of information that may need to occur during a DPHE, such as sharing of exposure information about individuals with public health authorities to support public health goals, such as contact tracing and the reduction of the spread of a health hazard.

The information covered by this system of records is separate and unique from other DoD systems of records which contain records maintained by DoD for accountability and assessment of DoD-affiliated personnel, or created during the normal course of DoD's delivery of occupational health and safety services, which DoD provides routinely to members of the military and DoD civilians, and sometimes to DoD visitors, concessionaires, and contractors. These records are covered by other SORNs, and are specifically identified in the notice below for clarity.

DoD maintains this information to ensure mission success through the appropriate management and response to the public health emergency, and to reduce the risk of disease or illness among DoD military and civilian personnel, contractors, concessionaires, and visitors to DoD facilities. The collection and use of records covered by this system of records is only permitted during times of a declared public health emergency.

Finally, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Rules, as amended by the Omnibus Final Rule, include the HIPAA Privacy Rule, the HIPAA Breach Rule, the HIPAA Security Rule, and the HIPAA Enforcement (Parts 160 and 164 of Title 45 CFR), permit a DoD covered entity to use or disclose protected health information for public health activities as noted in DoD Manual 6025.18. Under HIPAA, ''public health authority'' means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate. 45 CFR 164.501 (definition of ''public health authority''). The HIPAA Rules only apply if the entity or individual that is disclosing protected health information meets the definition of a HIPAA covered entity or business associate. The records covered under this SORN are not subject to the HIPAA Rules.

Additionally, the DoD is issuing a direct final rule to exempt this system of records from certain provisions of the Privacy Act elsewhere in today's issue of the **Federal Register**. DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Freedom of Information Directorate website at *https://dpcld.defense.gov.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: December 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Declared Public Health Emergency Exposure Records, DoD–0013.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301–6000.

SYSTEM MANAGERS:

The system managers for this system of records are as follows:

A. Office of the Assistant Secretary of Defense for Health Affairs, Under Secretary of Defense (Personnel and Readiness), 1000 Defense Pentagon, Washington, DC 20301–1100.

B. Deputy Assistant Secretary of the Army, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

C. Air Force Occupational Safety and Health (AFOSH), Department of the Air Force, 1000 Defense Pentagon, Washington, DC 20301–1100, *usaf.pentagon.af-a1.mbx.a1q--workflow@mail.mil.*

D. Chief of Naval Personnel, Occupational and Environmental Medicine, Navy & Marine Corps Public Health Center, 620 John Paul Jones Circle, Suite 1100, Portsmouth, VA 23708–2103.

E. The Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records have been delegated to the DoD components. DoD components include the Military Departments of the Army, Air Force (including the U.S. Space Force), and Navy (including the U.S. Marine Corps), field operating agencies, major commands, field commands, installations, and activities. To contact the system managers at the DoD component with oversight of the records, go to *www.FOIA.gov* to locate the contact information for each component's Freedom of Information Act (FOIA) office.

AUTHORITY FOR MAINTAINANCE OF THIS SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2672, Protection of Buildings, Grounds, Property, and Persons and Implementation of Section 2672 of Title 10, United States Code; E.O. 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; DoD Directive 5525.21, Protection of Buildings, Grounds, Property, and Persons; DoDI 6200.03, Public Health Emergency Management within the DoD; and DoDI 6055.17, DoD Emergency Management Program; or successor DoD policies, and E.O. 9397, as amended.

Note 1: The records covered under this SORN, while covered by the Privacy Act, are not subject to the HIPAA Rules.

PURPOSE(S) OF THE SYSTEM:

A. To support required or authorized activities during a declared public health emergency, such as contact tracing and coordination with medical and public health officials, for the purpose of maintaining safe and healthy DoD environments, including work and training environments, transportation facilities and vehicles, base housing, retail and recreation areas, hospitals, and other health care facilities.

B. To support the managing, monitoring, tracking, reporting and sharing of records created during a declared public health emergency to protect DoD Service members and their dependents, the civilian workforce, contractors, concessionaires, and visitors to DoD facilities.

C. To identify and protect individuals at risk for transmitting or contracting a communicable disease related to a declared public health emergency; to identify and protect those who may be at elevated risk of symptomatic or severe disease from a public health threat, such as a communicable disease or biohazard, or exposure to radiation, toxins, or chemical agents; and to limit exposure to the source(s) of infection or illness through public health mitigation and surveillance activities, such as monitoring and contact tracing.

D. To support DoD and non-DoD health care personnel, including public health officials, who need to collect, use, and review this information in performance of their duties related to the public health emergency or to delivering health care to affected individuals.

E. To support use of this information by other DoD officials to determine mission readiness and conduct after-action reviews. Statistical data instead of identifiable information will be used wherever practicable for these efforts.

Note 2: A declared public health emergency may be limited or broad in geographic scope, and could affect one, many, or all DoD installations and facilities. This system of records may support worldwide DoD public health emergency activities in the case of a pandemic, or local or regional DoD activities in the case of a geographically limited public health emergency.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD military Service members (Active Duty, Guard/Reserve, and Coast Guard personnel when acting as a military service with the Navy), civilian personnel (including non-appropriated fund employees), DoD spouses/dependents and cohabitants, military retirees, and DoD contractors. Also, personnel of partner organizations, visitors, eligible patrons, or concessionaires accessing or sharing DoD facilities or attending DoD-sponsored events, and individuals residing in military housing during a declared public health emergency, including a pandemic.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. *Personal and Employment Information:* name, Employee Identification Number/DoD ID number, Social Security Number, date of birth, gender, address, phone number(s), email(s), demographic or biographical information, recent domestic and international travel and status (*e.g.,* Service member, dependent, civilian, contractor, visitor, etc.); emergency contact information (emergency contact's name, phone number, address, email address, and relationship to the individual); employment information (title, organizational affiliation, duty location); employment time and attendance records; disability information; personnel accountability information (such as current work status of the individual and affiliated leave status information).

B. *Medical Information:* confirmed medical test results, physician assessment of medical transmission risk status (either for the individual or because the individual cohabitates with others who may be considered medically high-risk); medical diagnoses and prognosis information; dates of medical visits or tests, individual symptoms; potential or actual exposure to the public health threat (*e.g.,* biohazard or communicable disease); medical history related to the treatment of a virus or communicable disease essential to mitigate the spread of disease during a public health emergency; immunizations and vaccination information; medical directives and/or expressions of interest in receiving a vaccine or other medical treatments, religious or other objections to medical treatment; correspondence with individuals or medical/family representatives on medical treatment; medical, treatment, or disclosure consent forms;, medical or health emergency notification forms.

C. *Contact Tracing Information:* proximity tracking information of individuals after diagnosis or suspected exposure, to include dates when the individual visited a DoD facility or attended a DoD-sponsored event, the locations visited within the facility (*e.g.,* floor, room number), time duration spent in the facility, and identification of persons in contact with while at the facility; records that indicate an individual's location and/or proximity to others on DoD property or at the event over time as compiled through either manual or through technical means (such as badge access, office location, and information technology system login information; and any other relevant information completed, obtained, or developed as a result of an individual attending, working or entering a DoD facility/event during a public health emergency).

Note 3: Excluded from this system of records are employee occupational medical records covered by the U.S. Office of Personnel Management (OPM) regulation at 5 CFR part 293, subpart E, Employee Medical File System Records. The regulation requires agencies that are subject to OPM's recordkeeping requirements to maintain employee occupational medical records in the agency's Employee Medical File System. Such records are covered exclusively by the OPM/GOVT–10, Employee Medical File System of Records.

Note 4: Excluded from this system of records are DoD accountability and assessment records as described in DoD–0012, Defense Accountability and Assessment Records SORN. Records in DoD–0012 are collected and used to account for DoD-affiliated personnel in a natural or man-made disaster, during a public health emergency, or when directed by the Secretary of Defense. During a declared public health emergency, DoD may collect and maintain records under both the DoD–0012 SORN to support DoD accountability and assessment for DoD-affiliated individuals, and this SORN to support contract tracing and other authorized public health objectives necessitated by the declared public health emergency.

RECORD SOURCE CATEGORIES:

Records and information stored in this system of records are obtained from:

Individuals, healthcare personnel, entities designated as public health authorities, and information systems maintaining data described in the Categories of Records section above, such as DoD medical systems, DoD human resources/personnel systems, DoD identity and credentialing software for information technology systems; and visitor, security, and access control systems for DoD facilities or locations where DoD-sponsored events are held. When the individual is a minor or is otherwise unable to provide information about themselves due to illness or other incapacity, DoD may collect information from appropriate sources such as family members, co-workers, friends, or co-habitants for the purposes described in this notice.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as Routine Use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statue or treaty.

K. To Federal, State, local, foreign, or international public health agencies and officials, including the Centers for Disease Control and Prevention, to the extent necessary to comply with laws or policies governing reporting on the impact of a communicable disease, agent, or other cause responsible for the declared public health emergency.

L. To an emergency contact for purposes of locating an individual to communicate possible exposure to or treatment options for a public health threat such as a communicable disease or exposure to a biohazard.

M. To the U.S. Department of State when it requires information to consider or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about public health relating to DoD personnel, facilities, or activities abroad.

N. To individuals for the purpose of determining if they have had contact with a person known or suspected to have a communicable disease, illness, or other exposure that requires quarantine, and to identify and protect the health and safety of others who may have been exposed.

O. To hospitals, physicians, and other healthcare providers for the purpose of protecting the health and safety of individuals who may have been exposed to a contagion or biohazard, or to assist such persons or organizations in preventing exposure to or transmission of a communicable disease.

P. To Federal, state, local, tribal, territorial, or foreign governmental agencies; multilateral governmental organizations; medical facilities or providers, or other public health entities, for the purpose of protecting the vital interests of a record subject or other persons, including to assist such agencies or organizations during an epidemiological investigation, in facilitating continuity of care, or in preventing exposure to or transmission of a communicable disease or biohazard of public health significance.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by an individual's name and/or individual identification number, such as Social Security Number or DoD ID Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are to be retained by the Office of the Secretary of Defense, the Joint Staff, the Military Departments, the Defense Agencies, and the Defense Field Activities in accordance with their NARA-approved records retention schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DoD safeguards records in this system of records according to applicable rules,

policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including Common Access Card (CAC) authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

Personal information maintained will be the minimum necessary and only used for the purposes stated in this notice. Such information will be retained for the minimum amount of time, remain accessible only to personnel with a valid operational need, and only be used for the public health emergency and no other purposes. These records may be provided in aggregate for accountability and mission readiness purposes, as long as the information may not be easily re-identified.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD component with oversight of the records, as the component has Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records. The public may identify the contact information for the appropriate DoD office through the following website: *www.FOIA.gov.* Signed written requests should contain the name and number of this system of records notice along with the full name, current address, and email address of the individual. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

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

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

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD has exempted records maintained in this system 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)(1). In addition, when exempt records received from other systems of records become part of this system, the DoD also claims the same exemptions for those records that are claimed for the prior system(s) of records of which they were a part, and claims any additional exemptions set forth here. An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e), and published in 32 CFR part 310.

HISTORY:

None.

[FR Doc. 2022–27150 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0139]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is establishing a new Department-wide system of records titled, ''Enterprise Identity, Credential, and Access Management (ICAM) Records, DoD–0015.'' This system of records will support the management of individual identity information, support the provision of credentials to individuals and entities to provide them access to the DoD information services and data they require, and support a standardized DoD-wide process and protocol for individual system and data access across the enterprise to improve security and cost savings.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before January 17, 2023. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by either of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is establishing the Enterprise Identity, Credentialing, and Access

Management (ICAM) Records, DoD–0015, as a DoD-wide Privacy Act system of records. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintain the same kind of information about individuals for the same purpose. Establishment of DoD-wide SORNs helps DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public, and create efficiencies in the operation of the DoD privacy program.

This system of records covers the Department's maintenance of records about individual users of the DoD network and information systems, to create a secure and trusted environment where users can access authorized resources, including services, information systems, and data, thereby supporting mission accomplishment while efficiently providing oversight of DoD users on the network. There are significant advantages in providing ICAM services at the enterprise level, including efficiencies in consolidating network services; improved security; cost savings; and enabling the creation of digital identities for a single individual for use across the enterprise. The purposes of this system of records include maintaining standardized user access controls, which provides for supporting users through self-service functions, and ensuring only approved users may access systems and data across the DoD enterprise. ICAM more efficiently reinforces the rules and controls governing the collection, maintenance, use, and sharing of information. This SORN will reduce duplicative efforts and overlap from SORNs published by separate DoD Components for solutions pursuing the same functions.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and FOIA Directorate website at *https://dpcld.defense.gov.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particulars assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: December 10, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Enterprise Identity, Credential, and Access Management (ICAM) Records, DoD–0015.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301–6000.

SYSTEM MANAGER(S):

Chief Information Officer, Department of Defense, 6000 Defense Pentagon, Washington, DC 20301–6000; *osd.pentagon.dod-cio.list.cio@mail.mil;* 703–614–7323.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2222, Defense Business Systems: Business Process Reengineering; Enterprise Architecture; Management; 10 U.S.C. 2224, Defense Information Assurance Program; 10 U.S.C. Chapter 8-Defense Agencies and Department of Defense Field Activities; 31 U.S.C. 902, Authority and functions of agency Chief Financial Officers; Homeland Security Presidential Directive (HSPD) 12, Policies for a Common Identification Standard for Federal Employees and Contractors, August 27, 2004; OMB M–19–17, Enabling Mission Delivery through Improved Identity, Credential, and Access Management; National Institute of Standards and Technology (NIST) Federal Information Processing Standard (FIPS) 201–2, Personal Identity Verification (PIV) of Federal Employees and Contractors; DoD Instruction 8320.02, Sharing Data, Information, and Information Technology (IT) Services in the Department of Defense; DoD Instruction 8320.07, Implementing the Sharing of Data, Information, and Information Technology (IT) Services in the Department of Defense; and DoD Instruction 8520.03, Identity Authentication for Information Systems.

PURPOSE(S) OF THE SYSTEM:

This system of records supports the Department's maintenance of records about individual users of the DoD network and information systems, to create a secure and trusted environment where users can access authorized resources, including services, information systems, and data. ICAM more efficiently reinforces the rules and controls governing the collection, maintenance, use, and sharing of information and supports the standardization of user access controls, self-service functions, and ensuring that only approved users access systems and data across the DoD enterprise. The system creates a single user record, consolidating all pertinent data associated with the individual under one account. The principal purpose of the ICAM system is to capture and maintain a record of names, digital signatures, approved access, and other identifiers from authoritative sources to provide and maintain a record of access management to DoD systems and resources, to include Financial Management and Reporting Records and Information Systems Security records. This information is used to provide the following ICAM services:

A. Enables and manages the digital flow of identity, credential, and access-management data for DoD-affiliated individuals.

B. Provides authentication to DoD networks and resources through common standards, shared services, and federation.

C. Facilitates managed access to protected resources, such as federally managed facilities, information systems, and data.

D. Scopes access that is necessary and relevant to authorize the actions each user is allowed to perform on a given system; provides audit capability to ensure proper access is granted.

E. Supports aligning existing account or entitlement information from DoD authoritative source systems to consuming applications.

F. Provides fast, reliable, secure, and auditable capabilities across the DoD enterprise in a manner enhancing user experience and supports the critical missions.

G. Provides consistent auditing capabilities such as monitoring and logging to support identity analytics for

detecting insider threats and external attacks.

H. Enables the determination of requirements for identification, credentialing, authentication, and authorization lifecycle management for future planning and fiscal management.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been issued credentials for access to DoD data, systems, or facilities which may include uniformed services personnel, including National Guard and Reserve components; former members and retirees of the uniformed services; dependent family members of uniformed services members; civilian employees, contractors, and any other DoD-''affiliated'' individuals requiring or requesting access to DoD or DoD-controlled information systems and/or DoD- or DoD contractor-operated, controlled, or secured facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal information, such as name, DoD Identification (ID) Number, or other DoD-assigned student or educational ID number, date and place of birth, gender, citizenship, mother's middle/maiden name, driver's license, passport information, photograph, email address(es), personal and duty phone numbers, emergency contact information, race and ethnic origin.

B. Employment-related information, such as employment status, duty position, service component, branch, personnel classification, security clearance, grade/rank/series, military status, military occupational specialty, official orders, unit of assignment, occupation, access rights provisioned in DoD systems and applications, DD Form 577, ''Appointment/Termination Record—Authorized Signature,'' financial position appointed to, and other organizational affiliation information.

C. Course and training data, such as examination and course completion status.

RECORD SOURCE CATEGORIES:

A. Individuals.

B. All DoD databases flowing into or accessed through the following integrated data systems, environments, applications, and tools, including:

Defense Finance and Accounting Services financial business feeder systems, Procurement Integrated Enterprise Environment, Defense Manpower Data Center including the Defense Eligibility Enrollment System (DEERS), Defense Readiness Reporting System (DRRS) enterprise (including DRRS-Strategic and DRRS-Army Database), Defense Medical Logistics—Enterprise Solution, Digital Training Management System, Defense Occupational and Environmental Health Readiness System, Global Force Management Data Initiative, Medical Operational Data System, Force Risk Reduction, Medical Readiness Reporting System, Medical Health System Data Repository, National Guard Bureau Human/Personnel, Resource, and Manpower Systems, National Guard Bureau System, and commensurate data from DoD Component systems performing ICAM services.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a Routine Use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act of 1987, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by individual name, DoD ID Number, or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

A. Financial Records: The DD Form 577 records are retained for six (6) years after the final invoice or Intra-Government Payment and Collection or other similar documentation and then destroyed (DAA–GRS2013–0003–0001).

B. General System Records: Records are created as part of the user identification and authorization process to gain access to systems. Records are used to monitor inappropriate systems access by users. These records are temporary and will be destroyed in accordance with NARA guidance, when business use ceases (DAA–GRS–2013–0006–0003).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII) in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including Common Access Card (CAC) authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD component with oversight of the records, as the component has Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records. The public may identify the contact information for the appropriate DoD office through the following website: *www.FOIA.gov.* Signed written requests should contain the name and number of this system of records notice along with the full name, current address, telephone number and email address of the individual along with the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

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

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

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2022–27356 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0137]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is modifying, renumbering, and renaming a Department-wide system of records titled DoD DPR–39, ''DoD Personnel Accountability and Assessment System.'' This system of records is being modified to support additional information systems being established within the DoD using the same categories of data for the same purposes. The system number is changing from DPR–39 to DoD–0012, to reflect its status as a DoD-wide system of records, and the name is changing from ''DoD Personnel Accountability and Assessment System'' to ''Defense Accountability and Assessment Records.'' The DoD is also modifying numerous sections of the notice, including the system location, system managers, authority for maintenance of the system, purpose of the system, individuals covered by the system, record source categories, routine uses, and notification procedures. This system of records covers DoD's maintenance of records about accountability for and status of DoD-affiliated individuals, including Military Service members, civilian employees, dependents and family members, contractors, and other DoD-affiliated personnel (including individuals in other uniformed services performing DoD-related assignments) in a natural or man-made disaster, public health emergency, similar crisis, or when directed by the Secretary of Defense. This system may also apply to DoD's maintenance of records about DoD-affiliated individuals that are necessary to respond to anomalous health incidents (AHIs), such as AHIs contemplated by two sections of the National Defense Authorization Act of Fiscal Year 2022, when such records are not covered by another system, such as EDHA 07, Military Health Information System (June 15, 2020). Additionally, DoD is issuing a direct final rule, which is exempting this system of records from certain provisions of the Privacy Act, elsewhere in today's issue of the **Federal Register**.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before January 17, 2023. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox

24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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

SUPPLEMENTARY INFORMATION:

I. Background

DoD is modifying an existing DoD-wide Privacy Act system of records titled DPR–39, DoD Personnel Accountability and Assessment System, March 26, 2020 (85 FR 17047) and renaming it DoD–0012, Defense Accountability and Assessment Records. A DoD-wide system of records notice (SORN) supports multiple DoD paper or electronic recordkeeping systems operated by more than one DoD component that maintain the same kind of information about individuals for the same purpose. Establishment of DoD-wide SORNs helps DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public, and create efficiencies in the operation of the DoD privacy program.

This system of records contains personnel accountability and assessment records created and maintained by all component parts of DoD, wherever they are maintained. The system consists of both electronic and paper records and will be used by DoD components and offices to maintain records about accountability for and status of DoD-affiliated individuals, including Military Service members, civilian employees, dependents and family members, contractors, and other DoD-affiliated individuals, in preparation for, response to, or recovery from a natural or man-made disaster or public health emergency, or when directed by the Secretary of Defense. Such events could include severe weather events, acts of terrorism or severe destruction, pandemics or major outbreaks, and similar crises. This system may also apply to DoD's maintenance of records about DoD-affiliated individuals that are necessary to respond to anomalous health incidents (AHIs), such as AHIs contemplated by sections 910 or 6603 of the National Defense Authorization Act of Fiscal Year 2022, when such records are not covered by another system, such as EDHA 07, Military Health Information System, 85 FR 36190 (June 15, 2020).

The DoD is updating this SORN to add the standard DoD routine uses (routine uses A through J) and three other routine uses. Additionally, the following sections of this SORN are being modified as follows: (1) the Authority for Maintenance of the System section to add additional authorities; (2) the Security Classification section to add ''Classified''; (3) the Categories of Individuals Covered by the System section to expand the individuals covered and Categories of Records to clarify how the records relate to the revised Category of Individuals; (4) the Administrative, Technical, and Physical Safeguards to update the individual safeguards protecting the personal information; (5) the Contesting Records Procedures section to update the appropriate citation for contesting records; (6) the System Manager and System Location sections to update the addresses and office names; (7) the Purpose(s) of the System section to clarify the collection of why this system is needed; (8) the Policies and Practice for Storage of Records, to list different ways records may be kept; (9) the Record Source Categories to add additional sources where information can be acquired; (10) the Policies and Practices For Retrieval Of Records: to include ''other unique identifier''; (11) the Record Access Procedures section to reflect the need for individuals to provide a notarized statement or an unsworn declaration and to identify the appropriate DoD office or component to which their request should be directed; and (12) the Exemptions Promulgated for the System, to add an exemption from certain provisions of the Privacy Act.

This system also documents individuals' check-in data or other information that is self-reported or provided by third parties (*e.g.,* supervisors or commanders) if necessary to maintain accountability or inform agency responses to emergencies, including to ensure the safety and protection of the workforce. The DoD Components may also collect information about DoD personnel and their dependents for needs and status assessments as a result of the natural or man-made disaster, public health emergency, similar crisis, AHIs, or when directed by the Secretary of Defense. The DoD Components may also use accountability data for accountability and assessment reporting exercises.

This system of records is being modified to reflect and affirm its status as a DoD-wide system of records. The remaining modifications principally change the SORN to reflect the broad intended use of this system of records to cover data stored in multiple information systems throughout the Department.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division website at *https://dpcld.defense.gov.*

Additionally, the DoD is issuing a direct final rule to exempt this system of records from certain provisions of the Privacy Act elsewhere in today's issue of the **Federal Register**. DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Freedom of Information Directorate website at *https://dpcld.defense.gov.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, DoD has provided a report of this system of records to the OMB and to Congress.

Dated: December 9, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

Defense Accountability and Assessment Records, DoD–0012.

SECURITY CLASSIFICATION:

Unclassified and Classified.

SYSTEM LOCATION:

Department of Defense (Department or DoD), located at 1000 Defense Pentagon, Washington, DC 20301–1000, and other Department installations, offices, or mission locations. Information may also be stored within a government-certified cloud, implemented and overseen by the Department's Chief Information Officer (CIO), 6000 Defense Pentagon, Washington, DC 20301–6000.

SYSTEM MANAGER(S):

The system managers are as follows:

A. Senior Program Manager for Casualty and Mortuary Affairs, Office of the Under Secretary of Defense (Personnel & Readiness), Deputy Under Secretary of Defense for Military Community and Family Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

B. Individuals in DoD components who have responsibilities for maintaining records for personnel accountability and assessment purposes. To obtain information on the system managers at the Military Departments, Combatant Commands, Defense Agencies, or other Field Activities with oversight of the records, please visit *www.FOIA.gov* to contact the component's Freedom of Information Act (FOIA) office. The Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system notice have been delegated to the employing DoD components.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 113, Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 137, Under Secretary of Defense for Intelligence and Security; 10 U.S.C. 7013, Secretary of the Army; 10 U.S.C. 8013, Secretary of the Navy; 10 U.S.C. 9013, Secretary of the Air Force; 10 U.S.C. 2672, Protection of buildings, grounds, property, and persons; Public Law 117–82, National Defense Authorization Act for Fiscal Year 2022, including sections 910 (Cross-Functional Team for Emerging Threat Relating to Anomalous Health Incidents) and 6603 (Anomalous Health Incidents Interagency Coordinator); DoD Directive 5525.21, Protection of Buildings, Grounds, Property and Persons and Implementation of 2672 of Title 10, United States Code; DoD Instruction (DoDI) 3001.02, Personnel Accountability in Conjunction with Natural or Manmade Disasters; DoDI 6200.03, Public Health Emergency Management (PHEM) Within the DoD; DoDI 6055.17, DoD Emergency Management (EM) Program; DoDI 1444.02, Volume 2, Data Submission Requirements for DoD Civilian Personnel: Nonappropriated Fund (NAF) Civilians; and E.O. 9397, as amended.

PURPOSE(S) OF THE SYSTEM:

A. To accomplish personnel accountability for and status assessment of DoD-affiliated individuals in preparation for, response to, or recovery from a natural or man-made disaster or public health emergency, similar events of concern, or when directed by the Secretary of Defense. Such events could include severe weather events, acts of terrorism or severe destruction, pandemics or major outbreaks, anomalous health incidents, and similar crises.

B. To document an individual's status reporting data or other information that is self-reported or provided by third parties (*e.g.,* supervisors, commanders, or caretakers).

C. To maintain accountability or inform agency responses to emergencies and similar events of concern, including the safety and protection of the workforce.

D. To conduct needs and status assessments as a result of the natural or man-made disaster, public health emergency, similar crisis or event or concern, or when directed by the Secretary of Defense. This could include assessments and referrals that are necessary to respond to a reported suspected anomalous health incident, when such records are not covered by another system, such as EDHA 07, Military Health Information System, 85 FR 36190 (June 15, 2020).

E. To support accountability and assessment reporting exercises.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD-affiliated individuals such as: Military Service members (active duty, Guard/Reserve and the Coast Guard personnel when operating as a military service with the Navy), civilian employees (including non-appropriated fund employees), dependents and family members of the above, contractors or other individuals working at or requiring access to DoD facilities; and other DoD-affiliated individuals that may require personnel accountability or assessment by DoD.

CATEGORIES OF RECORDS IN THE SYSTEM:

A. Personal and work-related information, such as name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), other unique identifier, DoD affiliation, date of birth, duty station address and telephone numbers, home and email addresses, and telephone numbers (to include cell number).

B. Emergency information, such as spouse's and children's names, dates of birth, contact information and address; parents' names, addresses and contact information; or other emergency contact name and contact information.

C. Needs and status information of DoD-affiliated individuals, such as component-conducted needs and status assessment records identifying specific emergent needs, the date of the assessment, and the type of event and category classification.

D. Federal Emergency Management Agency (FEMA) number, if issued, and additional information about individuals if necessary to maintain personnel accountability or inform agency responses to emergencies, such as travel and health-related information covered under the Privacy Act. Personal information maintained will be the minimum necessary in order to accomplish the accountability and/or emergency response mission in accordance with the Privacy Act of 1974 and DoD Instruction 5400.11, consistent with applicable law.

E. Information reported about events of concern, including anomalous health incidents, such as date and description of event or incident, location, symptoms, actions taken, and other information requested by DoD to inform agency responses.

Note 1: Excluded from this system of records are employee occupational medical records covered by the U.S. Office of Personnel Management (OPM) regulation at 5 CFR part 293, subpart E, Employee Medical File System Records. The regulation requires agencies that are subject to OPM's recordkeeping requirements to maintain employee occupational medical records in the agency's Employee Medical File System. Such records are covered exclusively by the OPM/GOVT–10, Employee Medical File System of Records.

Note 2: Excluded from this system of records are records gathered or created to assist DoD during a declared public health emergency in maintaining a safe and healthy DoD environment—including for contact tracing purposes—such as work and training environments, transportation facilities and

vehicles, base housing, retail and recreation areas, hospitals, and other health care facilities which are maintained in the DoD–0013, DoD Declared Public Health Emergency Exposure Records system of records.

Note 3: Excluded from this system of records are records gathered or created for the delivery of health care to eligible personnel for the medical treatment of anomalous health incidents (such as those contemplated by sections 732, 910, and 6603 of the National Defense Authorization Act of Fiscal Year 2022) that are maintained in the EDHA 07, Military Health Information System, system of records.

RECORD SOURCE CATEGORIES:

A. Individuals and supervisors, commanders, and other third parties on behalf of individuals.

B. Federal Agencies, Public Health and Emergency Management authorities, and non-governmental organizations, such as the Red Cross.

C. The Defense Enrollment Eligibility Reporting System (DEERS database).

D. DoD Component program offices including DoD contractor databases, internal security databases and files, personnel security databases and files, DoD component human resources databases and files.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, all or a portion of the records or information contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (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 DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD 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.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act of 1978, as amended.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To the Office of Personnel Management (OPM) for the purpose of addressing civilian pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

L. To State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C. 5516, 5517, or 5520 and only to those state and local taxing authorities for which an employee or military member is or was subject to tax, regardless of whether tax is or was withheld. The information to be disclosed is information normally contained in Internal Revenue Service (IRS) Form W–2.

M. To any person, organization or governmental entity (*e.g.,* other Federal, State, territorial, local, or foreign, or international governmental agencies or entities, first responders, American Red Cross, etc.), as is necessary and relevant to notify them of, respond to, evaluate, or guard against a serious and imminent terrorist or homeland security threat, natural or manmade disaster, public health emergency, anomalous health incident, or other similar crisis or event of concern, including for the purpose of enabling emergency service personnel to locate an individual.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. Electronic records may be stored locally on digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by individual's name, DoD ID Number, Social Security Number, other unique identifier, date of birth, and/or date of occurrence.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are to be retained by the Office of the Secretary of Defense (OSD), the Joint Staff, the Military Departments, the Defense Agencies, and the Defense Field Activities in accordance with their NARA-approved records retention schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

DoD safeguards records in this system of records according to applicable rules, policies, and procedures, including all applicable DoD automated systems security and access policies. DoD policies require the use of controls to minimize the risk of compromise of personally identifiable information (PII)

in paper and electronic form and to enforce access by those with a need to know and with appropriate clearances. Additionally, DoD has established security audit and accountability policies and procedures which support the safeguarding of PII and detection of potential PII incidents. DoD routinely employs safeguards such as the following to information systems and paper recordkeeping systems: Multifactor log-in authentication including Common Access Card (CAC) authentication and password; physical token as required; physical and technological access controls governing access to data; network encryption to protect data transmitted over the network; disk encryption securing disks storing data; key management services to safeguard encryption keys; masking of sensitive data as practicable; mandatory information assurance and privacy training for individuals who will have access; identification, marking, and safeguarding of PII; physical access safeguards including multifactor identification physical access controls, detection and electronic alert systems for access to servers and other network infrastructure; and electronic intrusion detection systems in DoD facilities.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the DoD component with oversight of the records as the component has Privacy Act responsibilities concerning access, amendment, and disclosure of the records within this system of records. The public may identify the contact information for the appropriate DoD office through the following website: *www.FOIA.gov.* Signed written requests should contain the name and number of this system of records notice along with the full name, current address, and email address of the individual. Individuals should also provide any additional identifiers (*i.e.,* DoD ID Number or Defense Benefits Number), date of birth, and telephone number. In addition, the individual must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the appropriate format:

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

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

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct the content of records about them should follow the procedures in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The DoD has exempted records maintained in this system 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)(1). In addition, when exempt records received from other systems of records become part of this system, the DoD also claims the same exemptions for those records that are claimed for the prior system(s) of records of which they were a part, and claims any additional exemptions set forth here. An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e), and published in 32 CFR part 310.

HISTORY:

March 26, 2020 (85 FR 17047).

[FR Doc. 2022–27145 Filed 12–15–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Record of Decision for the Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility Dry Dock and Waterfront Production Facility Environmental Impact Statement

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The United States (U.S.) Department of the Navy (Navy), after carefully weighing the strategic, operational, and environmental consequences of the proposed action, announces its decision to select Alternative 4 (Preferred Alternative) from the Final Environmental Impact Statement for Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility Dry Dock and Waterfront Production Facility at Joint Base Pearl Harbor-Hickam, Oahu, Hawaii (herein, Final EIS). This alternative will support the Pearl Harbor Naval Shipyard and Intermediate Maintenance Facility's (PHNSY & IMF's) mission to repair, maintain, and modernize Navy fast-attack submarines and surface ships. Additionally, this alternative will allow the Navy to provide appropriate dry dock capability to meet submarine depot maintenance mission requirements no later than January 2028, as well as build and operate a properly sized and configured waterfront production facility (WPF) to enable efficient vessel maintenance.

SUPPLEMENTARY INFORMATION: The selected alternative involves construction, operation, and maintenance of a graving dry dock (herein, Dry Dock [DD]5) and an adjacent multiple support concept WPF located east of DD5, as well as auxiliary facilities, a new weight-handling system (crane type), and upgraded utilities. The proposed dry dock will replace existing DD3 and will be given a new dry dock number, DD5. DD5 will be of sufficient size to support maintenance of current and future classes of fast-attack submarines. The WPF will reduce lost operational days by increasing collaboration and efficiency among the workforce. The proposed project's construction-related actions will include dredging, filling, pile driving, installing new temporary and permanent in-water structures, demolishing existing landside structures, and constructing new temporary and permanent landside facilities.

The complete text of the Record of Decision (ROD) is available on the project website at *www.PearlHarborDryDockEIS.org,* along with the October 2022 Final EIS and supporting documents. Single copies of the ROD are available upon request by contacting: Naval Facilities Engineering System Command Pacific, Attn: PHNSY & IMF DD/WPF EIS Project Manager, 258 Makalapa Drive, Suite 100, Pearl Harbor, HI 96860.

Dated: December 13, 2022.

A.R. Holt,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2022–27352 Filed 12–15–22; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0150]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Credit Enhancement for Charter School Facilities Program Application Package

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 17, 2023.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. Reginfo.gov provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Clifton Jones, 202–205–2204.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Credit Enhancement for Charter School Facilities Program Application Package.

OMB Control Number: 1810–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 12.

Total Estimated Number of Annual Burden Hours: 960.

Abstract: An application is required by statute to award the Credit Enhancement for Charter School Facilities Program (formerly known as the Charter School Facilities Financing Demonstration Program) grants. These grants are made to private, non-profits; public entities; and consortia of these organizations. The funds are to be deposited into a reserve account that will be used to leverage private funds on behalf of charter schools to acquire, construct, and renovate school facilities.

The U.S. Department of Education is seeking OMB approval for a new collection for the application for the Credit Enhancement for Charter School Facilities Program. This collection was previously approved under 1855–0007 but the program has been moved into the Office of Elementary and Secondary Education (OESE) so we are requesting a new OMB number in order to align it with collections in OESE. Once approved, we will discontinue the 1855–0007 collection.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: December 13, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–27327 Filed 12–15–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Grain Belt Express Transmission Line Project, DOE/EIS–0554

AGENCY: Loan Programs Office, Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement, request for comments, notice of floodplain involvement.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA), the U.S. Department of Energy (DOE), Loan Programs Office (LPO), announces its intent to prepare an environmental impact statement (EIS) to consider the environmental impacts associated with providing potential financial assistance (a federal loan guarantee) to Grain Belt Express, LLC, for construction and energization of Phase 1 of the Grain Belt Express Transmission Line Project (Grain Belt Express Project). The Grain Belt Express Project consists of an approximately 530-mile-long high-voltage direct-current (HVDC) transmission line, with a terminus in Ford County, Kansas, and a terminus in Monroe County, Missouri; two HVDC converter stations; a 1,000-foot alternating-current (AC) transmission line from the HVDC converter station at the terminus of the Ford County, Kansas HVDC transmission line to an existing substation; and an approximately 40-mile AC transmission line from the HVDC converter station at the terminus of the Monroe County, Missouri HVDC transmission line to an existing substation and a proposed substation, both in Callaway County, Missouri. This notice of intent (NOI) announces the EIS scoping process as well as a notice of proposed floodplain action. Detailed information about the project can be found at *www.EIS-GrainBeltExpress.com.*

DATES: Written comments and information are requested on or before February 28, 2023.

LPO will hold six public scoping meetings for the project, four in-person and two virtual meetings, at the following dates and times (Central Time). Registration for the virtual public meetings may be completed at the following web links:

- Wednesday, January 25, 2023, 11:30 a.m.–1 p.m., virtual meeting on Zoom (*https://us06web.zoom.us/webinar/register/WN_NOQzgumNTpOAIL5UoLVIeA*)
- Thursday, January 26, 2023, 5 p.m.–6:30 p.m., virtual meeting on Zoom (*https://us06web.zoom.us/webinar/register/WN_D619NGe1TGqMH0fcHx5SSA*)
- Tuesday, January 31, 2023, 11 a.m.–1 p.m. and 4 p.m.–6 p.m., Dodge House Hotel and Convention Center, 2408 W Wyatt Earp Blvd., Dodge City, KS 67801
- Tuesday, January 31, 2023, 11 a.m.–1 p.m. and 4 p.m.–6 p.m., Municipal Auditorium, 201 W Rollins St., Moberly, MO 65270

- Thursday, February 2, 2023, 11 a.m.–1 p.m. and 4 p.m.–6 p.m. Corinthians Hill Event Center, 464 NE 20 Ave., Great Bend, KS 67530
- Thursday, February 2, 2023, 11 a.m.–1 p.m. and 4 p.m.–6 p.m., Fairview Golf Course, 3302 Pacific St., St. Joseph, MO 64507

All meetings are open to the public and free to attend.

ADDRESSES: Written comments can be submitted in any of the following ways:

- *Hand Delivery/Courier:* Enclosed in an envelope labeled ''Grain Belt Express EIS'' and addressed to DOE LPO, c/o AECOM, 100 N Broadway, 20th Floor, St. Louis, MO 63102; or
- *Email: EIS-GrainBeltExpress@aecom.com* or *www.EIS-GrainBeltExpress.com.*

FOR FURTHER INFORMATION CONTACT: Angela Ryan, U.S. Department of Energy, Loan Programs Office,1000 Independence Avenue SW, Washington DC, 20585. Telephone: 240–220–4586. Email: *Angela.Ryan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

Title XVII of the Energy Policy Act of 2005 (EPAct) established a federal loan guarantee program for certain projects that employ innovative technologies. EPAct authorizes the Secretary of Energy to make loan guarantees available for those projects. Specifically, Title XVII identifies the projects as those that ''avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued.'' Grain Belt Express, LLC (Applicant), has applied for a loan guarantee pursuant to the DOE Renewable Energy Project and Efficient Energy Projects Solicitation (Solicitation Number: DE–SOL–0007154) under Title XVII, Innovative Energy Loan Guarantee Program, authorized by the EPAct. The primary goal of the program is to finance projects and facilities in the United States that employ innovative and renewable or efficient energy technologies that avoid, reduce, or sequester anthropogenic emission of greenhouse gases (GHGs).

The purpose and need for agency action are to comply with DOE's mandate under the EPAct by selecting eligible projects that meet the goals of the act. The DOE LPO has determined that the Grain Belt Express Project, as proposed by the Applicant, is eligible pursuant to section 1703 of the EPAct and that it complies with DOE's mandate, as defined in the act. DOE is using the NEPA process to assist in determining whether to issue a loan guarantee to the Applicant to support the project.

Proposed Action and Alternatives

The DOE, LPO, proposed action is to provide federal financial support (a loan guarantee) to the Applicant for construction and energization of the Grain Belt Express Project, as proposed by the Applicant. The Grain Belt Express Project is a HVDC transmission line that will be designed to operate at 600 kilovolts (kV), extending approximately 530 miles from a HVDC converter station in Ford County, Kansas, to another HVDC converter station in Monroe County, Missouri; certain facilities necessary to allow interconnection into the broader electric grid are also included. The route of the HVDC transmission line was reviewed and approved by the State of Kansas, through the Kansas Corporation Commission (KCC), and the State of Missouri, through the Missouri Public Service Commission (MPSC), which are reflected in the existing KCC Certificate of Public Convenience and Necessity and Siting Permit and the existing MPSC Certificate of Convenience and Necessity for the Grain Belt Express Project.

In Kansas, the Grain Belt Express Project includes construction and energization of approximately 384 miles of HVDC transmission line and Ford County interconnection facilities. The Ford County interconnection facilities will comprise:

- An approximately 2,500-megawatt (MW) HVDC converter station.
- An AC switchyard adjacent to the HVDC converter station.
- An approximately 1,000-foot-long 345 kV AC transmission line from the AC switchyard to the existing Saddle Substation that ITC Great Plains (a subsidiary of ITC Holdings Corporation) owns adjacent to the switchyard.

In Missouri, the Grain Belt Express Project includes construction and energization of approximately 146 miles of HVDC transmission line and Missouri interconnection facilities. The Missouri interconnection facilities will comprise:

- An approximately 2,500 MW HVDC converter station in Monroe County.
- An AC switchyard adjacent to the HVDC converter station.
- An approximately 40-mile-long 345 kV AC transmission line, constructed between the AC switchyard in Monroe County and the non-Applicant-owned existing McCredie Substation and the proposed non-Applicant-constructed and -owned Burns Substation in Callaway County. This AC transmission connection, which is referred to as the ''Tiger Connector'' and part of the Grain Belt Express Project, would have approximately 2,500 MW of capacity and deliver electricity into the Midcontinent Independent System Operator power market and other customers in the Midwest.

Under the No Action Alternative, LPO would not provide federal financial support (a loan guarantee) to the Applicant for construction and energization of the Grain Belt Express Project, with the assumption that the project would not be constructed.

Summary of Expected Impacts

The draft EIS will identify, describe, and analyze the potential effects of the proposed action (*i.e.,* the Grain Belt Express Project) and the No Action Alternative on the human environment that are reasonably foreseeable and have a reasonably close causal relationship. Potential impacts on resources include, but are not limited to, impacts (whether beneficial or adverse; short term or long term) on air quality and GHG emissions; soils and paleontological resources; water resources, including surface and groundwater and floodplains; vegetation, wildlife, and special-status species; land use and recreation; socioeconomics and environmental justice; public health and safety; cultural resources and Native American traditional values; transportation; visual resources; and noise. Analyses for cumulative impacts will be conducted for those resources directly affected and determined to be reasonably foreseeable through the scoping process.

The EIS will identify, describe, and analyze the potential effects of the proposed action and No Action Alternative. This will include direct, indirect, and cumulative effects resulting from implementation of the proposed action and No Action Alternatives that are determined to be reasonably foreseeable. LPO recognizes that other actions or activities may be induced by or related to the proposed action (*e.g.,* development of new generation assets as developers seek to interconnect with the project as well as system upgrades in Missouri for system reliability that would be performed by other utilities). In addition, construction of the Grain Belt Express Project may result in the Applicant developing a subsequent phase to the transmission project, Grain Belt Express Project Phase 2, which would extend from the HVDC converter station in Monroe County, Missouri, to an HVDC converter station in Illinois before transitioning to a 345

kV AC transmission line that interconnects with an existing substation in Indiana. Additional actions that are induced by or related to the proposed action, and identified as reasonably foreseeable, would also be discussed in the EIS.

Based on a preliminary evaluation and prior projects of a similar nature (*i.e.,* transmission development), the Grain Belt Express Project could affect local air quality, soil stability (*e.g.,* compaction) and quality, and floodplains, riparian habitat, and wetlands due to ground disturbance associated with construction activities. Construction and energization of the Grain Belt Express Project could affect wildlife and plant species, including individuals and the habitat of federally threatened, endangered, and proposed species and state-listed species. Species of specific concern include the whooping crane, lesser and greater prairie-chickens, bald eagle, northern long-eared bat, Indiana bat, monarch butterfly, and Kansas state-designated critical habitat for the eastern spotted skunk. Initial evaluations suggest that the Grain Belt Express Project could also affect known and previously unidentified archaeological and paleontological resources and historic properties as well as resources important to Native American tribes, including both natural and cultural.

Construction and energization of the Grain Belt Express Project could affect local and regional economies in terms of construction-related job creation and changes in property values, tax revenues, and construction and ancillary spending. The project could also create safety concerns for workers during construction and maintenance as well as local safety risks associated with electromagnetic fields, power surges, risk of increased lightning strikes, and line-induced fires.

Finally, introduction of the transmission line and associated construction and energization could affect the viewshed throughout the project corridor by introducing a new element onto landscapes as well as increasing noise above ambient levels typically experienced.

Anticipated Permits and Authorizations

In addition to NEPA, other federal authorizations will be required. These processes, as well as consultation under section 106 of the National Historic Preservation Act and section 7 of the Endangered Species Act, as appropriate, will occur concurrently with the NEPA process. Other authorizations may be required pursuant to the Migratory Bird Treaty Act, the Clean Water Act, the Rivers and Harbors Act, and the Clean Air Act. As appropriate, DOE will also conduct government-to-government tribal consultations.

Notice of Proposed Floodplain Action

Because the Grain Belt Express Project is expected to involve activities within floodplains, this NOI also serves as a notice of proposed floodplain action. The EIS will analyze potential impacts on floodplains and include a floodplain assessment. A floodplain statement of findings will be published following DOE regulations for compliance with floodplain environmental review (10 CFR part 1022).

Schedule for the Decision-Making Process

Subsequent to the draft EIS completion, LPO will publish a notice of availability (NOA) and request public comments on the draft EIS. LPO anticipates issuance of the NOA in September 2023. After the public comment period, LPO will review and respond to comments received and develop a final EIS. LPO anticipates the final EIS will be available to the public in July 2024. A record of decision will be completed no sooner than 30 days after the final EIS is published, in compliance with 40 CFR 1506.11.

Scoping Process and Comments

This NOI commences the public scoping process to identify issues for consideration in the draft EIS. LPO will hold in-person and virtual public scoping meetings at the times and dates described previously under the **DATES** section. Throughout the scoping process, federal agencies; tribal, state, and local governments; and the general public have the opportunity to help LPO identify significant resources and issues, impact-producing factors, and potential mitigation measures to be analyzed in the EIS as well as an opportunity to provide additional information.

Comments may be broad in nature or focused on specific areas of concern but should be directly relevant to the proposed action, the NEPA process, or expected resource impacts. The scoping process allows the public and interested parties to shape the EIS impact analysis, focusing on the areas of greatest importance and identifying areas requiring less attention. Comments on the proposed action will be accepted and considered at any time during the EIS process and may be directed to LPO as described under the **ADDRESSES** section. However, commenters should be aware that their comments should be timely for them to be fully considered (*e.g.,* scoping comments received well after the close of the scoping period would be considered but would be received too late to be useful for scoping purposes).

Federal agencies; tribal, state, and local governments; and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the **ADDRESSES** section.

LPO does not consider anonymous scoping comments. Please include your name and address as part of your scoping comment. All scoping comments, including the names, addresses, and other personally identifiable information included in the comment, will be part of the administrative record.

NEPA Cooperating Agencies

Per 40 CFR 1501.8, LPO will invite other federal agencies with jurisdiction by law, or those tribal, state, or local governments with special expertise related to the relevant environmental issues, to collaborate as a cooperating agency, participating agency, or commenting agency. Upon request, LPO will provide interested agencies with a written summary of expectations, including schedules, milestones, responsibilities, scope, and details of agency expected contributions. LPO, as the lead agency, does not provide financial assistance to cooperating agencies. Governmental agencies that are not designated cooperating or participating agencies will have the opportunity to provide information, comments, and consultation to LPO during the public input stages of the NEPA process.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action

LPO requests data, comments, information, analysis, or suggestions relevant to the proposed action from the public; affected federal, tribal, state, and local governments, agencies and offices; the scientific community; industry; or any other interested party. Specifically, LPO requests information on the following topics:

1. Potential effects that could occur on biological resources.

2. Potential effects that could occur on physical resources and conditions, including air quality, soils, water quality, floodplains, wetlands, and other waters of the United States.

3. Potential effects that could occur on socioeconomic and cultural resources,

including environmental justice and Native American tribal resources.

4. Proposed measures to avoid, minimize, or mitigate any adverse effects.

5. Information on other current or planned activities in, or in the vicinity of, the proposed action and their possible impacts.

6. Other information relevant to the proposed action and its impacts on the human environment.

To promote informed decision-making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform LPO of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts affecting the quality of the human environment.

The draft EIS will include a summary of all alternatives, information, and analyses submitted during the scoping process for consideration by LPO and any cooperating agencies.

Authority: 42 United States Code (U.S.C.) 4321 *et seq.* and 40 CFR 1501.9.

Signing Authority

This document of the Department of Energy was signed on December 8, 2022, by Todd Stribley, NEPA Compliance Officer, Loan Programs Office, 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 DOE. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 9, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–27099 Filed 12–15–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Notice of Availability of Draft Environmental Impact Statement for the Surplus Plutonium Disposition Program and Announcement of Public Hearings

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The National Nuclear Security Administration (NNSA), a semi-autonomous agency within the Department of Energy (DOE), announces the availability of a Draft Environmental Impact Statement for the Surplus Plutonium Disposition Program (SPDP EIS) (DOE/EIS–0549) in compliance with the National Environmental Policy Act of 1969 (NEPA). NNSA is also announcing a 60-day public comment period and four public hearings to receive comments on the Draft SPDP EIS. NNSA prepared the Draft SPDP EIS to evaluate the potential environmental impacts of dispositioning 34 metric tons (MT) of surplus plutonium.

DATES: NNSA invites Federal and state agencies, Native American tribes, state and local governments, industry, other organizations, and members of the public to review and submit comments on the Draft SPDP EIS through February 14, 2023. NNSA will hold four public hearings (three in-person hearings and one online virtual hearing) to present information and receive comments on the Draft SPDP EIS. This information will also be published in local New Mexico and South Carolina newspapers in advance of the hearings. Any changes to the public hearing dates or locations will be announced in the local media and posted on the following website at least 15 days before the hearing date: *https://www.energy.gov/nnsa/nnsa-nepa-reading-room.*

The four public hearings on the Draft SPDP EIS will be at the following dates, times, and locations:

Date	Time	Location
January 19, 2023	Thursday; 6:00 p.m. to 9:00 p.m. Eastern Time	North Augusta Municipal Building, 100 Georgia Avenue, North Augusta, SC 29841.
January 24, 2023	Tuesday; 6:00 p.m. to 9:00 p.m. Mountain Time	Carousel House at Pecos River Village Conference Center, 711 Muscatel Drive, Carlsbad, NM 88220.
January 26, 2023	Thursday; 6:00 p.m. to 9:00 p.m. Mountain Time	Duane Smith Auditorium, Los Alamos High School, 1300 Diamond Drive, Los Alamos, NM 87544.
January 30, 2023	Monday; 7:00 p.m. to 10:00 p.m. Eastern Time. 6:00 p.m. to 9:00 p.m. Central Time. 5:00 p.m. to 8:00 p.m. Mountain Time. 4:00 p.m. to 7:00 p.m. Pacific Time.	Online Virtual Hearing. NNSA will post the link before the hearing at *https://www.energy.gov/nnsa/nnsa-nepa-reading-room.*

ADDRESSES: Written and oral comments will be given equal weight and NNSA will consider all comments received or postmarked by the end of the comment period in preparing the Final SPDP EIS. Comments received or postmarked after the comment period will be considered to the extent practicable. Written comments on the Draft SPDP EIS or requests for information related to the Draft SPDP EIS should be sent by email to SPDP-EIS@*nnsa.doe.gov* or to Ms. Maxcine Maxted, NEPA Document Manager, National Nuclear Security Administration, Office of Material Management and Minimization, P.O. Box A, Aiken, SC 29802. You may also comment by phone by leaving a message at (803) 952–7434. Before including your address, phone number, email address, or other personally identifiable information in your comment, please be advised that your entire comment—including your personally identifiable information—may be made publicly available. If you wish for NNSA to withhold your name and/or other personally identifiable information, please state this prominently at the beginning of your comment. You may also submit comments anonymously.

The Draft SPDP EIS is available online at: *https://www.energy.gov/nnsa/nnsa-nepa-reading-room* and *https://www.energy.gov/nepa/doeeis-0549-surplus-plutonium-disposition-program.*

FOR FURTHER INFORMATION CONTACT: For further information about this notice, please contact Ms. Maxcine Maxted, NEPA Document Manager, National Nuclear Security Administration, Office of Material Management and Minimization, P.O. Box A, Aiken, SC 29802; email: *SPDP-EIS@nnsa.doe.gov;* or call (803) 952–7434 to leave a message.

SUPPLEMENTARY INFORMATION:

Background

NNSA prepared the Draft SPDP EIS pursuant to NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508) and the DOE NEPA implementing procedures (10 CFR part 1021). NNSA's previous NEPA reviews and decisions regarding the disposition of surplus plutonium are summarized in section 1.1 of the SPDP EIS. The following paragraphs describe recent developments relevant to the scope of the SPDP EIS.

In 2015, NNSA completed the Surplus Plutonium Disposition Supplemental Environmental Impact Statement (SPD Supplemental EIS) (DOE/EIS–0283–S2). In the SPD Supplemental EIS, NNSA evaluated the environmental impacts of alternatives for dispositioning 13.1 MT of surplus plutonium (7.1 MT of pit and 6 MT of non-pit) for which a disposition path had not been assigned. The alternatives evaluated in the 2015 SPD Supplemental EIS included the Mixed Oxide (MOX) Fuel Alternative, the Waste Isolation Pilot Plant (WIPP) Alternative, and two variations of waste immobilization. In addition, NNSA evaluated four options for pit disassembly and conversion (pit disassembly and conversion is equivalent to pit disassembly and processing [PDP] as used in this Notice and the Draft SPDP EIS) using facilities at the Savannah River Site (SRS) and Los Alamos National Laboratory (LANL). In 2015, NNSA announced its preferred alternative for the 6 MT of non-pit surplus plutonium evaluated in the SPD Supplemental EIS was to prepare this plutonium for eventual disposal at the WIPP facility in Carlsbad, New Mexico (80 FR 80348, December 24, 2015). In a 2016 Record of Decision (ROD), NNSA announced a decision to disposition the 6 MT of non-pit surplus plutonium by downblending it with an adulterant (downblending is a process equivalent to dilution in the dilute and dispose strategy in the Draft SPDP EIS), packaging it as contact-handled transuranic (CH–TRU) waste, and shipping it to the WIPP facility for disposal (81 FR 19588). In the 2016 ROD, NNSA did not make a decision about the disposition of the 7.1 MT of pit plutonium or about the various options for pit disassembly and conversion that were analyzed in the 2015 SPD Supplemental EIS.

In 2016, NNSA, partnering with the U.S. Army Corps of Engineers, developed an independent cost estimate for the MOX Fuel Fabrication Facility (MFFF) project, and concluded that the cost of the project, upon completion of construction, would be approximately $17 billion, and construction would not be complete until 2048. Congress directed NNSA to prepare a lifecycle cost estimate for disposal of surplus plutonium using the same approach announced for the 6 MT, now referred to as the dilute and dispose strategy. The completed cost estimate indicated that the estimate-to-complete lifecycle cost of the dilute and dispose strategy would be substantially lower than the cost to complete the MOX project. In response, the Secretary of Energy halted construction of the MOX fuel project in May 2018 by waiving the requirement to use funds for construction and support activities for the MFFF per the National Defense Authorization Act. In a letter dated May 10, 2018, the Secretary of Energy certified that ''the remaining lifecycle cost for the dilute and dispose approach will be less than approximately half of the estimated remaining lifecycle cost of the MOX fuel program.'' On October 10, 2018, NNSA issued a notice of terminating the contract for construction of MFFF. On February 8, 2019, the U.S. Nuclear Regulatory Commission (NRC) terminated the construction license for MFFF (NRC 2019). NNSA is preparing this SPDP EIS to evaluate alternatives for disposition of the 34 MT of surplus plutonium previously designated for disposition using the MOX fuel program that no longer has a disposition path.

In 2020 NNSA prepared a Supplement Analysis (SA) based on the analysis presented in the 2015 SPD Supplemental EIS. NNSA determined that disposition of 7.1 MT of non-pit surplus plutonium was not a substantial change in the action analyzed in the 2015 SPD Supplemental EIS to disposition 7.1 MT of pit plutonium via the WIPP Alternative, and that the environmental impacts had been sufficiently analyzed. NNSA subsequently issued an Amended ROD (AROD) to include preparation of an additional 7.1 MT of non-pit surplus plutonium for disposal as CH–TRU waste at the WIPP facility (85 FR 53350, August 28, 2020). The SA and AROD are available online at *https://www.energy.gov/nnsa/nnsa-nepa-reading-room.*

The 7.1 MT of non-pit surplus plutonium to be sent to the WIPP facility as CH–TRU waste is part of the 34 MT of surplus plutonium that NNSA had decided to disposition by fabricating it into MOX fuel for use in commercial reactors. In the same 2020 AROD, NNSA also decided that non-pit metal processing (NPMP) may be performed at either LANL or SRS.

Purpose and Need for Agency Action

Since the end of the Cold War in the early 1990s and the Presidential declarations of surplus fissile materials, DOE has been charged with the disposition of surplus plutonium.

NNSA's purpose in taking action is to support safe and secure disposition of 34 MT of plutonium that is surplus to the Nation's defense needs, in a reasonable time frame and at a reasonable cost, so that it is not readily usable in nuclear weapons. To achieve this, NNSA must use mature methods and proven technologies that are based on processes requiring minimal research and engineering development.

Proposed Action and Alternatives

Both the Preferred Alternative and the No Action Alternative in the Draft SPDP EIS use the dilute and dispose strategy and both address up to 7.1 MT of non-pit surplus plutonium that NNSA previously decided to dispose of using the dilute and dispose strategy (85 FR 53350). The dilute and dispose strategy includes processing surplus plutonium to plutonium oxide, diluting it with an adulterant to inhibit plutonium recovery, and disposing the resulting CH–TRU waste at the WIPP facility.

Preferred Alternative

NNSA's Preferred Alternative is to use the dilute and dispose strategy for 34 MT of surplus plutonium comprised of both surplus pit and non-pit surplus plutonium. The exact amounts of pit and non-pit forms of plutonium that compose the 34 MT are safeguarded, so they cannot be delineated further. Therefore, to bound the impacts, the analysis in the SPDP EIS evaluates the impacts of dispositioning 34 MT of surplus plutonium in pit form and the impacts of dispositioning 7.1 MT of non-pit surplus plutonium. However, the SPDP mission involves only 34 MT of surplus plutonium. The activities that are part of the Preferred Alternative would occur at five DOE sites—Pantex in Texas, LANL in New Mexico, SRS in South Carolina, the Y–12 National Security Complex (Y–12) in Tennessee, and the WIPP facility in New Mexico. NNSA has developed four sub-alternatives for the Preferred Alternative based on the location of activities.

Base Approach Sub-Alternative

Under the Base Approach Sub-Alternative, NNSA analyzes the impacts of shipping 34 MT of surplus pit plutonium from Pantex to LANL and disassembling and processing (*i.e.,* PDP) the 34 MT of surplus pit plutonium at LANL with subsequent shipment of the decontaminated and oxidized highly

enriched uranium (HEU) to Y–12. NNSA also analyzes the impacts of processing 7.1 MT of non-pit surplus plutonium at LANL, using some of the same capabilities as PDP. This sub-alternative would rely on expanding existing capabilities at LANL in the Plutonium Facility (PF–4) for PDP and modifying or building additional support facilities. The resulting plutonium oxide from the surplus pit and non-pit surplus plutonium would be shipped to K-Area at SRS, where it would be diluted, characterized, and packaged for shipment to and disposal at the WIPP facility.

SRS NPMP Sub-Alternative

The SRS NPMP Sub-Alternative is similar to the Base Approach Sub-Alternative. NNSA analyzes the impacts of shipping 34 MT of surplus pit plutonium from Pantex to LANL and PDP of the 34 MT of surplus pit plutonium at LANL. The decontaminated and oxidized HEU would then be shipped to Y–12. This sub-alternative would rely on NNSA expanding existing capabilities at LANL in PF–4 for PDP and modifying or building additional support facilities. Plutonium oxide resulting from PDP would be shipped to SRS (K-Area). Unlike the Base Approach Sub-Alternative, under this sub-alternative, NNSA does not analyze NPMP at LANL. Instead, processing of 7.1 MT of non-pit surplus plutonium would occur in the SRS K-Area either in Building 105–K or in a modular system adjacent to the building. Under this sub-alternative, NNSA considers the impacts of dilution and characterization and packaging (C&P) of the diluted plutonium oxide CH–TRU waste in SRS's K-Area for shipment to and disposal at the WIPP facility.

All LANL Sub-Alternative

Under the All LANL Sub-Alternative NNSA would use only capabilities at LANL for the entire disposition pathway prior to shipment to the WIPP facility. Under this sub-alternative, NNSA analyzes the impacts of shipping 34 MT of surplus pit plutonium from Pantex to LANL, PDP at LANL, and shipment of the decontaminated and oxidized HEU to Y–12. NNSA would rely on expanding existing capabilities at LANL in PF–4 for PDP and modifying or building additional support facilities. NNSA also analyzes the impacts of processing 7.1 MT of non-pit surplus plutonium at LANL in PF–4. Under this sub-alternative, NNSA considers the impacts of dilution in PF–4 and C&P of the diluted plutonium oxide CH–TRU waste for shipment to and disposal at the WIPP facility.

All SRS Sub-Alternative

Under the All SRS Sub-Alternative NNSA would use only capabilities at SRS for the entire disposition pathway prior to shipment to the WIPP facility. Under this sub-alternative, NNSA analyzes the impacts of shipping 34 MT of surplus pit plutonium from Pantex to SRS and the disassembly and processing of the 34 MT of surplus pit plutonium and processing 7.1 MT of non-pit surplus plutonium in a new capability installed at SRS in either K-Area or F-Area. NNSA analyzes the subsequent shipment of the decontaminated and oxidized HEU to Y–12 and the shipment of by-product material to LANL. Under this sub-alternative, NNSA considers the impacts of dilution and C&P of the diluted plutonium oxide CH–TRU waste in SRS's K-Area for shipment to and disposal at the WIPP facility.

No Action Alternative

The No Action Alternative is the continued management of 34 MT of surplus plutonium. This includes (1) continued storage of surplus pits at Pantex, (2) continuing the plutonium mission at LANL to process up to 400 kg of actinides (including surplus plutonium) per year, and (3) disposition of up to 7.1 MT of non-pit surplus plutonium for which the decision to use the dilute and dispose strategy was announced in NNSA's 2020 AROD (85 FR 53350).

Final SPDP EIS

Following this public comment period on the Draft SPDP EIS, and after consideration of comments received, NNSA will prepare a Final SPDP EIS. NNSA will announce the availability of the Final SPDP EIS in the **Federal Register** and local media outlets. If warranted, NNSA will issue a ROD no sooner than 30 days after publication by the Environmental Protection Agency of a Notice of Availability of the Final SPDP EIS.

Signing Authority

This document of the Department of Energy was signed on December 8, 2022, by Jill Hruby, Under Secretary for Nuclear Security and Administrator, NNSA, 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 December 9, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–27152 Filed 12–15–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–274–000.
Applicants: MoGas Pipeline LLC.
Description: § 4(d) Rate Filing: MoGas Pipeline LLC Ozark Gas NRA Filing to be effective 1/1/2023.
Filed Date: 12/9/22.
Accession Number: 20221209–5149.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: RP23–275–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2022–12–09 Negotiated Rate Agreements and Amendments to be effective 12/9/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5176.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: RP23–276–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2022–12–09 Negotiated Rate Agreement to be effective 12/10/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5185.
Comment Date: 5 p.m. ET 12/21/22.

Docket Numbers: RP23–277–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Mieco) to be effective 12/9/2022.
Filed Date: 12/9/22.
Accession Number: 20221209–5187.
Comment Date: 5 p.m. ET 12/21/22.

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: December 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27337 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2459–279]

Lake Lynn Generation, LLC; Notice of Application Tendered for Filing With The Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2459–279.

c. *Date filed:* November 30, 2022.

d. *Applicant:* Lake Lynn Generation, LLC.

e. *Name of Project:* Lake Lynn Hydroelectric Project.

f. *Location:* On the Cheat River, near the city of Morgantown, in Monongalia County, West Virginia, and near the borough of Point Marion, in Fayette County, Pennsylvania. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Jody Smet, Lake Lynn Generation, LLC, 7315 Wisconsin Avenue, Suite 1100W, Bethesda, MD 20814; Phone at (240) 482–2700; or email at *Jody.Smet@eaglecreekre.com.*

i. *FERC Contact:* Joshua Dub at (202) 502–8138, or *joshua.dub@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 29, 2023.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: Lake Lynn Hydroelectric Project (P–2459–279).

m. The application is not ready for environmental analysis at this time.

n. *The existing Lake Lynn Project consists of:* (1) a 13 mile-long, 1,729-acre impoundment (Lake Lynn) with a maximum storage capacity of 72,300 acre-feet at a normal water surface elevation of 870 feet National Geodetic Vertical Datum of 1929 (NGVD 29) and a normal minimum storage capacity of 51,100 acre-feet at 857 feet NGVD 29; (2) a 1,000-foot-long, 125-foot-high, concrete gravity dam with a 624-foot-long spillway section controlled by 26, 21-foot-wide by 17-foot-high, Tainter gates; (3) a concrete intake structure equipped with a log boom and eight trash racks with 4-inch clear bar spacing; (4) eight 12-foot-wide by 18-foot-deep gated reinforced concrete penstocks; (5) a 160-foot-long by 94.5-foot-wide powerhouse containing four Francis generating units with a combined capacity of 51.2 megawatts; and (6) two 800-foot-long transmission lines that run from the powerhouse to a substation within the project boundary.

The Lake Lynn Project is currently operated as a peaking facility with storage. The hours of peaking vary depending on environmental and economic considerations. The current license requires Lake Lynn Generation, LLC to maintain Cheat Lake between 868 feet and 870 feet NGVD 29 from May 1 through October 31, 857 feet and 870 feet NGVD 29 from November 1 through March 31, and 863 feet and 870 feet NGVD 29 from April 1 through April 30 each year. The current license also requires Lake Lynn Generation, LLC to release a downstream minimum flow of 212 cubic-feet-per-second (cfs), or inflow, from the dam when not generating, with an absolute minimum flow of 100 cfs regardless of inflow, when not generating. The project generates about 144,741 megawatt-hours annually.

Lake Lynn Generation, LLC proposes to continue operating the project as a peaking facility with storage, and does not propose any new development at the project.

o. In addition to publishing the full text of this notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this notice, as well as other documents in the proceeding (*e.g.,* license application) via the internet through the Commission's Home Page (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document (P–2459). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676, or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule and final amendments:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—February 2023

Request Additional Information—February 2023

Issue Acceptance Letter—June 2023

Issue Scoping Document 1 for comments—June 2023

Issue Scoping Document 2 (if necessary)—August 2023

Issue Notice of Ready for Environmental Analysis—August 2023

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 12, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27310 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14995–000]

Pumped Hydro Storage LLC; Notice of Surrender of Preliminary Permit

Take notice that Pumped Hydro Storage LLC, permittee for the proposed San Francisco River Pumped Storage Project, has requested that its preliminary permit be terminated. The permit was issued on February 18, 2021 and would have expired on January 31, 2024.[1] The project would have been located on the San Francisco River in Greenlee County, Arizona and Catron County, New Mexico, on land that is part of the Apache-Sitgreaves National Forest in Arizona and the Gila National Forest in New Mexico.

The preliminary permit for Project No. 14995 will remain in effect until the close of business, January 11, 2023. 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: December 12, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27312 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 174 FERC ¶ 61,122 (2021).

[2] 18 CFR 385.2007(a)(2) (2021).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14992–000]

Notice of Surrender of Preliminary Permit; Pumped Hydro Storage LLC

Take notice that Pumped Hydro Storage LLC, permittee for the proposed Salt Trail Canyon Pumped Storage Project, has requested that its preliminary permit be terminated. The permit was issued on May 21, 2020, and would have expired on April 30, 2023.[1] The project would have been located on the Little Colorado River in Coconino County, Arizona.

The preliminary permit for Project No. 14992 will remain in effect until the close of business, January 11, 2023. 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: December 12, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27314 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 171 FERC ¶ 61,137 (2020).

[2] 18 CFR 385.2007(a)(2) (2021).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6634–003]

Shasta Meadows, Inc.; Notice of Application for Surrender of Exemption, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for surrender of exemption.

b. *Project No:* P–6634–003.

c. *Date Filed:* February 8, 2019.

d. *Applicant:* Shasta Meadows, Inc.

e. *Name of Project:* Prather Creek Hydroelectric Project.

f. *Location:* The project is located on Prather Creek, in Siskiyou County, California.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Anthony Ralphs, Shasta Meadows, Inc., 2415 Wishing Star Way, Chula Vista, California 91915, (619) 437–9200, *tralphs@mac.com.*

i. *FERC Contact:* Ashish Desai, (202) 502–8370, *Ashish.Desai@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* January 11, 2023.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket number P–6634–003. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The exemptee proposes to surrender its exemption for the project. The power purchasing agreement for the project expired in 2013 and the exemptee has been unable to enter into a new agreement. Currently, the project is non-operational and no water flows through penstock. The exemptee proposes to leave all project works secured in place including the powerhouse and generator.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://*

www.ferc.gov using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: December 12, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27309 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–36–000.

Applicants: NextEra Energy Resources, LLC, North American Sustainable Energy Fund, L.P., Energy Power Investment Company, LLC, EPP Renewable Energy, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of NextEra Energy Resources, LLC.

Filed Date: 12/9/22.

Accession Number: 20221209–5232.

Comment Date: 5 pm ET 1/23/23.

Docket Numbers: EC23–37–000.

Applicants: Flat Water Wind Farm, LLC, TPW Petersburg, LLC, Roth Rock Wind Farm, LLC, Roth Rock North Wind Farm, LLC, Persimmon Creek Wind Farm 1, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Flat Water Wind Farm, LLC, et al.

Filed Date: 12/12/22.

Accession Number: 20221212–5100.

Comment Date: 5 p.m. ET 1/2/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL23–15–000.

Applicants: Sunfish Solar LLC v. PJM Interconnection, L.L.C.

Description: Complaint of Sunfish Solar LLC.

Filed Date: 12/12/22.

Accession Number: 20221212–5024.

Comment Date: 5 p.m. ET 1/2/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2904–001.

Applicants: MidAmerican Central California Transco, LLC.

Description: Compliance filing: Amended Order No. 864 Compliance Filing (ER21–2904) to be effective 1/27/2020.

Filed Date: 12/12/22.

Accession Number: 20221212–5080.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–16–002.

Applicants: ISO New England Inc., The Narragansett Electric Company.

Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): The Narragansett Electric Company—Response to Req. for Additional Information to be effective 1/1/2023.

Filed Date: 12/12/22.

Accession Number: 20221212–5118.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–597–000.

Applicants: Oklahoma Gas and Electric Company.

Description: § 205(d) Rate Filing: Section 205 Filing to Update Depreciation Rates in Transmission Formula Rate to be effective 7/1/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5030.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–598–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–12–12_SA 2225 METC-Midland 2nd Rev GIA (G809) to be effective 12/1/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5034.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–599–000.

Applicants: Grand River Dam Authority, Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Grand River Dam Authority submits tariff filing per 35.13(a)(2)(iii: Grand River Dam Authority Revisions to Formula Rate Protocols to be effective 2/11/2023.

Filed Date: 12/12/22.

Accession Number: 20221212–5040.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–600–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original WMPA SA No. 6734; Queue No. AG2–397 to be effective 11/11/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5063.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–601–000.

Applicants: Black Hills Colorado Electric, LLC.

Description: § 205(d) Rate Filing: Revisions to Open Access Transmission Tariff to be effective 2/11/2023.

Filed Date: 12/12/22

Accession Number: 20221212–5066.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–602–000.

Applicants: Duke Energy Progress, LLC.

Description: § 205(d) Rate Filing: DEP–DEP Provisional LGIA SA No. 419 Q485 to be effective 12/8/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5067.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–603–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement

FERC No. 110 to be effective 11/18/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5069.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–604–000.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreement No. 23 to be effective 2/11/2023.

Filed Date: 12/12/22.

Accession Number: 20221212–5071.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–605–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6715; Queue No. AE2–111 to be effective 11/11/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5077.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–607–000

Applicants: K2SO, LLC

Description: Baseline eTariff Filing: Baseline new to be effective 12/13/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5081.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–608–000.

Applicants: Arizona Public Service Company.

Description: § 205(d) Rate Filing: Administrative Filing for Collation Correction to be effective 12/12/2022.

Filed Date: 12/12/22.

Accession Number: 20221212–5098.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–609–000.

Applicants: California Independent System Operator Corporation.

Description: § 205(d) Rate Filing: 2022–12–12 Tariff Clarifications to be effective 2/11/2023.

Filed Date: 12/12/22.

Accession Number: 20221212–5106.

Comment Date: 5 p.m. ET 1/2/23.

Docket Numbers: ER23–610–000

Applicants: Northern Indiana Public Service Company LLC

Description: § 205(d) Rate Filing: East Winamac CIAC Agreement to be effective 1/1/2023.

Filed Date: 12/12/22.

Accession Number: 20221212–5128.

Comment Date:

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–17–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Midcontinent Independent System Operator, Inc.

Filed Date: 12/12/22.

Accession Number: 20221212–5107.

Comment Date: 5 p.m. ET 1/2/23.

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: December 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–27338 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–21–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 1, 2022, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in above referenced docket a prior notice request pursuant to sections 157.205, 157.208, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and Columbia's blanket certificate issued in Docket No. CP83–76–000, for authorization to replace a total of 2.7 miles of its existing 18-inch-diameter pipeline Line D420 in three separate segments located in Lucas, Wood, and Ottawa Counties, Ohio. Columbia states that the replacement is necessary to comply with the Pipeline and Hazardous Materials Safety Administration requirements under 49 CFR part 192.611. Columbia estimates the cost of the project to be approximately $17.9 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this request should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002–2700, by phone at (832) 320–5477, or by email at *david_alonzo@tcenergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on February 10, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is February 10, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is February 10, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/how-guides.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 10, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–21–000 in your submission. The Commission encourages electronic filing of submissions.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing.''

The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP23–21–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To send via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

Protests and motions to intervene must be served on the applicant either by mail to David A. Alonzo, Manager, Project Authorizations, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002–2700 or by email (with a link to the document) at: *david_alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *https://www.ferc.gov/ferc-online/overview.*

Dated: December 12, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27311 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14994–000]

Pumped Hydro Storage LLC; Notice of Surrender of Preliminary Permit

Take notice that Pumped Hydro Storage LLC, permittee for the proposed Little Colorado River Pumped Storage Project, has requested that its preliminary permit be terminated. The permit was issued on May 21, 2020, and would have expired on April 30, 2023.[1] The project would have been located on the Little Colorado River in Coconino County, Arizona.

The preliminary permit for Project No. 14994 will remain in effect until the close of business, January 11, 2023. 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: December 12, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–27313 Filed 12–15–22; 8:45 am]

BILLING CODE 6717–01–P

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[1] 171 FERC ¶ 61,138 (2020).

[2] 18 CFR 385.2007(a)(2) (2021).

DEPARTMENT OF ENERGY

Southeastern Power Administration

Revision to Power Marketing Policy Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of revision to power marketing policy.

SUMMARY: Southeastern Power Administration (Southeastern or SEPA) announces revision to the power marketing policy for the Georgia-Alabama-South Carolina System of Projects to include a procedure for distribution of renewable energy certificates (RECs). The Georgia-Alabama-South Carolina System power marketing policy was published on December 28, 1994, and is reflected in contracts for the sale of system power, which are maintained in Southeastern's headquarters office. Pursuant to the Procedure for Public Participation in the Formulation of Marketing Policy, published in the **Federal Register** on July 6, 1978, Southeastern published on January 14, 2022, a notice of intent to revise the power marketing policy to include provisions regarding RECs from the Georgia-Alabama-South Carolina System. The proposed revision to the Georgia-Alabama-South Carolina System Power Marketing Policy was published in the **Federal Register** on August 16, 2022. A virtual web based public information and comment forum was held on October 19, 2022, with written comments due on or before November 3, 2022.

DATES: The power marketing policy revision will become applicable upon publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Spencer, Engineer, Southeastern Power Administration, 1166 Athens Tech Road, Elberton, GA 30635, (706) 213–3855, Email: *douglas.spencer@sepa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

Southeastern published a ''Notice of Issuance of Final Power Marketing Policy Georgia-Alabama-South Carolina System of Projects'' in the **Federal Register** on December 28, 1994, 59 FR 66957. The policy establishes the marketing area for system power and addresses the utilization of area utility systems for essential purposes. The policy also addresses wholesale rates, resale rates, and conservation measures, but does not address RECs.

Under Section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), Southeastern is responsible for the transmission and disposition of electric power and energy from reservoir projects operated by the U.S. Army Corps of Engineers. Furthermore, Southeastern must transmit and dispose of power and energy in such a manner as to encourage the most widespread use at the lowest possible rates to consumers consistent with sound business principles. Rate schedules are developed with regard to the recovery of the cost of producing and transmitting such electric energy.

The Georgia-Alabama-South Carolina System consist of ten projects: Allatoona, Buford, Carters, Hartwell, J.S. Thurmond, Millers Ferry, R.B. Russell, R.F. Henry, West Point, and W.F. George projects. The power generated at these projects is purchased by and benefits 192 preference customers in Alabama, Florida, Georgia, Mississippi, South Carolina, and North Carolina. The power from the projects is currently marketed to Preference Customers located in the service areas of Southern Company, PowerSouth Energy Cooperative, Duke Energy Carolinas, South Carolina Public Service Authority, and Dominion Energy South Carolina formerly doing business as South Carolina Electric & Gas. The System provides 2,184,257 kilowatts of capacity and about 3,383,000 MWh of average annual energy from stream-flow based on modeling for the period of record.

Southeastern has been using the Generation Attribute Tracking System (GATS) provided through the PJM Interconnection, LLC, for the Kerr-Philpott System of Projects. The attributes are unbundled from the megawatt-hour of energy produced and recorded onto a certificate. These certificates may be used by electricity suppliers and other energy market participants to comply with relevant state policies and regulatory programs and to support voluntary ''green'' electricity markets. Southeastern will use the similar M–RETS product for distributing certificates to current Preference Customers with allocations of power from the Georgia-Alabama-South Carolina System.

This RECs tracking system Southeastern is capable of tracking environmental attributes used for voluntary claims in all state, provinces, and territories in North America. Under the following revision of the 1994 power marketing policy, Southeastern will distribute the M–RETS created certificates to current Preference Customers with allocations of power from the Georgia-Alabama-South Carolina System.

Public Notice and Comment

Southeastern published a proposed revision in the **Federal Register**, 87 FR 50333, dated August 16, 2022. Southeastern held a web-based information and comment forum on October 19, 2022. Southeastern received comments from Southeastern Federal Power Customers, Inc. (SeFPC).

Public Comment

Written and oral comments are summarized below. Southeastern's responses follow each comment.

Comment 1: SeFPC has requested clarification whether any further transfer sale, use, or trade transaction would be the sole responsibility of the preference customer and whether the customer is allowed to retire and monetize its RECs in a manner in which that customer sees fit.

Response 1: Southeastern agrees with the understanding that after distribution into the customer M–RETS account the customer has the sole responsibility for further disposition of its RECs.

Comment 2: SeFPC has requested clarification on the life-cycle and disposition of RECs remaining after the failure of a customer to provide a valid M–RETS account to receive a distribution.

Response 2: Southeastern intends to utilize the M–RETS system to create, track and distribute RECs. RECs not yet distributed (either because a customer M–RETS account was not provided or by accumulation prior to the marketing policy being in effect) will adhere to the M–RETS terms of service, procedures, policies for transfers regarding their life-cycle and the potential for forfeiture.

Comment 3: SeFPC has requested to limit the revisions to the GA–AL–SC System Power Marketing Policy solely to issues regarding RECs.

Response 3: Southeastern agrees that this revision to the GA–AL–SC System Power Marketing Policy only addresses RECs.

Summary of Changes to the Power Marketing Policy Revision

Southeastern made further changes to the Power Marketing Policy Revision as a result of comments received during the comment period and public forum. Southeastern added language indicating that any further transfer, sale, use, or transaction would be the sole responsibility of a Preference Customer.

Revision to the Power Marketing Policy

Southeastern revises the Power Marketing Policy for the System to

include the following additional provisions for RECs associated with hydroelectric generation:

Renewable Energy Certificates: The M–RETS Tracking System creates and tracks certificates reporting generation attributes, by generating unit, for each megawatt-hour (MWh) of energy produced by registered generators. The System projects are registered generators within M–RETS. The RECs potentially satisfy Renewable Portfolio Standards, state policies, and other regulatory or voluntary clean energy standards in a number of states. Southeastern has subscribed to M–RETS and has an account in which RECs are collected and tracked for each MWh of energy produced from the System. Within M–RETS, certificates can be transferred to other M–RETS subscribers or to a third-party tracking system.

M–RETS creates a REC for every MWh of renewable energy produced in the region, tracks the life cycle of each REC created, and ensures against any double-counting or double-use of each REC. These RECs may be used by electricity suppliers and other energy market participants to comply with relevant state policies and regulatory programs and to support voluntary ''green'' electricity markets.

Southeastern will distribute M–RETS-created RECs to Preference Customers with allocations of power from the System.

REC Distribution: M–RETS (or a successor application) will be the transfer mechanism for all RECs related to the System. Southeastern shall maintain an account with M–RETS and collect RECs from the generation at the System projects. Southeastern will verify the total amount of RECs each month. Preference Customers with an allocation of power from the System are eligible to receive RECs by transfer from Southeastern's M–RETS account to their M–RETS account or that of their agent. Transfers to each customer will be based on the customer's monthly invoices during the same three-month period (quarter). Where applicable, RECs will be project-specific based on the customer's contractual arrangements. Any further transfer, sale, use, or trade transaction would be the sole responsibility of a Preference Customer.

All RECs distributed by Southeastern shall be transferred within forty-five days of the end of a quarter. Each customer must submit to Southeastern, by the tenth business day after the quarter, any notice of change to M–RETS account or agent. Any REC transfers that were not claimed or if a transfer account was not provided to Southeastern will be forfeited if they become nontransferable as described in the M–RETS terms of service, procedures, policies, or definitions of reporting and trading periods, or any subsequent rules and procedures for transfers as established.

The initial transfer process in M–RETS will be accomplished by the sixtieth day after the end of the first completed quarter subsequent to publication of the final policy revision. Any balance of RECs that exist in Southeastern's M–RETS account, other than the first quarter after policy revision publication, may also be transferred to Preference Customers according to the customer's invoiced energy at the time of the REC creation.

Rates: No rates shall be established by Southeastern for RECs transferred to Preference Customers. Any cost to Southeastern, such as the M–RETS subscription, will be incorporated into marketing costs and included in recovery through the energy and capacity rates of the System.

Determination Under Executive Order 12866

Southeastern has exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Environmental Compliance

SEPA has determined this action fits within the following categorical exclusions listed in appendix B to subpart D of 10 CFR part 1021: B4.1 (Contracts, policies, and marketing and allocation plans for electric power). Categorically excluded projects and activities do not require preparation of either an environmental impact statement or an environmental assessment.

Signing Authority

This document of the Department of Energy was signed on December 6, 2022, by Virgil G. Hobbs III, Administrator, Southeastern Power Administration, pursuant to the 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 December 13, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–27289 Filed 12–15–22; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0374; FRL–10476–01–OMS]

Notice of Rescheduled Public Hearing Regarding Notice of Intent To Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of objections and rescheduled public hearing.

SUMMARY: The Environmental Protection Agency (EPA) received objections and hearing requests in response to its issuance of a Notice of Intent to Suspend registration of a pesticide containing dimethyl tetrachloroterephthalate (DCPA). EPA will hold a rescheduled public hearing to receive evidence related to the proposed suspension of DCPA.

DATES: A public hearing will be held beginning at 9 a.m. ET January 24, 2023, and continue as necessary through January 27, 2023.

ADDRESSES: The public hearing will take place in the EPA Administrative Courtroom, EPA East Building, Room 1152, 1201 Constitution Ave. NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mary Angeles, Headquarters Hearing Clerk, Office of Administrative Law Judges, 1200 Pennsylvania Ave. NW, Mail Code 1900R, Washington, DC 20460; telephone number: (202) 564–6281; email address: *angeles.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The regulatory docket for this action, identified by docket identification number EPA–HQ–OPP–2011–0374, is available electronically at *https://www.regulations.gov* or in hard copy at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

The adjudication docket for the proceeding in which petitioners have requested a public hearing, captioned In re FIFRA Section 3(c)(2)(B) Notice of Intent to Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration and identified by docket number FIFRA–HQ–2022–0002, is available electronically on the website of EPA's Office of Administrative Law Judges at *https://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/Active+Dockets?OpenView.*

II. Public Hearing To Be Held on Objections to EPA's Notice of Intent To Suspend DCPA

EPA previously published (87 FR 25262, April 28, 2022) a Notice of Intent to Suspend (NOITS) the registration of DCPA pursuant to its authority under Section 3(c)(2)(B)(iv) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136a(c)(2)(B)(iv). Section 3(c)(2)(B)(iv) of FIFRA provides that any person adversely affected by the NOITS may request a hearing on the proposed suspension within thirty days of the registrant receiving the notice. On May 24, 2022, the Western Plant Health Association filed an objection to the NOITS. On May 27, 2022, AMVAC Chemical Corporation, the DCPA registrant, filed an objection to the NOITS and requested a hearing. Also on May 27, 2022, the Grower-Shipper Association of Central California, Sunheaven Farms, LLC, J&D Produce, Ratto Bros., Inc., and Huntington Farms jointly filed an objection to the NOITS and requested a hearing.

The hearing requests commenced a proceeding under section 6(d) of FIFRA, 7 U.S.C. 136d(d), and EPA's procedural rules, 40 CFR 164, before EPA's Office of Administrative Law Judges. Under those rules, a hearing was previously scheduled to begin on July 6, 2022 (87 FR 37507, June 23, 2022). However, that hearing was canceled after the EPA requested and was granted an accelerated decision. Petitioners appealed that decision to the Environmental Appeals Board, which on September 28, 2022, issued an order remanding the case to the Office of Administrative Law Judges. The Environmental Appeals Board directed that a hearing be held to determine whether AMVAC failed to take appropriate steps to secure data required by EPA to maintain DCPA's registration and, if so, whether the existing stocks provision of the DCPA NOITS is consistent with FIFRA.

As set forth in **DATES** and **ADDRESSES**, this rescheduled hearing will begin at 9 a.m. ET January 24, 2023, and continue as necessary through January 27, 2023, in the EPA Administrative Courtroom, EPA East Building, Room 1152, 1201 Constitution Ave. NW, Washington, DC 20460. Anyone wishing to attend the hearing must notify Mary Angeles, Headquarters Hearing Clerk, Office of Administrative Law Judges, by email no later than January 13, 2023, at the email address listed under **FOR FURTHER INFORMATION CONTACT**. A notice of intent to attend the hearing shall include the individual's name, email address, telephone number, and any organization they represent. On the day of the hearing, attendees must present government-issued identification to enter EPA facilities, and they may be required to wear a mask and physically distance from others in the hearing room. Attendees may face further restrictions on entry based on the community level of COVID–19 at the time of the hearing.

Authority: 7 U.S.C. 136 *et seq.;* 40 CFR 164.

Dated: December 9, 2022.

Susan Biro,

Chief Administrative Law Judge, Office of Administrative Law Judges.

[FR Doc. 2022–27242 Filed 12–15–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–048]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed December 5, 2022 10 a.m. EST Through December 12, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20220183, Draft, USACE, CA, Delta Conveyance Project, *Comment Period Ends:* 02/14/2023, *Contact:* Zachary Simmons 415–503–2951.

EIS No. 20220184, Final Supplement, USFS, MT, Telegraph Vegetation Project, *Review Period Ends:* 01/17/2023, *Contact:* Sharon Scott 406–495–3943.

EIS No. 20220185, Draft, NNSA, SC, Surplus Plutonium Disposition Program, *Comment Period Ends:* 02/14/2023, *Contact:* Maxcine Maxted 803–952–7434.

EIS No. 20220186, Final, TVA, TN, Moore County Solar, *Review Period Ends:* 01/17/2023, *Contact:* Ashley Pilakowski 865–632–2256.

EIS No. 20220187, Draft, BOEM, VA, Coastal Virginia Offshore Wind Commercial Project, *Comment Period Ends:* 02/14/2023, *Contact:* Bonnie L Houghton 703–438–5108.

EIS No. 20220188, Draft, BOEM, NY, Sunrise Wind Project, *Comment Period Ends:* 02/14/2023, *Contact:* Paige Foley 703–787–1584.

Amended Notice: EIS No. 20220143, Draft, USACE, NY, Draft Integrated Feasibility Report and Tier 1 Environmental Impact Statement, New York-New Jersey Harbor and Tributaries Coastal Storm Risk Management Feasibility Study, *Comment Period Ends:* 03/07/2023, *Contact:* Cheryl Alkemeyer 917–790–8723. Revision to FR Notice Published 10/07/2022; Extending the Comment Period from 01/06/2023 to 03/07/2023.

EIS No. 20220158, Draft, NNSA, CA, Draft Site-Wide Environmental Impact Statement for Continued Operation of the Lawrence Livermore National Laboratory, *Comment Period Ends:* 01/18/2023, *Contact:* Ms. Fana Gebeyehu-Houston 833–778–0508. Revision to FR Notice Published 11/04/2022; Extending the Comment Period from 01/03/2023 to 01/18/2023.

EIS No. 20220162, Draft, USDA, OR, Predator Damage Management in Oregon, *Comment Period Ends:* 01/03/2023, *Contact:* Kevin Christensen 503–820–2751. Revision to FR Notice Published 11/10/2022; Extending the Comment Period from 12/27/2022 to 01/03/2023.

Dated: December 12, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–27292 Filed 12–15–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0863, OMB 3060–1203; FR ID 118403]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before January 17, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 848 respondents; 250,000 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement, On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection action is contained in 47 U.S.C. 339.

Total Annual Burden to Respondents: 125,000 hours.

Total Annual Cost: No cost.

Needs and Uses: The information collection requirements contained in 47 CFR 73.686 describes a method for measuring signal strength at a household so that the satellite and broadcast industries would have a uniform method for making an actual determination of the signal strength that a household received. The information gathered as part of the noise-limited service contour signal strength tests will be used to indicate whether a household is ''unserved'' by over-the-air network signals.

Satellite and broadcast industries making field strength measurements for formal submission to the Commission in rulemaking proceedings, or making such measurements upon the request of the Commission, shall follow the procedure for making and reporting such measurements which shall be included in a report to the Commission and submitted in affidavit form, in triplicate. The report shall contain the following information:

(a) Tables of field strength measurements, which for each measuring location; (b) U.S. Geological Survey topographic maps; (c) All information necessary to determine the pertinent characteristics of the transmitting installation; (d) A list of calibrated equipment used in the field strength survey; (e) A detailed description of the calibration of the measuring equipment, and (f) Terrain profiles in each direction in which measurements were made.

The information collection requirements contained in 47 CFR 73.686 also requires satellite and broadcast companies to maintain a written record describing, for each location, factors which may affect the recorded field (*i.e.,* the approximate time or measurement, weather, topography, overhead wiring, heights and types of vegetation, buildings and other structures, the orientation of the measuring location, objects of such shape and size that cause shadows or reflections, signals received that arrived from a direction other than that of the transmitter, survey, list of the measured value field strength, time and date of the measurements and signature of the person making the measurements).

The information collection requirements contained in 47 CFR 73.686(e) describes the procedures for measuring the field strength of television signals. These procedures are used to determine whether a household is eligible to receive a distant digital network signal from a satellite television provider, relying on existing, proven methods. The signal measurement procedures include provisions for the location of the measurement antenna, antenna height, signal measurement method, antenna orientation and polarization, and data recording.

Pursuant to 47 CFR 73.686(e)(3), satellite and broadcast industries making field strength measurements shall maintain written records and include the following information: (a) A list of calibrated equipment used in the field strength survey, which for each instrument specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture; (b) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable; (c) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features; (d) A description of where the cluster measurements were made; (e) Time and date of the measurements and signature of the person making the measurements; (f) For each channel being measured, a list of the measured value of field strength (in units of dBμ after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

OMB Control No.: 3060–1203.

Title: Section 79.107 User Interfaces Provided by Digital Apparatus; Section 79.108 Video Programming Guides and Menus Provided by Navigation Devices; Section 79.110 Complaint Procedures for User Interfaces, Menus and Guides, and Activating Accessibility Features on Digital Apparatus and Navigation Devices.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not for profit institutions; State, Local or Tribal government.

Number of Respondents and Responses: 5,599 respondents and 546,277 responses.

Estimated Time per Response: 0.0167 hours to 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g).

Total Annual Burden: 39,350 hours.

Annual Cost Burden: $74,100.

Needs and Uses: The Commission will use the information submitted by a digital apparatus manufacturer or other party to determine whether it is achievable for digital apparatus to be fabricated so that control of appropriate built-in apparatus functions are accessible to and usable by individuals who are blind or visually impaired or whether it is achievable to comply with the information, documentation, and training requirements. The Commission will use the information submitted by an Multichannel Video Programming Distributor (MVPD) or navigation device manufacturer or other party to determine whether it is achievable for on-screen text menus and guides provided by navigation devices for the display or selection of multichannel video programming to be audibly accessible in real time upon request by individuals who are blind or visually impaired or whether it is achievable to comply with the information, documentation, and training requirements. Consumers will use the information provided by manufacturers of digital apparatus on the full functionalities of digital apparatus, such as instructions and product information, as well as information provided by manufacturers and MVPDs in accordance with the information, documentation, and training requirements, in order to have accessible information and support on how to use the device. Consumers will use the information provided by manufacturers and MVPDs notifying consumers of the availability of accessible digital apparatus and navigation devices to determine which devices accessible and whether they wish to request an accessible device. MVPDs and manufacturers of navigation devices will use the information provided by consumers who are blind or visually impaired consumers when requesting accessible navigation devices to fulfill such requests. MVPDs will use information provided by customers who are blind or visually impaired as reasonable proof of disability as a condition to providing equipment and/or services at a price that is lower than that offered to the general public. Consumers will use the contact information of covered entities to file written complaints regarding the accessibility requirements for digital apparatus and navigation devices. Finally, the Commission will use information received pursuant to the complaint procedures for violations of sections 79.107–79.109 to enforce the Commission's digital apparatus and navigation device accessibility requirements. The Commission will forward complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that the Commission determines may be involved, and it may request additional information from relevant parties.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27299 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0770, OMB 3060–0971; FR ID 118265]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice, request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize

the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 14, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0770.

Title: Sections 61.49 and 69.4, Price Cap Performance Review for Local Exchange Carriers CC Docket 94–1, FCC 99–206 (New Services).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 13 respondents; 13 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: On occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(i), 154(j), 201–205, 303(r), and 403.

Total Annual Burden: 130 hours.

Total Annual Cost: $12,090.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No information of a confidential nature is requested. However, respondents may request materials or information submitted to the Commission to be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: In the 1999 Fifth Report and Order and Further Notice of Proposed Rulemaking (Pricing Flexibility Order), 64 FR 51280, the Commission permitted price cap local exchange carriers (LECs) to introduce new services on a streamlined basis, without prior approval or cost support requirements. The Commission eliminated the public interest showing required by 47 CFR 69.4(g), and, except in the case of new loop-based switched access services, eliminated the new services test required under 47 CFR 61.49(f) and (g).

OMB Control Number: 3060–0971.

Title: Request for Audits and State Commissions' Access to Numbering Resource Application Information (47 CFR Section 52.15).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and State, Local or Tribal government.

Number of Respondents and Responses: 35 respondents; 2,615 responses.

Estimated Time per Response: 0.166 hours—3 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 153, 154, 201–205, and 251.

Total Annual Burden: 448 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Provider numbering resource applications and audits of provider compliance will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses:

There are two Paperwork Reduction Act related obligations under this OMB Control Number: 1. The North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or a state commission may draft a request to the auditor stating the reason for the request, such as misleading or inaccurate data, and attach supporting documentation; and 2. Requests for copies of providers' applications for numbering resources may be made directly to providers. The information collected will be used by the FCC, state commissions, the NANPA and the Pooling Administrator to verify the validity and accuracy of such data and to assist state commissions in carrying out their numbering responsibilities, such as area code relief.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27307 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0607; FR ID 118266]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice, request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments shall be submitted on or before February 14, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0607.

Title: Section 76.922, Rates for Basic Service Tiers and Cable Programming Services Tiers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities and State, Local or Tribal Government.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Number of Respondents and Responses: 1 respondent; 1 response.

Estimated Time per Response: 12 hours.

Total Annual Burden: 12 hours.

Total Annual Cost: No cost.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i) and 623 of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 76.922(b)(5) provides that bgh an eligible small system that elects to use the streamlined rate reduction process must implement the required rate reductions and provide written notice of such reductions to local subscribers, the local franchising authority (''LFA''), and the Commission.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27308 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0787; FR ID 118258]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments shall be submitted on or before February 14, 2023. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, CG Docket 17–169.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents and Responses: 3,660 respondents; 5,273 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 10 hours.

Frequency of Response: Recordkeeping requirement; Biennial, on occasion and one-time reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found at sec. 258 [47 U.S.C. 258] Illegal Changes In Subscriber Carrier Selections, Public Law 104–104, 110 Stat. 56.

Total Annual Burden: 14,561 hours.

Total Annual Cost: 5,260,000.

Needs and Uses: Section 258 of the Telecommunications Act of 1996 (1996 Act) directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* On January 9, 2008, the Commission released the *Fourth Report and Order,* CC Docket No. 94–129, FCC 07–223, revising its requirements concerning verification of a consumer's intent to switch carriers.

The *Fourth Report and Order* modified the information collection requirements contained in § 64.1120(c)(3)(iii) of the Commission's rules to provide for verifications to elicit ''confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized.''

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27281 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX; FR ID 118494]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as

required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 14, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.
Title: Resilient Networks.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 75 respondents; 1,725 responses.

Estimated Time per Response: 1 hour–20 hours.

Frequency of Response: One-time, on occasion and annual reporting requirements.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in Sections 1, 4(i), 4(j), 4(o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403, 615a–1, and 615c.

Total Annual Burden: 4,575 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: If appropriate, respondents may include a request for confidential treatment under Section 0.459 of the Commission's rules. 47 CFR 0.459 with information supplied under this information collection.

Needs and Uses: The nation's communications networks provide a significant lifeline for those in need during disasters and other emergencies. Recent events, including Hurricane Ida, earthquakes in Puerto Rico, severe winter storms in Texas, and active hurricane and wildfire seasons, have demonstrated however that the United States' communications infrastructure is susceptible to disruption during disaster events. To address this issue, the Federal Communications Commission adopted a Report and Order in June 2022 to improve the reliability and resiliency of mobile wireless networks. *See* 87 FR 59329 (2022). In the Report and Order, the Commission introduced the Mandatory Disaster Response Initiative (MDRI) and set forth requirements that the nation's facilities-based mobile wireless providers must take to ensure their compliance the MDRI. Pursuant to the MDRI, these providers must take action related to roaming with other providers, mutual aid agreements, municipal preparedness and restoration and consumer readiness and preparation. These providers must also submit reports to the Commission detailing the timing, duration, and effectiveness of their implementation of the MDRI's provisions on request, perform annual testing of their roaming capabilities and related coordination processes, and issue written denials of roaming requests, among other requirements.

The Commission submits this information collection, which seeks to have collected information described in the Report and Order, to support its adoption of the MDRI. The collected information will be used by the Commission, consumers and consumer groups, service providers to realize significant public safety benefits. For example, consumers and consumer groups will use the information to increase consumer education and improve consumer preparedness for disasters and other emergencies. Further, providers will use the information to ensure that roaming will work expeditiously in times of emergencies and to better understand their network capabilities related to roaming and ensure their networks roam as effectively as possible when a disaster strikes. Further, the Commission will use information as a basis for potential future improvements to the MDRI and other programs in furtherance of public safety, including by gauging providers' compliance with the MDRI's roaming provision, ensuring accountability by providers who fail to comply and for resolving disputes related to roaming agreements. Thus, the information sought in this collection is necessary and vital to ensuring that the MDRI is effective at protecting the life and property of the public.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27306 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1226; FR ID 117522]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before January 17, 2023.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1226.

Title: Receiving Written Consent for Communication with Base Stations in Canada; Issuing Written Consent to Licensees from Canada for Communication with Base Stations in the U.S.; Description of Interoperable Communications with Licensees from Canada.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, Local, or Tribal government agencies.

Number of Respondents and Responses: 3,215 respondents; 3,215 responses.

Estimated Time per Response: 0.5 hours—1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Written consent from the licensee of a base station repeater is required before first responders from the other country can begin communicating with that base stations repeater. Applicants are advised to include a description of how they intend to interoperate with licensees from Canada when filing applications to operate under any of the scenarios described in Public Notice DA 16–739 in order to ensure that the application is not inadvertently rejected by Canada. Statutory authority for these collections are contained in 47 U.S.C. 151, 154, 301, 303, 307, 308, 309, 310, 316, 319, 325(b), 332, 336(f), 338, 339, 340, 399b, 403, 534, 535, 1404, 1452, and 1454 of the Communications Act of 1934.

Total Annual Burden: 5,626 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: Applicants who include a description of how they intend to interoperate with licensees from Canada need not include any confidential information with their description. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as an extension of an existing collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The purpose of requiring an agency to issue written consent before allowing first responders from the other country to communicate with its base station repeater ensures to that the licensee of that base stations repeater (host licensee) maintains control and is responsible for its operation at all times. The host licensee can use the written consent to ensure that first responders from the other country understand the proper procedures and protocols before they begin communicating with its base station repeater. Furthermore, when reviewing applications filed by border area licensees, Commission staff will use any description of how an applicant intends to interoperate with licensees from Canada, including copies of any written agreements, in order to coordinate the application with Innovation, Science and Economic Development Canada (ISED) and reduce the risk of an inadvertent rejection by ISED.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–27287 Filed 12–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA20

Guidelines for Appeals of Material Supervisory Determinations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of guidelines.

SUMMARY: On December 13, 2022, the Federal Deposit Insurance Corporation adopted revised Guidelines for Appeals of Material Supervisory Determinations (Guidelines). The revisions expand and clarify the role of the agency's Ombudsman, adding the Ombudsman to the Supervision Appeals Review Committee as a non-voting member, and require that materials considered by the Supervision Appeals Review Committee be shared with both parties to the appeal on a timely basis, subject to applicable legal limitations on disclosure. In addition, the revised Guidelines allow insured depository institutions to request a stay of a material supervisory determination while an appeal is pending.

DATES: The revised Guidelines become applicable December 13, 2022.

FOR FURTHER INFORMATION CONTACT: Sheikha Kapoor, Senior Counsel, Legal Division, 202–898–3960, *skapoor@fdic.gov;* James Watts, Counsel, Legal Division, 202–898–6678, *jwatts@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle Act) required the FDIC (as well as the other Federal banking agencies and the National Credit Union Administration) to establish an ''independent intra-agency appellate process'' to review material supervisory determinations.[1] The statute defines the term ''independent appellate process'' to mean ''a review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.'' [2] In the appeals process, the FDIC is required to ensure that: (1) an IDI's appeal of a material supervisory determination is heard and decided expeditiously; and (2) appropriate safeguards exist for protecting appellants from retaliation by agency examiners.[3]

In 1995, the FDIC adopted Guidelines for Appeals of Material Supervisory Determinations to implement section 309(a). At that time, the FDIC's Board of Directors established the SARC to consider and decide appeals of material supervisory determinations.[4] The Board has modified the composition of the SARC over the years, but as of 2021, the SARC included: one inside member of the FDIC's Board of Directors (serving as Chairperson); one deputy or special assistant to each of the other inside Board members; and the General Counsel as a non-voting member.

In January 2021, the FDIC adopted Guidelines that replaced the SARC as the final level of review in the appellate process with a standalone office within the FDIC, designated the Office of Supervisory Appeals (Office).[5] After appealing a material supervisory determination to the relevant Division Director, an IDI would have had the option to appeal to the Office. If a material supervisory determination was appealed to the Office, a three- or five-member panel of reviewing officials would consider the appeal and issue a written decision to the IDI. The Guidelines did not provide for additional review beyond the Office.

Earlier this year, the FDIC revised the Guidelines by restoring the SARC as the final level of review of material supervisory determinations made by the FDIC.[6] The revised Guidelines reconstituted the SARC as it existed in 2021. The revised Guidelines also included procedural changes to reflect the restoration of the SARC structure, such as granting specific authorities to the SARC Chairperson. The FDIC also eliminated a provision that had been added specifically to accommodate an independent Office of Supervisory Appeals, which required communications between the Office and either supervisory staff or the appealing IDI, including materials submitted to the Office for review, to be shared with the other party to the appeal.

The FDIC invited comments on all aspects of the revised Guidelines, including, in particular, how the process could be further enhanced to include the Ombudsman's perspective. Commenters generally disagreed with the restoration of the SARC structure, but supported expanding the Ombudsman's role in the appeals process. In addition, commenters recommended changes to other aspects of the appeals process, including the sharing of information with an appealing institution, the standard of review, and staying supervisory actions while an appeal is pending.

II. October 2022 Proposal To Amend the Guidelines

In October 2022, the FDIC proposed further amendments to the Guidelines to incorporate certain suggestions made by commenters and address concerns raised by the commenters. Recognizing the need for a balance of perspectives to be reflected in the appellate process, the FDIC proposed to add the Ombudsman to the SARC as a non-voting member. Adding the Ombudsman to the SARC as a non-voting member would minimize any potential for conflict with the Ombudsman's statutory role as a liaison between the agency and any affected person. As a non-voting member, the Ombudsman would be expected to attend SARC meetings, participate in discussions, and offer views, opinions, and advice to the SARC during its deliberations based on the Ombudsman's perspective as a neutral advocated for a fair process, and as a party independent of the supervisory process. Under the proposed Guidelines, the Ombudsman would also have access to all materials reviewed by the SARC.

The FDIC also recognized that adding the Ombudsman to the SARC could cause IDIs to reconsider whether they should share confidential information with the Ombudsman, given that the Ombudsman could be involved in deciding a potentially related supervisory appeal. The FDIC proposed to address this by allowing a SARC member to designate any member of his or her staff within the member's area of responsibility to serve on the SARC on his or her behalf. For example, if the Ombudsman were unable to serve as a SARC member with respect to a particular appeal because of information learned from meeting with the institution, he or she might designate a Regional Ombudsman who has not been involved in the matter to serve on the SARC instead.

To address concerns expressed by commenters about possible retaliatory actions if an IDI submits a supervisory appeal, the proposal required the Ombudsman to monitor the supervisory process following an IDI's submission of an appeal, and noted that the Ombudsman will be expected to report to the Board on these matters periodically.

The FDIC also sought to address commenters' concerns regarding the elimination of a provision that generally required communications between the Office and supervisory staff to be shared with the appealing institution. The FDIC agreed that basic notions of fairness support a requirement that both parties to the appeal are aware of the information considered by the decision-maker. The proposal required that all materials considered by the SARC be shared with both parties to the appeal, subject to applicable legal limitations on

[1] 12 U.S.C. 4806(a).

[2] 12 U.S.C. 4806(f)(2).

[3] 12 U.S.C. 4806(b).

[4] 60 FR 15923 (Mar. 28, 1995).

[5] 86 FR 6880 (Jan. 25, 2021).

[6] 87 FR 30942 (May 20, 2022).

disclosure.[7] The Ombudsman would oversee this aspect of the process, verifying that both parties have received all materials considered by the SARC.

Related to the proposed addition of the Ombudsman as a non-voting member of the SARC, the FDIC proposed to make certain conforming changes to other provisions of the Guidelines in section G.4 and prior section J. The FDIC also proposed to amend section G.1 of the Guidelines to require copies of all relevant materials related to an appeal to be provided to the Office of the Ombudsman.

The FDIC further proposed to amend the Guidelines to expressly permit IDIs to request a stay of an action or determination from the appropriate Division Director while its appeal is pending. The request would be in writing and include the reasons for the stay. The Division Director would have discretion to grant a stay, and would generally decide whether a stay is granted within 21 days of receiving the IDI's request. The Division Director could grant a stay subject to certain conditions where appropriate; for example, a stay could be time-limited.

III. Discussion of Comments

The FDIC received three comment letters in response to the proposed Guidelines: (1) a joint letter from six banking industry trade associations; (2) a letter from a bank holding company; and (3) a letter from a nonprofit think tank. While commenters were appreciative of some of the FDIC's proposed changes, they all had further suggestions.

SARC Membership

Commenters were generally supportive of including the Ombudsman as a member of the SARC. While commenters viewed this change as an improvement, one commenter questioned why the Ombudsman would be made a non-voting member, rather than a voting member, of the SARC.

A commenter suggested that the Guidelines specify the criteria for minimum qualifications to serve as a voting member of the SARC when an individual is designated by an FDIC Director, stating that this would promote greater credibility and trust in the process. The commenter also recommended that the FDIC develop and maintain a list of qualified candidates outside the FDIC to serve on the SARC, including current state supervisors (from states and regions outside of where the appeal originated) and retired examiners, and allow FDIC Directors to appoint individuals from this list to serve on the SARC.

Stay of a Supervisory Decision or Action

Commenters generally appreciated the proposal to allow institutions to request a stay of a material supervisory determination while an appeal is pending. However, one commenter suggested requiring the SARC, rather than the appropriate Division Director, to decide requests for stays. The commenter recommended that the FDIC set specific standards for evaluating stay requests, and making public the basis for denial of any stay request (subject to the protection of confidential information). Another commenter suggested that a stay should be automatic unless the relevant Division Director can make a showing in writing that a stay would pose a threat to the safety and soundness of the bank or otherwise adversely impact the banking system.

Appeal Directly to SARC and SARC Standard of Review

One commenter suggested giving institutions the option to bypass the Division Director level review and appeal directly to the SARC. This commenter also suggested requiring the SARC to conduct a *de novo* review and prohibiting the SARC from relying on the opinions and conclusions of the Division Directors, including their findings of facts.

Sharing of Information

One commenter suggested that the FDIC prohibit *ex parte* communications (including oral communications) and require any *ex parte* communications that inadvertently occur to be memorialized in writing and made available to both the SARC and the appealing bank on a timely basis.

Additionally, the commenter suggested that the FDIC clarify that both parties will receive the information considered by the SARC on a timely basis prior to the issuance of the SARC's decision, so that both parties will have an opportunity to correct the factual record prior to a SARC decision.

Burden of Proof

A commenter stated that the burden of proof in appeals proceedings should not be on the institution, noting that this is not required by statute, and the appellate process is not governed by the Administrative Procedure Act or other formal judicial review procedures. The commenter stated that this reinforces a structure under which an appeal cannot succeed unless the decision maker rules that the people they supervise are not merely wrong, but clearly wrong.

Inspector General Review

One commenter recommended that the FDIC instruct the FDIC's Office of the Inspector General (OIG) conduct periodic reviews of the appellate process as well as the decisions or outcomes of appeals, and publish these findings on the FDIC's website. The commenter stated that the FDIC Board should annually review and approve the OIG's findings and make them public.

IV. Final Guidelines

The FDIC is amending the Guidelines generally as proposed, with additional changes intended to address certain areas raised by the commenters. As discussed further below, the revised Guidelines would include the following changes: (1) adding the Ombudsman as a non-voting member of the SARC, (2) requiring all materials considered by the SARC to be shared with both parties to the appeal on a timely basis, subject to applicable legal limitations on disclosure, and (3) requiring the Division Director, when deciding whether to issue a stay with respect to a material supervisory determination, to provide the institution with the reason(s) for his or her decision in writing.

Ombudsman's Role

The revised Guidelines include the Ombudsman as a non-voting member of the SARC. The FDIC believes that this provides for a balance of perspectives while minimizing potential for conflict with the Ombudsman's statutory role that may result if the Ombudsman were a voting member. The FDIC's Ombudsman has a longstanding commitment to neutrality that could be compromised if the Ombudsman were to serve as a voting member of the SARC. If the Ombudsman were a voting member, he or she might decide a matter against the institution, and this possibility could affect IDIs' willingness to utilize the Ombudsman's services. As a non-voting member, the Ombudsman will attend SARC meetings, participate in discussions, and offer views, opinions, and advice to the SARC during its deliberations based on the Ombudsman's perspective as a neutral advocate for a fair process, and as a party independent of the supervisory process. As a SARC member, the Ombudsman will have access to all materials reviewed by the SARC.

[7] For example, the disclosure of confidential supervisory information and certain other types of information is restricted under 12 CFR part 309. Thus, to the extent that materials shared with the SARC include such confidential supervisory information relating to another IDI, for example, that material could be redacted.

Consistent with these changes, the Guidelines include conforming amendments in sections G.4 and J.[8]

In addition, the FDIC is adopting the proposed provision of the Guidelines that would require the Ombudsman to monitor the supervisory process following an IDI's submission of an appeal. This should help to alleviate concerns regarding potential retaliation. The Ombudsman will be expected to report to the Board on these matters periodically.

Consistent with the proposal, the revised Guidelines allow a SARC member to designate any member of his or her staff within the member's area of responsibility to serve on the SARC on his or her behalf. For example, if the Ombudsman is unable to serve as a SARC member with respect to a particular appeal because of information learned from meeting with the institution, he or she might designate a Regional Ombudsman who has not been involved in the matter to serve on the SARC instead.

The Ombudsman also oversees the sharing of information considered by the SARC in connection with the appeal, as described in further detail below.

Sharing of Information

As noted above, a commenter appreciated the proposed provision that would require information considered by the SARC to be shared with both parties to the appeal, subject to applicable legal limitations on disclosure. However, the commenter suggested that the FDIC clarify the timing of when parties will receive this information. The FDIC agrees that such clarification would be useful. The revised Guidelines state that information considered by the SARC (subject to applicable legal limitations on disclosure) will be shared on a timely basis. This information will be provided in time for the appealing institution to prepare for a meeting with the SARC, if oral presentation is requested. The Ombudsman will oversee this aspect of the process, verifying that both parties have received all materials considered by the SARC.

Stay of Material Supervisory Determinations

As discussed above, commenters raised concerns relating to the proposed provision of the Guidelines that would allow institutions to request a stay of a supervisory determination while an appeal is pending, requesting that the SARC decide requests for stays. The revised Guidelines provide that requests for a stay should be directed to and decided by the Division Director. In order to preserve the SARC's independent judgment based on the complete record of the appeal as provided by the appealing bank and the responsible supervisory staff, decision-making authority regarding a request for a stay will remain with the appropriate Division Director. The FDIC also appreciates the recommendation that any decision with respect to a stay include the reason(s) for the decision in writing, and is including this in the revised Guidelines. This is consistent with current practice. In terms of standards for evaluating a request for a stay, the FDIC expects that the decision may be based on a number of factors, including the likelihood of irreparable and/or material harm. The resolution of procedural requests, including a request for a stay, will typically be set forth in the SARC's decision with respect to an appeal, which will be published as provided by the Guidelines.

The FDIC further notes that if an institution is concerned about the impact of a supervisory determination, section G of the Guidelines also provides for expedited review by the SARC under appropriate circumstances. In some circumstances, this course of action may be more appropriate than requesting a stay of a supervisory decision or action.

V. Responses to Other Comments

SARC Membership

A commenter suggested that the Guidelines specify the criteria for minimum qualifications to serve as a voting member of the SARC when an individual is designated by an FDIC Director, stating that this would promote greater credibility and trust in the process. SARC members that have been designated by Directors are special assistants or deputies to that Director and have a broad view of FDIC policy due to their positions. They are agency officials independent from the staff that carry out day-to-day supervisory responsibilities, but have substantial exposure to the supervisory process, providing a strong foundation for reviewing material supervisory determinations.

Appeal Directly to SARC

A commenter suggested giving institutions the option to bypass the Division Director level review and appeal directly to the SARC. The FDIC has previously noted, however, that its experience in administering the appellate process suggests that Division-level review resolves issues, narrowing the matters in dispute prior to SARC review or eliminating the need for an appeal to the SARC.[9] Division-level review also ensures that arguments are more fully developed for the SARC's review, and allows the Division Director to correct errors and maintain consistency across the organization. The Division Director also has the authority to refer an appeal directly to the SARC under the current Guidelines.

Structure of Appeals Process

As noted above, the commenters did not support the approach reflected in the proposed Guidelines, with two commenters recommending that the either FDIC reinstate the Office of Supervisory Appeals or develop and maintain a list of qualified candidates outside the FDIC to serve on the SARC. The Riegle Act requires appeals to be decided by agency officials, as it defines ''independent appellate process'' as ''review by an agency official who does not directly or indirectly report to the agency official who made the material supervisory determination under review.'' [10] Review of material supervisory determinations by a Board-level committee such as the SARC also promotes accountability in the supervisory appeals process. Ultimate responsibility for the FDIC's supervision function is vested in the agency's Board of Directors by statute, and the SARC structure ensures that the Board remains accountable for the agency's supervisory determinations. Hiring individuals from outside the agency to make final supervisory decisions was a significant departure from the FDIC's established approach for more than 25 years of reliance on a Board-level committee and could undermine accountability for supervisory determinations. Moreover, this approach differed significantly from how the other agencies subject to the Riegle Act carry out their responsibilities under the Act. While there is some diversity of approach, the Federal Reserve Board of Governors, the Office of the Comptroller of the Currency, and the National Credit Union Administration utilize full-time,

[8] Specifically, G.4 is amended to eliminate the reference to the Ombudsman submitting views in writing to the SARC. As explained in the proposal, a separate mechanism for providing views to the SARC is not necessary because the Ombudsman will now be a SARC member. Section J of the Guidelines states that the subject matter of a material supervisory determination is not eligible for consideration by the Ombudsman, and is also being eliminated to accommodate the Ombudsman's membership on the SARC.

[9] *See* 82 FR 34522, 34525 (July 25, 2017).

[10] 12 U.S.C. 4806(f)(2).

internal staff or Board members in their appeals processes.

While reinstatement of the SARC was not the subject of the proposal, one commenter asserted that the rescission of the Office of Supervisory Appeals without notice and comment was inconsistent with the Administrative Procedure Act (APA) and that the proposed Guidelines do not meaningfully address concerns about the appeals process. Taking action to restore the SARC structure quickly avoided a situation in which an appeal might be filed while the Guidelines and the appropriate appeals structure were under review. The FDIC also notes that while notice and comment was not required, the FDIC requested comment, and subsequently further solicited comment on additional changes.

SARC Standard of Review

A commenter suggested requiring the SARC to conduct a *de novo* review and prohibiting the SARC from relying on the opinions and conclusions of the Division Directors, including their findings of facts. The SARC reviews an appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The FDIC believes this standard of review is appropriate at the final level of review, and is retaining it in the revised Guidelines. The FDIC also notes that use of a *de novo* standard at the final level of review would be inconsistent with the appeals processes used at other banking agencies, such as the Board of Governors of the Federal Reserve System. However, the Division Director considers whether material supervisory determinations are consistent with applicable laws, regulations, and policy, and makes his or her own supervisory determination without deferring to the judgments of either party. The FDIC has previously noted that this approach may reasonably be characterized or described as a *de novo* standard of review, while in fact providing more specificity on the actual considerations to be applied.

Burden of Proof

Section G.3 of the current Guidelines provides that the burden of proof as to all matters at issue in the appeal rests with the institution. A commenter raised concern with this provision, stating that an appeal cannot succeed unless the decision maker finds that a determination is not merely wrong, but clearly wrong. This conflates the burden of proof with the standard of review. The burden of proof only provides that the institution must come forward with evidence or arguments in order to make its case. The standard of review provides the level of proof demanded to satisfy that burden. The Guidelines do not require the institution to demonstrate that the determination is clearly wrong. Rather, the SARC reviews whether a material supervisory determination is consistent with the established policies, practices, and mission of the FDIC, as well as the overall reasonableness of, and the support offered for, the positions advanced.

Inspector General Review

As noted above, a commenter recommended that the FDIC instruct the FDIC's Office of the Inspector General to conduct periodic reviews of the appellate process, and recommended that the FDIC's Board annually review and approve the OIG's findings and make them public. The FDIC appreciates this suggestion, but notes that the OIG is an independent office that conducts audits, evaluations, investigations, and other reviews of FDIC programs and operations. The FDIC generally does not instruct the OIG to initiate particular reviews. With respect to review of OIG findings, the FDIC's Audit Committee reviews all reports from the OIG relating to FDIC's operations. However, the FDIC is not in a position to approve the findings of the OIG, which is an independent office.

For the reasons set out in the preamble, the Federal Deposit Insurance Corporation adopts Guidelines for Appeals of Material Supervisory Determinations as set forth below.

Guidelines for Appeals of Material Supervisory Determinations

A. Introduction

Section 309(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) (Riegle Act) required the Federal Deposit Insurance Corporation (FDIC) to establish an independent intra-agency appellate process to review material supervisory determinations made at insured depository institutions that it supervises. The Guidelines for Appeals of Material Supervisory Determinations (Guidelines) describe the types of determinations that are eligible for review and the process by which appeals will be considered and decided. The procedures set forth in these Guidelines establish an appeals process for the review of material supervisory determinations by the Supervision Appeals Review Committee (SARC).

B. SARC Membership

The following individuals comprise the three (3) voting members of the SARC: (1) One inside FDIC Board member, either the Chairperson, the Vice Chairperson, or the FDIC Director (Appointive), as designated by the FDIC Chairperson (this person would serve as the Chairperson of the SARC); and (2) one deputy or special assistant to each of the inside FDIC Board members who are not designated as the SARC Chairperson. The General Counsel and the Ombudsman are non-voting members of the SARC. The FDIC Chairperson may designate alternate member(s) to the SARC if there are vacancies so long as the alternate member was not involved in making or affirming the material supervisory determination under review. A member of the SARC may designate and authorize a member of his or her staff within the member's area of responsibility related to cases before the SARC to act on his or her behalf.

C. Institutions Eligible to Appeal

The Guidelines apply to the insured depository institutions that the FDIC supervises (*i.e.,* insured State nonmember banks, insured branches of foreign banks, and state savings associations), and to other insured depository institutions for which the FDIC makes material supervisory determinations.

D. Determinations Subject to Appeal

An institution may appeal any material supervisory determination pursuant to the procedures set forth in these Guidelines.

(1) Material supervisory determinations include:

(a) CAMELS ratings under the Uniform Financial Institutions Rating System;

(b) IT ratings under the Uniform Rating System for Information Technology;

(c) Trust ratings under the Uniform Interagency Trust Rating System;

(d) CRA ratings under the Revised Uniform Interagency Community Reinvestment Act Assessment Rating System;

(e) Consumer compliance ratings under the Uniform Interagency Consumer Compliance Rating System;

(f) Registered transfer agent examination ratings;

(g) Government securities dealer examination ratings;

(h) Municipal securities dealer examination ratings;

(i) Determinations relating to the appropriateness of loan loss reserve provisions;

(j) Classifications of loans and other assets in dispute the amount of which, individually or in the aggregate, exceeds 10 percent of an institution's total capital;

(k) Determinations relating to violations of a statute or regulation that may affect the capital, earnings, or operating flexibility of an institution, or otherwise affect the nature and level of supervisory oversight accorded an institution;

(l) Truth in Lending Act (Regulation Z) restitution;

(m) Filings made pursuant to 12 CFR 303.11(f), for which a request for reconsideration has been granted, other than denials of a change in bank control, change in senior executive officer or board of directors, or denial of an application pursuant to section 19 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1829 (which are contained in 12 CFR 308, subparts D, L, and M, respectively), if the filing was originally denied by the Director, Deputy Director, or Associate Director of the Division of Depositor and Consumer Protection (DCP) or the Division of Risk Management Supervision (RMS);

(n) Decisions to initiate informal enforcement actions (such as memoranda of understanding);

(o) Determinations regarding the institution's level of compliance with a formal enforcement action; however, if the FDIC determines that the lack of compliance with an existing formal enforcement action requires an additional formal enforcement action, the proposed new enforcement action is not appealable;

(p) Matters requiring board attention; and

(q) Any other supervisory determination (unless otherwise not eligible for appeal) that may affect the capital, earnings, operating flexibility, or capital category for prompt corrective action purposes of an institution, or that otherwise affects the nature and level of supervisory oversight accorded an institution.

(2) Material supervisory determinations do not include:

(a) Decisions to appoint a conservator or receiver for an insured depository institution, and other decisions made in furtherance of the resolution or receivership process, including but not limited to determinations pursuant to parts 370, 371, and 381, and § 360.10 of the FDIC's rules and regulations;

(b) Decisions to take prompt corrective action pursuant to section 38 of the FDI Act, 12 U.S.C. 1831*o*;

(c) Determinations for which other appeals procedures exist (such as determinations of deposit insurance assessment risk classifications and payment calculations); and

(d) Formal enforcement-related actions and decisions, including determinations and the underlying facts and circumstances that form the basis of a recommended or pending formal enforcement action.

(3) A formal enforcement-related action or decision commences, and becomes unappealable, when the FDIC initiates a formal investigation under 12 U.S.C. 1820(c) (Order of Investigation), issues a notice of charges or a notice of assessment under 12 U.S.C. 1818 or other applicable laws (Notice of Charges), provides the institution with a draft consent order, or otherwise provides written notice to the institution that the FDIC is reviewing the facts and circumstances presented to determine if a formal enforcement action is merited under applicable statutes or published enforcement-related policies of the FDIC, including written notice of a referral to the Attorney General pursuant to the Equal Credit Opportunity Act (ECOA) or a notice to the Secretary of Housing and Urban Development (HUD) for violations of ECOA or the Fair Housing Act (FHA). Such notice may be provided in the transmittal letter accompanying a Report of Examination. For the purposes of these Guidelines, remarks in a Report of Examination do not constitute written notice that the FDIC is reviewing the facts and circumstances presented to determine if a proposed enforcement action is merited. Commencement of a formal enforcement-related action or decision will not suspend or otherwise affect a pending request for review or appeal that was submitted before the commencement of the formal enforcement-related action or decision.

(4) Additional Appeal Rights:

(a) In the case of any written notice from the FDIC to the institution that the FDIC is determining whether a formal enforcement action is merited, the FDIC must issue an Order of Investigation, issue a Notice of Charges, or provide the institution with a draft consent order within 120 days of such a notice, or the most recent submission of information from the institution, whichever is later, or appeal rights will be made available pursuant to these Guidelines. If the FDIC timely provides the institution with a draft consent order and the institution rejects the draft consent order in writing, the FDIC must issue an Order of Investigation or a Notice of Charges within 90 days from the date on which the institution rejects the draft consent order in writing or appeal rights will be made available pursuant to these Guidelines. The FDIC may extend these periods, with the approval of the SARC Chairperson, after the FDIC notifies the institution that the relevant Division Director is seeking formal authority to take an enforcement action.

(b) In the case of a referral to the Attorney General for violations of the ECOA, beginning on the date the referral is returned to the FDIC, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(c) In the case of providing notice to HUD for violations of the ECOA or the FHA, beginning on the date the notice is provided, the FDIC must proceed in accordance within paragraph (a), including within the specified timeframes, or appeal rights will be made available pursuant to these Guidelines.

(d) Written notification will be provided to the institution within 10 days of a determination that appeal rights have been made available under this section.

(e) The relevant FDIC Division and the institution may mutually agree to extend the timeframes in paragraphs (a), (b), and (c) if the parties deem it appropriate.

E. Good-Faith Resolution

An institution should make a good-faith effort to resolve any dispute concerning a material supervisory determination with the on-site examiner and/or the appropriate Regional Office. The on-site examiner and the Regional Office will promptly respond to any concerns raised by an institution regarding a material supervisory determination. Informal resolution of disputes with the on-site examiner and the appropriate Regional Office is encouraged, but seeking such a resolution is not a condition to filing a request for review with the appropriate Division, either DCP, RMS, or the Division of Complex Institution Supervision and Resolution (CISR), or to filing a subsequent appeal with the SARC under these Guidelines.

F. Filing a Request for Review With the Appropriate Division

(1) An institution may file a request for review of a material supervisory determination with the Division that made the determination, either the Director, DCP, the Director, RMS, or the Director, CISR (Director or Division Director), 550 17th Street NW, Room F–4076, Washington, DC 20429, within 60 calendar days following the institution's receipt of a report of examination

containing a material supervisory determination or other written communication of a material supervisory determination. Requests for review also may be submitted electronically. To ensure confidentiality, requests should be submitted through *securemail.fdic.gov,* directing the message to *DirectorReviewRequest@fdic.gov.* A request for review must be in writing and must include:

(a) A detailed description of the issues in dispute, the surrounding circumstances, the institution's position regarding the dispute and any arguments to support that position (including citation of any relevant statute, regulation, policy statement, or other authority), how resolution of the dispute would materially affect the institution, and whether a good-faith effort was made to resolve the dispute with the on-site examiner and the Regional Office; and

(b) A statement that the institution's board of directors or senior management has considered the merits of the request and has authorized that it be filed. Senior management is defined as the core group of individuals directly accountable to the board of directors for the sound and prudent day-to-day management of the institution. If an institution's senior management files an appeal, it must inform the board of directors of the substance of the appeal before filing and keep the board of directors informed of the appeal's status.

(2) Within 45 calendar days after receiving a request for review described in paragraph (1), the Division Director will:

(a) review the appeal, considering whether the material supervisory determination is consistent with applicable laws, regulations, and policy, make his or her own supervisory determination without deferring to the judgments of either party, and issue a written determination on the request for review, setting forth the grounds for that determination; or

(b) refer the request for review to the SARC for consideration as an appeal under Section G and provide written notice to the institution that the request for review has been referred to the SARC.

(3) No appeal to the SARC will be allowed unless an institution has first filed a timely request for review with the appropriate Division Director.

(4) In any decision issued pursuant to paragraph (2)(a) of this section, the Director will inform the institution of the 30-day time period for filing with the SARC and will provide the mailing address for any appeal the institution may wish to file.

(5) The Division Director may request guidance from the SARC Chairperson or the Legal Division as to procedural or other questions relating to any request for review.

G. Appeal to the SARC

An institution that does not agree with the written determination rendered by the Division Director may appeal that determination to the SARC within 30 calendar days after the date of receipt of that determination. Failure to file within the 30-day time limit may result in denial of the appeal by the SARC.

1. Filing With the SARC

An appeal to the SARC will be considered filed if the written appeal is received by the FDIC within 30 calendar days after the date of receipt of the Division Director's written determination or if the written appeal is placed in the U.S. mail within that 30-day period. The appeal should be sent to the address indicated on the Division Director's determination being appealed, or sent via email to *ESS_Appeals@fdic.gov.* An acknowledgment of the appeal will be provided to the institution, and copies of the institution's appeal will be provided to the Office of the Ombudsman and the appropriate Division Director. Copies of all relevant materials related to an appeal will be provided to the Office of the Ombudsman.

2. Contents of Appeal

The appeal should be labeled to indicate that it is an appeal to the SARC and should contain the name, address, and telephone number of the institution and any representative, as well as a copy of the Division Director's determination being appealed. If oral presentation is sought, that request should be included in the appeal. If expedited review is requested, the appeal should state the reason for the request. Only matters submitted to the appropriate Division Director in a request for review may be appealed to the SARC. Evidence not presented for review to the Division Director is generally not permitted; such evidence may be submitted to the SARC only if approved by the SARC Chairperson and with a reasonable time for the Division Director to review and respond. The institution should set forth all of the reasons, legal and factual, why it disagrees with the Division Director's determination. Nothing in the SARC administrative process shall create any discovery or other such rights.

3. Burden of Proof

The burden of proof as to all matters at issue in the appeal, including timeliness of the appeal if timeliness is at issue, rests with the institution.

4. Submission From the Division Director

The Division Director may submit views regarding the appeal to the SARC within 30 calendar days of the date on which the appeal is received by the SARC.

5. Oral Presentation

The SARC will, if a request is made by the institution or by FDIC staff, allow an oral presentation. The SARC may hear oral presentations in person, telephonically, electronically, or through other means agreed upon by the parties. If an oral presentation is held, the institution and FDIC staff will be allowed to present their positions on the issues raised in the appeal and to respond to any questions from the SARC.

6. Consolidation, Dismissal, and Rejection

Appeals based upon similar facts and circumstances may be consolidated for expediency. An appeal may be dismissed by the SARC if it is not timely filed, if the basis for the appeal is not discernable from the appeal, or if the institution moves to withdraw the appeal. The SARC will decline to consider an appeal if the institution's right to appeal is not yet available under Section D(4), above.

7. Scope of Review and Decision

The SARC will be an appellate body and will make independent supervisory determinations. The SARC will review the appeal for consistency with the policies, practices, and mission of the FDIC and the overall reasonableness of, and the support offered for, the positions advanced. The SARC's review will be limited to the facts and circumstances as they existed prior to, or at the time the material supervisory determination was made, even if later discovered, and no consideration will be given to any facts or circumstances that occur or corrective action taken after the determination was made. The SARC will not consider any aspect of an appeal that seeks to change or modify existing FDIC rules or policy. The SARC, after consultation with the Legal Division, will refer any appeals that raise policy matters of first impression to the Chairperson's Office for its consideration. The SARC will notify the institution, in writing, of its decision concerning the disputed material

supervisory determination(s) within 45 days after the date the SARC meets to consider the appeal, which meeting will be held within 90 days after either the date of the filing of the appeal or the date that the Division Director refers the appeal to the SARC.

8. Other Communications

Materials considered by the SARC will be shared with both parties to the appeal, subject to applicable legal limitations on disclosure, on a timely basis. The Ombudsman will verify that both parties have received all materials considered by the SARC.

H. Publication of Decisions

Decisions of the SARC will be published as soon as practicable, and the published decisions will be redacted to avoid disclosure of the name of the appealing institution and any information exempt from disclosure under the Freedom of Information Act and the FDIC's document disclosure regulations found in 12 CFR part 309. In cases in which redaction is deemed insufficient to prevent improper disclosure, published decisions may be presented in summary form. Published SARC decisions may be cited as precedent in appeals to the SARC. Annual reports on the SARC's decisions and Division Directors' decisions with respect to institutions' requests for review of material supervisory determinations also will be published.

I. Appeal Guidelines Generally

Appeals to the SARC will be governed by these Guidelines. The SARC, with the concurrence of the Legal Division, will retain discretion to waive any provision of the Guidelines for good cause. Supplemental rules governing the SARC's operations may be adopted.

Institutions may request extensions of the time period for submitting appeals under these Guidelines from either the appropriate Division Director or the SARC Chairperson, as appropriate. If a filing under these Guidelines is due on a Saturday, Sunday, or a Federal holiday, the filing may be made on the next business day.

Institutions may request a stay of a supervisory action or determination from the Division Director while an appeal of that determination is pending. The request must be in writing and include the reason(s) for the stay. The Division Director has discretion to grant a stay and will generally decide whether to grant a stay within 21 days of receiving the institution's request, providing the institution with the reason(s) for his or her decision in writing. A stay may be granted subject to conditions, including time limitations, where appropriate.

J. Coordination With State Regulatory Authorities

In the event that a material supervisory determination subject to a request for review is the joint product of the FDIC and a State regulatory authority, the Director, DCP, the Director, RMS, or the Director, CISR, as appropriate, will promptly notify the appropriate State regulatory authority of the request, provide the regulatory authority with a copy of the institution's request for review and any other related materials, and solicit the regulatory authority's views regarding the merits of the request before making a determination. In the event that an appeal is subsequently filed with the SARC, the SARC will notify the institution and the State regulatory authority of its decision. Once the SARC has issued its determination, any other issues that may remain between the institution and the State regulatory authority will be left to those parties to resolve.

K. Effect on Supervisory or Enforcement Actions

The use of the procedures set forth in these Guidelines by any institution will not affect, delay, or impede any formal or informal supervisory or enforcement action in progress during the appeal or affect the FDIC's authority to take any supervisory or enforcement action against that institution.

L. Effect on Applications or Requests for Approval

Any application or request for approval made to the FDIC by an institution that has appealed a material supervisory determination that relates to, or could affect the approval of, the application or request will not be considered until a final decision concerning the appeal is made unless otherwise requested by the institution.

M. Prohibition on Examiner Retaliation

The FDIC has an experienced examination workforce and is proud of its professionalism and dedication. FDIC policy prohibits any retaliation, abuse, or retribution by an agency examiner or any FDIC personnel against an institution. Such behavior against an institution that appeals a material supervisory determination constitutes unprofessional conduct and will subject the examiner or other personnel to appropriate disciplinary or remedial action. In light of this important principle, the Ombudsman will monitor the supervision process following an institution's submission of an appeal under these Guidelines. The Ombudsman will report to the Board on these matters periodically.

Institutions that believe they have been retaliated against are encouraged to contact the Regional Director for the appropriate FDIC region. Any institution that believes or has any evidence that it has been subject to retaliation may file a complaint with the Director, Office of the Ombudsman, Federal Deposit Insurance Corporation, 3501 Fairfax Drive, Suite E–2022, Arlington, VA, 22226, explaining the circumstances and the basis for such belief or evidence and requesting that the complaint be investigated and appropriate disciplinary or remedial action taken. The Office of the Ombudsman will work with the appropriate Division Director to resolve the allegation of retaliation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on December 13, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–27351 Filed 12–15–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of

the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 30, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jessica White, Sue Ellen White, and Masakazu Miyagi, all of Covington, Indiana; and Thomas Benjamin Loda, Olomouc, Czech Republic;* to join the White Family Control Group, a group acting in concert, to retain voting shares of Piper Holdings, Inc., and thereby indirectly retain voting shares of The Fountain Trust Company, both of Covington, Indiana.

In addition, the Kip White Irrevocable Trust For Stock of Piper Holdings, Inc., Kipling Campbell White and Lucas White, as co-trustees, all of Covington, Indiana; to join the White Family Control Group, to acquire voting shares of Piper Holdings, Inc., and thereby indirectly acquire voting shares of The Fountain Trust Company.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–27249 Filed 12–15–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1794]

Regulation Q; Regulatory Capital Rules: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice.

SUMMARY: The Board is providing notice of the 2022 aggregate global indicator amounts, as required under the Board's rule regarding risk-based capital surcharges for global systemically important bank holding companies (GSIB surcharge rule).

DATES: The 2022 aggregate global indicator amounts are effective December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Juan Climent, Assistant Director (202) 872–7526, Brian Chernoff, Manager (202) 452–2952, Christopher Appel, Lead Financial Institution Policy Analyst, (202) 973–6862, Naima Jefferson, Lead Financial Institution Policy Analyst, (202) 912–4613, or Alexander Jiron, Senior Financial Institution Policy Analyst I, (202) 450–7350, Division of Supervision and Regulation; or Mark Buresh, Special Counsel, (202) 452–5270, or Jonah Kind, Senior Counsel, (202) 452–2045, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired and users of Telecommunications Device for the Deaf (TDD) and TTY–TRS, please call 711 from any telephone, anywhere in the United States.

SUPPLEMENTARY INFORMATION: The Board's GSIB surcharge rule establishes a methodology to identify global systemically important bank holding companies in the United States (GSIBs) based on indicators that are correlated with systemic importance.[1] Under the GSIB surcharge rule, a firm must calculate its GSIB score using a specific formula (Method 1). Method 1 uses five equally weighted categories that are correlated with systemic importance—size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity—and subdivided into twelve systemic indicators.

A firm divides its own measure of each systemic indicator by an aggregate global indicator amount. A firm's Method 1 score is the sum of its weighted systemic indicator scores expressed in basis points. A firm that calculates a Method 1 score of 130 basis points or more is identified as a GSIB under the GSIB surcharge rule. The GSIB surcharge for a firm is the higher of the GSIB surcharge determined under Method 1 and a second method, Method 2, which is calculated based on measures of size, interconnectedness, cross-jurisdictional activity, complexity, and the firm's reliance on short-term wholesale funding.[2]

The aggregate global indicator amounts used in the score calculation under Method 1 are based on data collected by the Basel Committee on Banking Supervision (BCBS). The BCBS amounts are determined based on the sum of the systemic indicator amounts as reported by the 75 largest U.S. and foreign banking organizations as measured by the BCBS, and any other banking organization that the BCBS includes in its sample total for that year. The BCBS publicly releases these amounts, denominated in euros, each year.[3] Pursuant to the GSIB surcharge rule, the Board publishes the aggregate global indicator amounts each year as denominated in U.S. dollars using the euro-dollar exchange rate provided by the BCBS.[4] Specifically, to determine the 2022 aggregate global indicator amounts, the Board uses the year-end 2021 euro-denominated indicator amounts published by the BCBS and multiplies each of the euro-denominated indicator amounts by 1.1326, the euro to U.S. dollar spot exchange rate on December 31, 2021.[5]

The aggregate global indicator amounts expressed in U.S. dollars for purposes of the 2022 Method 1 score calculation under § 217.404(b)(1)(i)(B) of the GSIB surcharge rule are:

AGGREGATE GLOBAL INDICATOR AMOUNTS IN U.S. DOLLARS (USD) FOR 2022

Category	Systemic indicator	Aggregate global indicator amount (in USD)
Size	Total exposures	111,533,327,831,520
Interconnectedness	Intra-financial system assets	10,678,025,771,171
	Intra-financial system liabilities	11,153,556,096,294
	Securities outstanding	17,488,749,541,061
Substitutability	Payments activity	3,169,043,506,242,536
	Assets under custody	236,228,379,798,411
	Underwritten transactions in debt and equity markets	9,890,925,779,988

[1] *See* 12 CFR 217.402, 217.404.

[2] Method 2 uses similar inputs to those used in Method 1, but replaces the substitutability category with a measure of a firm's use of short-term wholesale funding. In addition, Method 2 is calibrated differently from Method 1.

[3] The data used by the Board are available on the BCBS website at *https://www.bis.org/bcbs/gsib/denominators.htm.*

[4] 12 CFR 217.404(b)(1)(i)(B); *see also* 80 FR 49082, 49086–87 (August 14, 2015). In addition, the Board maintains the GSIB Framework Denominators on its website, available at *https://www.federalreserve.gov/bankinforeg/basel/denominators.htm.*

[5] Foreign exchange rates provided by the BCBS. Available at *https://www.bis.org/bcbs/gsib/denominators/gsib_framework_denominators_end21_exercise.xlsx.*

AGGREGATE GLOBAL INDICATOR AMOUNTS IN U.S. DOLLARS (USD) FOR 2022—Continued

Category	Systemic indicator	Aggregate global indicator amount (in USD)
Complexity	Notional amount of over-the-counter (OTC) derivatives	654,401,074,148,984
	Trading and available-for-sale (AFS) securities	4,195,914,629,999
	Level 3 assets	706,810,510,301
Cross-jurisdictional activity	Cross-jurisdictional claims	26,851,595,167,043
	Cross-jurisdictional liabilities	23,056,216,512,890

Authority: 12 U.S.C. 248(a), 321–338a, 481–486, 1462a, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1851, 3904, 3906–3909, 4808, 5365, 5368, 5371.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of Supervision and Regulation under delegated authority.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–27207 Filed 12–15–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than January 3, 2023.

A. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri, 64198:

1. *The FEATAN Revocable Trust, Thomas A. Holt as trustee and as trustee of the FNB 401(k) Employee Stock Ownership Plan; the Heather A. Eklund Living Trust, Heather A. Eklund as trustee; the Raymond A. Holt Revocable Trust, Raymond A. Holt, trustee, all of Buffalo, Wyoming; the Holt Family Trust, Denise A. Holt, as trustee, Ranchester, Wyoming; and Robert Holt and Lori Holt, both of Littleton, Colorado;* to become members of the Holt Family Group, a group acting in concert, to retain voting shares of First National Buffalo Bankshares, Inc., and thereby indirectly retain voting shares of First Northern Bank of Wyoming, both of Buffalo, Wyoming, and First State Bank of Newcastle, Newcastle, Wyoming.

B. Federal Reserve Bank of San Francisco (Joseph Cuenco, Assistant Vice President) Financial Institution Formations, Transactions & Enforcement, 101 Market Street, San Francisco, California 94105:

1. *Lee Andrew Adams, Kennewick, Washington;* to acquire additional voting shares of Coeur d'Alene Bancorp, Inc., and thereby indirectly acquire voting shares of Bankcda, both of Coeur D'Alene, Idaho.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–27339 Filed 12–15–22; 8:45 am]

BILLING CODE P

GENERAL SERVICES ADMINISTRATION

[Notice–MRB–2022–06; Docket No. GAPFAC 2022–0001; Sequence No. 2]

GSA Acquisition Policy Federal Advisory Committee; Notification of Upcoming Web-Based Public Meeting

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is providing notice of a meeting of the GSA Acquisition Policy Federal Advisory Committee (hereinafter ''the Committee'' or ''the GAP FAC'') in accordance with the requirements of the Federal Advisory Committee Act. This meeting will be open to the public. Information on attending and providing written public comment is under the **SUPPLEMENTARY INFORMATION** section.

DATES: The GAP FAC will hold a web-based open public meeting on January 12, 2023, from 1:00 p.m. to 4:30 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting will be accessible via webcast. Registrants will receive the webcast information before the meeting.

FOR FURTHER INFORMATION CONTACT: Boris Arratia, Designated Federal Officer, Office of Government-wide Policy, 703–795–0816, or email: *boris.arratia@gsa.gov;* or Stephanie Hardison, Office of Government-wide Policy, 202–258–6823, or email: *stephanie.hardison@gsa.gov.* Additional *information about* the Committee, including meeting materials and agendas, will be available on-line at *https://gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.*

SUPPLEMENTARY INFORMATION: The Administrator of GSA established the GSA Acquisition Policy Federal Advisory Committee) as a discretionary advisory committee under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App 2).

As America's buyer, GSA is uniquely positioned to enable a modern, accessible, and streamlined acquisition ecosystem and a robust marketplace connecting buyers to the suppliers and businesses that meet their mission needs. The GAP FAC will assist GSA in this endeavor through expert advice on a broad range of innovative solutions to acquisition policy, workforce, and industry partnership challenges.

The GAP FAC will serve as an advisory body to GSA's Administrator on how GSA can use its acquisition tools and authorities to target the highest priority Federal acquisition challenges. The initial focus for the GAP FAC will be on driving regulatory, policy, and process changes required to embed climate and sustainability considerations in Federal acquisition. This includes examining and recommending steps GSA can take to support its workforce and industry partners in ensuring climate and sustainability issues are fully considered in the acquisition process.

Purpose of the Meeting

The purpose of this meeting is for each of three subcommittees (Policy and Practice, Industry Partnerships, and Acquisition Workforce) to propose priority topics to be addressed by the GAP FAC. The Committee will, in turn, deliberate and select the priority topics it will undertake to advise GSA on.

Meeting Agenda

- Opening Remarks
- Policy and Practices Subcommittee Proposed Priority Topics
- Industry Partnerships Subcommittee Proposed Priority Topics
- Acquisition Workforce Subcommittee Proposed Priority Topics
- Discussion and Selection of GAP FAC Priority Topics
- Closing Remarks and Adjourn

Meeting Registration

This meeting is open to the public and will be accessible by webcast. All public attendees will need to register to obtain the meeting webcast information. Registration information is located on the GAP FAC website: *https://www.gsa.gov/policy-regulations/policy/acquisition-policy/gsa-acquisition-policy-federal-advisory-committee.* All registrants will be asked to provide their name, affiliation, and email address. After registration, individuals will receive webcast access information via email.

Public Comments

Written public comments are being accepted via *http://www.regulations.gov,* the Federal eRulemaking portal throughout the life of the Committee and three Subcommittees. To submit a written public comment, go to *http://www.regulations.gov* and search for GAPFAC–2022–0001. Select the link ''Comment Now'' that corresponds with this notice. Follow the instructions provided on the screen. Please include your name, company name (if applicable), and ''GAPFAC–2022–0001, Notification of Upcoming Web-Based Public Meetings'' on your attached document (if applicable).

Special Accommodations

For information on services for individuals with disabilities, or to request accommodation of a disability, please contact the Designated Federal Officer at least 10 business days prior to the meeting to give GSA as much time as possible to process the request. Closed captioning and live American Sign Language (ASL) interpreter services will be available.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–27279 Filed 12–15–22; 8:45 am]

BILLING CODE 6820–RV–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9896–N]

Membership List and Meeting Dates for the Ground Ambulance and Patient Billing (GAPB) Advisory Committee, January 17–18, 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: This notice announces the Membership of the Ground Ambulance and Patient Billing (GAPB) Advisory Committee and a public meeting of the Committee on January 17 and 18, 2023. The GAPB Advisory Committee will make recommendations with respect to disclosure of charges and fees for ground ambulance services and insurance coverage, consumer protection and enforcement authorities of the Departments of Labor, Health and Human Services, and the Treasury (the Departments) and relevant States, and the prevention of balance billing to consumers. The recommendations shall address options, best practices, and identified standards to prevent instances of balance billing; steps that can be taken by State legislatures, State insurance regulators, State attorneys general, and other State officials as appropriate, consistent with current legal authorities regarding consumer protection; and legislative options for Congress to prevent balance billing.

DATES:

Virtual Meeting Dates: The GAPB Advisory Committee will hold a virtual meeting on Tuesday, January 17, 2023 and Wednesday, January 18, 2023, from 9:30 a.m. to 5:30 p.m., Eastern Standard Time.

Registration Link: The virtual meeting will be open to the public and held via the Zoom webinar platform. Virtual attendance information will be provided upon registration. To register for this virtual meeting, please visit: *https://priforum.zoomgov.com/webinar/register/WN_YyO3T0-uTj6hZSJ9m2i9tg.* Attendance is open to the public subject to any technical or capacity limitations.

Deadline for Registration: All individuals who plan to attend the virtual public meeting must register to attend. The deadline to register for the public meeting is Monday, January 16, 2023. Interested parties are encouraged to register as far in advance of the meeting as possible. A detailed agenda and materials will be available approximately 2 days before the meeting on the GAPB Advisory Committee website at: *https://www.cms.gov/regulations-guidance/advisory-committees/advisory-committee-ground-ambulance-and-patient-billing-gapb.*

A recording of the meeting and a summary of the meeting will be made available on the GAPB Advisory Committee website within 30 calendar days after the meeting.

ADDRESSES: *Virtual Meeting Location:* The January 17 and 18, 2023, public meeting will be held virtually via Zoom only.

FOR FURTHER INFORMATION CONTACT: Shaheen Halim, CMS, by phone (410) 786–0641 or via email at *gapbadvisorycommittee@cms.hhs.gov.* Press inquiries may be submitted by phone (202) 690–6145 or via email at *press@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 117(a) of the No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, div. BB, tit. I, Public Law 116–260 (Dec. 27, 2020), requires the Secretaries of Labor, HHS, and the Treasury to establish and convene an advisory committee for the purpose of reviewing options to improve the disclosure of charges and fees for ground ambulance services, better inform consumers of insurance options for such services, and protect consumers from balance billing. The GAPB Advisory Committee is governed by the provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463 (Oct. 6, 1972), as amended, 5 U.S.C. App. 2.

II. Advisory Committee Membership Roster

On November 23, 2021, HHS published a Notice of Charter and Invitation for Member Nominations in the **Federal Register** for the GAPB Advisory Committee (86 FR 66565 through 66566). HHS received a total of 52 complete member nominations from the public by December 13, 2021. The nominees were evaluated by the Departments for alignment with the membership categories required under Section 117 of the No Surprises Act, their professional qualifications, recognition by the ground ambulance and emergency medical services community, years of relevant experience, experience with State or Federal committees on related issues, and expertise in subject matter to be addressed by the committee. The Departments also considered membership balance as required by FACA, and as appropriate to address health equity issues pertaining to ground ambulance consumer balance billing, and ground ambulance services in underserved communities.

The 17 Members of the GAPB Advisory Committee are:

- Asbel Montes—Committee Chairperson; Additional Representative determined necessary and appropriate by the Secretaries
- Ali Khawar—Secretary of Labor's Designee
- Thomas West—Secretary of Treasury's Designee
- Rogelyn McLean—Secretary of Health and Human Services' Designee
- Gamunu Wijetunge—Department of Transportation—National Highway Traffic Safety Administration
- Suzanne Prentiss—State Insurance Regulators
- Adam Beck—Health Insurance Providers
- Patricia Kelmar—Consumer Advocacy Groups
- Gary Wingrove—Patient Advocacy Groups
- Ayobami Ogunsola—State and Local Governments
- Ritu Sahni—Physician specializing in emergency, trauma, cardiac, or stroke
- Peter Lawrence—State Emergency Medical Services Officials
- Shawn Baird—Emergency Medical Technicians, Paramedics, and Other Emergency Medical Services Personnel
- Edward Van Horne—Representative of Various Segments of the Ground Ambulance Industry
- Regina Godette-Crawford—Representative of Various Segments of the Ground Ambulance Industry
- Rhonda Holden—Representative of Various Segments of the Ground Ambulance Industry
- Loren Adler—Additional Representative determined necessary and appropriate by the Secretaries

The GAPB Committee Roster will also be posted on the GAPB website at: *https://www.cms.gov/regulations-guidance/advisory-committees/advisory-committee-ground-ambulance-and-patient-billing-gapb.*

III. Meeting Agenda

The first meeting of the GAPB Advisory Committee will occur on January 17 and 18, 2023. During this meeting, the Committee will gather background information on the No Surprises Act, the ground ambulance industry, insurance and billing practices, and consumer issues such as disclosure of fees and balance billing, prior to discussing potential subcommittees and focus areas. The agenda will cover the following topics:

- No Surprises Act overview
- Overview of the ground ambulance industry
- Insurance and ground ambulance payment systems
- Ground ambulance billing practices
- Disclosure of charges to consumers, separation of charges and cost shifting
- Impact of balance billing on consumers and current consumer protections
- Balance billing prevention, including potential legislative and regulatory options

A more detailed agenda and materials will be made available approximately 2 days before the meeting on the GAPB website (listed above).

IV. Public Participation

This meeting will be open to the public. Attendance may be limited due to virtual meeting constraints. Interested parties are encouraged to register as far in advance of the meeting as possible. To register for the meeting, please visit: *https://www.cms.gov/regulations-guidance/advisory-committees/advisory-committee-ground-ambulance-and-patient-billing-gapb.* CMS is committed to providing equal access to this meeting for all participants and to ensuring Section 508 compliance. Closed captioning will be provided. If you need alternative formats or services because of a disability, such as sign language interpreter or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

V. Submitting Written Comments

Members of the public may submit written comments on subject matter under committee deliberation prior to the webinar via email to *gapbadvisorycommittee@cms.hhs.gov.* Comments must be submitted via email no later than January 3, 2023. During the virtual meeting, members of the public will have the opportunity to submit comments through the chat feature of the webinar platform. These comments will be compiled for future consideration by the committee.

V. Viewing Documents

You may view the documents discussed in this notice at *https://www.cms.gov/regulations-guidance/advisory-committees/advisory-committee-ground-ambulance-and-patient-billing-gapb.*

The Administrator of CMS, Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: December 12, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–27263 Filed 12–13–22; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; Culture of Continuous Learning Project: Case Study of a Breakthrough Series Collaborative for Improving Child Care and Head Start Quality (New Collection)

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 Office of Planning, Research, and Evaluation (OPRE), Administration for Child and Families (ACF) is proposing an information collection activity for the Culture of Continuous Learning Project (CCL). The goal of the project is to assess the feasibility of implementing continuous quality improvement methods in early care and education (ECE) programs and systems to support the use and

sustainability of evidence-based practices.

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 emailed requests should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The CCL project is proposing a new information collection activity to assess the feasibility of implementing continuous quality improvement methods in ECE programs and systems to support the use and sustainability of evidence-based practices. Three Breakthrough Series Collaboratives (BSCs), a specific quality improvement model designed to support the implementation of continuous quality improvement methods in organizations, will be implemented in Head Start and child care settings. The BSC methodology has been studied extensively in health care and other fields but has limited evidence as an effective quality improvement methodology in the early childhood field. The findings will be of broad interest to ECE programs as well as training and technical assistance providers and researchers, all of whom are interested in improving the quality of services young children receive.

Head Start and child care programs that voluntarily participate in the BSCs will be asked to complete a number of tools designed to facilitate implementation of the BSC. The implementation of the BSCs will be evaluated using a case study design that will involve focus groups, interviews, surveys, and classroom observations. To fully capture participants' experiences in the BSCs, the implementation and evaluation instruments are designed to engage respondents one to three times during a thirty six-month period, depending on the instrument. The goal of the case study is to document the factors that contribute to the feasibility of BSC implementation within a state quality improvement system (*e.g.,* a state quality rating and improvement system) and/or a regional professional development or technical assistance system (*e.g.,* a region within a state, or a cross-state region such as Head Start regional technical assistance areas) such that we can refine hypotheses and study measures which will be useful in the design of an evaluation for a future study of BSCs in ECE systems. The case study will also help determine what additional capacity ECE systems may need to adopt the BSC methodology and offer it within their system at a larger scale.

Respondents: Up to 45 ECE programs will be invited to complete an application to participate in a BSC and up to five people per program will be involved in completing the application. Up to eight programs will be selected to participate in one of three BSCs, for a total of up to 24 programs. Within each program, up to seven individuals (*e.g.,* directors, lead teachers, assistant teachers, teacher aides, parents, curriculum specialists, etc.) will participate in the implementation of the BSC, meaning that up to 168 individuals will participate. Respondents will also include additional teachers (up to 114), program staff (up to 96), and parents (up to 2,136) located at participating Head Start and child care programs where a BSC is implemented but who are not members of the BSC Team.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
BSC Implementation Instruments					
Instrument 1: BSC Selection Application Questionnaire	225	1	1.5	338	113
Instrument 2: Pre-Work Assignment: Data Collection Planning Worksheet	48	1	2	96	32
Instrument 3: Plan, Do, Study, Act (PDSA)Form & Tracker	168	34	0.25	1,428	476
Instrument 4: Monthly Metrics	48	8	1.5	576	192
Instrument 5: Implementation Discussion Forum Prompts	168	34	0.25	1,428	476
Instrument 6: Learning Session Feedback Form	168	4	0.25	168	56
Instrument 7: Action Planning Form	168	4	0.25	168	56
Instrument 8: BSC Overall Feedback Form	168	1	0.25	42	14
Instrument 9: Organizational Self-Assessment	168	5	1.5	1,260	420
BSC Evaluation Instruments					
Instrument 10: Key Informant Interviews with BSC Faculty Members Affiliated with the States/Regions Discussion Guide	9	1	1	9	3
Instrument 11: BSC Implementation Staff and Faculty Focus Group Discussion Guide	30	2	1.5	90	30
Instrument 12: BSC Implementation Staff and Faculty Background Survey	30	1	0.17	5	2
Instrument 13: Key Informant Interviews with BSC Center Administrators Discussion Guide	24	2	1	48	16

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Instrument 14: BSC Teachers and Support Staff Focus Group Discussion Guide	120	2	1.5	360	120
Instrument 15: BSC Parent Focus Group Discussion Guide	24	2	1.5	72	24
Instrument 16: Individual BSC Teams Focus Group Discussion Guide	168	2	1.5	504	168
Instrument 17a: Administrator Surveys	24	3	0.5	36	12
Instrument 17b: Teacher Surveys	240	3	0.5	360	120
Instrument 17c: Other Center Staff Surveys	96	3	0.5	144	48
Instrument 17di: Non-BSC Parent Surveys	2136	2	0.25	1068	356
Instrument 17dii: BSC Parent Surveys	24	3	0.5	36	12
Instrument 18: Classroom Observations	48	3	0.33	48	16
Instrument 19: Administrative Data Survey	24	4	0.25	24	8

Estimated Total Annual Burden Hours: 2,770.

Authority: Head Start Act 640 [42 U.S.C. 9835] and 649 [42 U.S.C. 9844]; appropriated by the Continuing Appropriations Act of 2019. Child Care and Development Block Grant Act of 1990 as amended by the CCDBG Act of 2014 (Public Law 113186).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–27241 Filed 12–15–22; 8:45 am]

BILLING CODE 4184–22–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0710]

Circumstances That Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection; Draft Guidance for Industry, Revision 1; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance entitled, ''Circumstances that Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection.'' The FDA Reauthorization Act of 2017 (FDARA) amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) so that, as is the case with a drug, a device is deemed to be adulterated if the owner, operator, or agent of the factory, warehouse, or establishment at which the device is manufactured, processed, packed, or held delays, denies, or limits an FDA inspection. This draft guidance describes, for both drugs and now devices, the types of behaviors (actions, inactions, and circumstances) that the FDA considers to constitute delaying, denying, or limiting inspection, or refusing to permit entry or inspection. Once finalized, this draft guidance is intended to supersede the October 2014 FDA final guidance for industry entitled, ''Circumstances that Constitute Delaying, Denying, Limiting, or Refusing a Drug Inspection.'' However, until this draft guidance is finalized, the October 2014 FDA guidance remains in effect until it is withdrawn and will continue to reflect FDA's current thinking on this issue. FDA is particularly interested in comments on the inclusion of devices to the October 2014 guidance.

DATES: Submit either electronic or written comments on the draft guidance by February 14, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2013–D–0710 for ''Circumstances that Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper

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

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

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

Submit written requests for a single hard copy of the draft guidance to the Division of Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Drive, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Lola Burford, Office of Regulatory Affairs, Food and Drug Administration, Element Building, 12420 Parklawn Dr., Rockville, MD 20857, *Lola.Burford@fda.hhs.gov,* 240–402–5865.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144) added section 501(j) to the FD&C Act (21 U.S.C. 351(j)) to deem adulterated a drug that ''has been manufactured, processed, packed, or held in any factory, warehouse, or establishment and the owner, operator, or agent of such factory, warehouse, or establishment delays, denies, or limits an inspection, or refuses to permit entry or inspection.'' Section 707(b) of FDASIA required the Food and Drug Administration to issue guidance that defined the circumstances that would constitute delaying, denying, or limiting inspection, or refusing to permit entry or inspection, for purposes of section 501(j) of the FD&C Act. In the **Federal Register** of October 22, 2014 (79 FR 63130), FDA announced the availability of a guidance for industry entitled, ''Circumstances that Constitute Delaying, Denying, Limiting, or Refusing a Drug Inspection'' (hereinafter, 2014 guidance).

Subsequently, on August 18, 2017, FDARA (Pub. L. 115–52) was signed into law. Section 702 of FDARA amended the scope of section 501(j) of the FD&C Act to provide that, as the case with drugs, devices are deemed to be adulterated if an FDA inspection is delayed, denied, limited, or refused by the owner, operator, or agent of the establishment at which the device is manufactured, processed, packed, or held. This draft guidance is intended to update the 2014 final guidance to incorporate devices and to explain the circumstances that FDA would consider to constitute delaying, denying, or limiting inspection, or refusing to permit entry or inspection, resulting in a drug or device manufactured in the facility being deemed adulterated. The 2014 guidance will remain in effect and will continue to reflect FDA's current thinking regarding circumstances that would constitute delaying, deny, or limiting inspection, or refusing to permit entry or inspection, for purposes of 501(j) of the FD&C Act with respect to drug inspections, until this draft guidance is finalized.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Circumstances that Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection'' and will supersede the 2014 guidance. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/search-general-and-cross-cutting-topics-guidance-documents, https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*. Persons unable to download an electronic copy of ''Circumstances that Constitute Delaying, Denying, Limiting, or Refusing a Drug or Device Inspection'' may send an email request to *ORAPolicyStaffs@fda.hhs.gov* to receive an electronic copy of the document.

Dated: December 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27344 Filed 12–15–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1206]

Electronic Study Data Submission; Data Standards; Support and Requirement Begin for Study Data Tabulation Model Version 1.7 Implementation Guide 3.3 and for Define-Extensible Markup Language Version 2.1; Requirement Ends for Study Data Tabulation Model Version 1.3 Implementation Guide 3.1.3; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice correction that appeared in the **Federal Register** of August 20, 2020. The document announced the correction dates that the support and requirement were to begin for version 1.7 of the Clinical Data Interchange Standards Consortium (CDISC) Study Data Tabulation Model (SDTM), and version 3.3 of the SDTM Implementation Guide (SDTMIG), and for version 2.1 of the Define-Extensible Markup Language (Define-XML). The document erroneously provided the

incorrect dates for these electronic study data standards. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Chenoa Conley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 1117, Silver Spring, MD 20993–0002, 301–796–0035, *cderdatastandards@fda.hhs.gov,* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 20, 2020 (85 FR 51450), in FR Doc. 2020–18236, the following correction is made:

On page 51450, in the second and third columns, the last paragraph of the document is corrected to read as follows: ''On page 40659, in the first column, the last three sentences of the document are corrected to read as follows: Support for version 1.7 of the CDISC SDTM, version 3.3 of the SDTMIG, and version 2.1 of the Define-XML will begin on March 15, 2021, and the date that the requirement begins will be on March 15, 2022, for new drug applications, abbreviated new drug applications, and certain biologics license applications. For certain investigational new drug applications, the date that requirement begins will be March 15, 2023. Support and requirement for version 1.3 of the CDISC SDTM and version 3.1.3 of the SDTMIG will end on March 15, 2021.''

Dated: December 13, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–27346 Filed 12–15–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990-new]

Agency Information Collection Request: 30-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 17, 2023.

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.

FOR FURTHER INFORMATION CONTACT: Sherrette Funn, *Sherrette.Funn@hhs.gov* or (202) 264–0041, or *PRA@HHS.GOV.* When submitting comments or requesting information, please include the document identifier 0990-New-30D and project title for reference.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: National Strategy for a Resilient Public Health Supply Chain Paperwork Reduction Act Clearance.

Type of Collection: New Father Generic ICR.

OMB No. 0990-new—Administration for Strategic Preparedness and Response—Office of Strategy, Policy, Planning, and Requirements.

Abstract: The Office of Strategy, Policy, Planning, and Requirements, within the Department of Health and Human Services (HHS), Administration for Strategic Preparedness and Response (ASPR), is seeking OMB approval of a new Generic clearance. In July 2021, the White House published the *National Strategy for a Resilient Public Health Supply Chain* (National Strategy), which provides a strategic approach to design, build, and sustain a long-term capability in the United States to manufacture supplies for future pandemics and biological threats. HHS is working with the White House and across the federal interagency to launch a multiyear implementation of the National Strategy involving the identification and coordination of measurable activities across the U.S. government, State, Local, Tribal, and Territorial (SLTT) jurisdictions, and the private sector.

HHS is requesting a 3-year PRA generic clearance for purposes of implementation to engage with SLTTs, trade groups, mixed cross-sector audiences, non-governmental organizations, manufacturers, academia, healthcare providers and facilities, local communities, and other partners to: gain a better understanding of the public health supply chain; develop future strategic goals and recommendations for building immediate and long-term resilience through increased visibility, agility, and robustness in the public health supply chain to prepare for and mitigate future public health emergencies; and to ensure ASPR, HHS, and the broader U.S. government have current data and information to inform program and policy decision-making.

Cross-sectoral engagement underpins many of the interdependent implementation activities. For example, one such activity involves information collection from SLTT partners on facility, local, and state stockpiling plans to ensure coordinated plans are in place for a future public health emergency. Other potential engagements include, but are not limited to questionnaires, stakeholder meetings, requests for information, town hall meetings, and workshops. Stakeholder engagement frequency will vary depending on the type of stakeholder and the information collection needs. Therefore, some engagements may only occur once, while others may require a series of recurring meetings.

ESTIMATED ANNUALIZED BURDEN TABLE OVER THREE YEARS

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Private sector companies, SLTT, Trade groups and associations, NGOs, Manufacturers, distributors, Academia, Healthcare delivery providers/facilities, Public, USG Supply chain inventory holders, Biopharmaceutical industry, Biotechnology development companies, Communities, GPOs, standards development organizations, logistics, third party contractors, purchasing organizations, professional associations/societies, Mixed cross-sector audience, labor unions, workforce training providers, organizations, state and local workforce boards.	32800 (Form: Informed consent)	1	5/60	2734
	32800 (Form: Demographics standardized questionnaire with decision logic allowing some questions to be omitted).	1	15/60	8200
	6000(Form: Cognitive questionnaire)	1	8	48000
	6600(Form: Formative interviews and focus groups).	2	4	52800
	10200 (Form: Town halls and public meetings).	2	8	163200
	1000 (Form: Supply chain questionnaires)	156	30/60	78000
	6000 (Form: Knowledge-based questionnaires).	1	30/60	3000
	3000 (Form: Interviews and focus groups)	1	1	3000
Total				358,934

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–27262 Filed 12–15–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Alice C. Chang, Ph.D. (formerly named Chun-Ju Chang) (Respondent), who was an Associate Professor of Basic Medical Sciences, College of Veterinary Medicine, Purdue University (PU). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Cancer Institute (NCI), National Institutes of Health (NIH), grants P30 CA023168 and R37 CA215087. The administrative actions, including debarment for a period of ten (10) years, were implemented beginning on December 7, 2022, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Alice C. Chang, Ph.D., Purdue University: Based on the report of an investigation conducted by PU and additional analysis conducted by ORI in its oversight review, ORI found that Dr. Alice C. Chang (formerly named Chun-Ju Chang), former Associate Professor of Basic Medical Sciences, College of Veterinary Medicine, PU, engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Cancer Institute (NCI), National Institutes of Health (NIH), grants P30 CA023168 and R37 CA215087.

ORI found that Respondent engaged in research misconduct by knowingly, intentionally, or recklessly falsifying and/or fabricating data included in the following sixteen (16) grant applications submitted for PHS funds:

- R21 CA191797–01, ''Targeting miR–200c for early detection of aggressive breast cancer,'' submitted to NCI, NIH, on 02/17/2014.
- R21 CA194474–01, ''The role of miRNA regulated-cell polarity machinery in breast cancer stem cell fate decision,'' submitted to NCI, NIH, on 06/19/2014.
- R03 CA198606–01, ''Targeting cell polarity machinery to exhaust breast cancer stem cell pool,'' submitted to NCI, NIH, on 10/28/2014 (funded).
- R01 CA205940–01, ''Epigenetic regulation governing ATRA-mediated cellular programming,'' submitted to NCI, NIH, on 06/04/2015.
- R01 CA208325–01, ''Epigenetic mechanism underlying retinoic acid resistance in breast cancer stem cells,'' submitted to NCI, NIH, on 10/05/2015.
- R01 CA208325–01A1, ''Epigenetic mechanism underlying retinoic acid resistance in tumor stem cells,'' submitted to NCI, NIH, on 11/07/2016.
- R21 CA215908–01, ''Targeting EMT-induced mitochondrial heterogeneity in breast cancer,'' submitted to NCI, NIH, on 06/24/2016.
- R01 CA211063–01, ''The role of mitochondrial regulation in directing the cancer stem cell fate,'' submitted to NCI, NIH, on 01/28/2016.
- R01 CA215087–01, ''Targeting metformin-directed stem cell fate in triple negative breast cancer,'' submitted to NCI, NIH, on 06/03/2016.
- R37 CA215087–01A1, ''Targeting metformin-directed stem cell fate in triple negative breast cancer,'' submitted to NCI, NIH, on 03/06/2017 (funded).
- R01 CA226951–01, ''(PQ11) Role of DHA in directing luminal differentiation and therapy response in triple-negative breast cancer,'' submitted to NCI, NIH, on 06/22/2017.
- R01 CA231940–01, ''Regulation of Tet2 in programming mammary stem cell fate,'' submitted to NCI, NIH, on 10/05/2017.

• R01 CA231940–01A1, ''Regulation of Tet2 in programming mammary stem cell fate,'' submitted to NCI, NIH, on 06/26/2018.

• R01 CA233941–01, ''DHA directs epigenetic programming in triple-negative breast cancer,'' submitted to NCI, NIH, on 02/05/2018.

• R01 GM121775–01, ''The role of Tet2 regulation in directing mammary stem cell fate,'' submitted to the National Institute of General Medical Sciences (NIGMS), NIH, on 02/05/2016.

• R35 GM124972–01, ''Novel role of microRNA in directing stem cell fate decision,'' submitted to NIGMS, NIH, on 11/04/2016.

Specifically, ORI found that Respondent knowingly, intentionally, or recklessly falsified and/or fabricated data from the same mouse models or cell lines by reusing the data, with or without manipulation, to represent unrelated experiments from different mouse models or cell lines with different treatments in three hundred eighty-four (384) figure panels in sixteen (16) grant applications.

In addition, ORI found that Respondent engaged in research misconduct by knowingly, intentionally, or recklessly falsifying and/or fabricating data included in two (2) PHS-supported published papers. Respondent neither admits nor denies ORI's findings with respect to the two (2) published papers:

• Chang CC, Wu MJ, Yang JY, Camarillo IG, Chang CJ. Leptin-STAT3–G9a signaling promotes obesity-mediated breast cancer progression. *Cancer Res.* 2015 Jun 1;75(11):2375–86. doi: 10.1158/0008–5472.CAN–14–3076.

• Wu MJ, Kim MR, Chen YS, Yang JY, Chang CJ. Retinoic acid directs breast cancer cell state changes through regulation of TET2–PKCζ pathway. *Oncogene* 2017 Jun 1;36(22):3193–206. doi: 10.1038/onc.2016.467.

Specifically, ORI found that Respondent intentionally, knowingly, or recklessly falsified and/or fabricated:

• confocal image data for generation, differentiation, and drug sensitivity of cancer stem cells (CSC) in mouse models and cell lines by reusing the data, with or without manipulation, and relabeling them to represent different experiments in fifty-four (54) figure panels included in fifteen (15) grant applications;

• Western blot and co-IP blot images for different protein expression in different mouse models and cell lines by reusing the images, with or without manipulation, and relabeling them to represent different experiments in eighty-one (81) figure panels in thirteen (13) grant applications;

• figures, charts, and graphs reporting gene expression related results for the global or tissue-related gene expression in mouse models and cell lines with drug treatments by reusing them, with or without manipulation, and relabeling them to represent different experiments in one hundred nineteen (119) figure panels in fifteen (15) grant applications and two (2) published papers;

• figures, charts, and graphs about cellular experiment related results for different mouse models and cell lines by reusing them, with or without manipulation, and relabeling them to represent different experiments in forty-two (42) figure panels in thirteen (13) grant applications;

• photomicrographs for different results from different mouse models and cell lines by reusing them, with or without manipulation, and relabeling them to represent different experiments in eighty-five (85) figure panels in fifteen (15) grant applications;

• CSC frequency (xenograft tumor formation) data reporting different results from either mouse models or cell lines by reusing and relabeling the same data to represent different experiments in three (3) figure panels in three (3) grant applications.

Dr. Chang entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed to the following:

(1) Respondent will exclude herself voluntarily for a period of ten (10) years beginning on December 7, 2022 (the ''Exclusion Period'') from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement or procurement transactions referred to as ''covered transactions'' in 2 CFR parts 180 and 376 (collectively the ''Debarment Regulations'').

(2) During the Exclusion Period, Respondent will exclude herself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

(3) Respondent will request that the following papers be corrected:

• *Cancer Res.* 2015 Jun 1; 75(11):2375–86.

• *Oncogene* 2017 Jun 1; 36(22):3193–206.

Respondent will copy ORI and the Research Integrity Officer at PU on the correspondence with the journal(s).

Dated: December 13, 2022.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2022–27316 Filed 12–15–22; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HHS–NIH–CDC–SBIR PHS 2020–1 Phase II: Antiviral drugs to cure chronic hepatitis B virus infection (Topic 84)

Date: January 18, 2023.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3F36 Rockville, MD 20892, (Virtual Meeting).

Contact Person: Noto K. Dutta, Ph.D., Scientific Review Officer, Scientific Review Program Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3F36, Rockville, MD 20852, 240–669–2857 *noton.dutta@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27285 Filed 12–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory

Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below.

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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering NACBIB, January 2023.

Date: January 25, 2023.

Open: 12:00 p.m. to 2:30 p.m.

Agenda: Report from the Institute Director, Council Members and other Institute Staff.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Closed: 2:45 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David T. George, Ph.D., Associate Director for Research Administration, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892, *georged@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *https://www.nibib.nih.gov/about-nibib/advisory-council,* where an agenda and any additional information for the meeting will be posted when available.

Dated: December 13, 2022.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27291 Filed 12–15–22; 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; Vascular and Hematology Meeting.

Date: January 11, 2023.

Time: 9:00 a.m. to 10:00 a.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: Dmitri V. Gnatenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *gnatenkod2@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: December 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27286 Filed 12–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2023–1 Phase I: Artificial Intelligence to Improve Clinical Microscopy for Diagnosis of Infectious Diseases (Topic 121).

Date: January 17, 2023.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Noto K. Dutta, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F36, Rockville, MD 20852, 240–669–2857, *noton.dutta@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27284 Filed 12–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Pragmatic Clinical Trials to Decrease and Prevent VCID Outcomes.

Date: January 11, 2023.

Time: 12:00 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting)

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Room 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *Ana.Olariu@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BRAIN Initiative Basic Experimental Studies with Humans.

Date: January 26, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.

Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, 301–496–9223, *tatiana.pasternak@nih.gov*.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Study Section.

Date: January 30–31, 2023.

Time: 9:00 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: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892, 301–496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: December 13, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–27290 Filed 12–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0117]

Free Trade Agreements

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than February 14, 2023) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0117 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov*.

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Free Trade Agreements.

OMB Number: 1651–0117.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours, method of collection or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Free Trade Agreements (FTAs) are established to reduce and eliminate trade barriers, strengthen, and develop economic relations, and to lay the foundation for further cooperation to expand and enhance benefits of the agreement. These agreements establish free trade by reduced-duty treatment on imported goods.

The U.S. has entered into FTAs with the following countries: Chile (Pub. L. 108–77); the Republic of Singapore (Pub. L. 108–78, 117 Stat. 948,19 U.S.C. 3805 note); Australia (Pub. L. 108–286); Morocco (Pub. L. 108–302); Jordan (Pub. L. 107–43); Bahrain (Pub. L. 109–169); Oman (Pub. L. 109–283); Peru (Pub. L. 110–138, 121 Stat. 1455); Korea (Pub. L. 112–41); Colombia (Pub. L. 112–42, 125 Stat. 462); Panama (Pub. L. 112–43); and Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (Pub. L. 109–53, 119 Stat. 462); Japan (Presidential Proclamation 9974, (**Federal Register** Notice (84 FR 72187)); Mexico and Canada (USMCA) (Pub. L. 116–113 section 101—195) and Consolidated Appropriations Act of 2021 (Pub. L. No: 116–260) (December 27, 2020).

These FTAs involve collection of data elements such as information about the importer and exporter of the goods, a description of the goods, tariff classification number, and the preference criterion in the Rules of Origin.

Respondents can obtain information on how to make claims under these FTAs at *http://www.cbp.gov/trade/free-trade-agreements,* and use a standard fillable format for the FTA submission

by going to *http://www.cbp.gov/document/guides/certification-origin-template*.

Type of Information Collection: Free Trade Agreements.

Estimated Number of Respondents: 4,699,460.

Estimated Number of Total Annual Responses: 4,701,060.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 9,402,120.

Dated: December 13, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–27319 Filed 12–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Customs Broker Permit User Fee Payment for 2023

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document provides notice to customs brokers that the annual user fee that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due no later than February 24, 2023. The annual user fee reflects the changes made by two final rules, published in the **Federal Register** on October 18, 2022, and effective December 19, 2022, that eliminate broker districts and district permits, and transition all customs brokers to a single national permit. Pursuant to fee adjustments required by the Fixing America's Surface Transportation Act (FAST ACT) and U.S. Customs and Border Protection (CBP) regulations, the annual user fee payable for calendar year 2023 will be $163.71.

DATES: Payment of the 2023 Customs Broker Permit User Fee is due no later than February 24, 2023.

FOR FURTHER INFORMATION CONTACT: Melba Hubbard, Chief, Broker Management Branch, Office of Trade, (202) 325–6986, or *melba.hubbard@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96(c)), U.S. Customs and Border Protection (CBP) assesses an annual user fee for each customs broker permit held by an individual, partnership, association, or corporation. CBP regulations provide that this fee is payable each calendar year for a national permit held by a broker and must be paid by the due date published annually in the **Federal Register.** *See* 19 CFR 24.22(h) and (i)(9); 19 CFR 111.96(c).

On October 18, 2022, CBP published two concurrent final rules in the **Federal Register** (87 FR 63262 and 87 FR 63267) modernizing the customs broker regulations in parts 24 and 111 of title 19 of the CFR. These two final rules eliminate broker districts and district permits, as well as the permit user fees for district permits. CBP is in the process of transitioning all district permit holders to a national permit. In accordance with the effective date of these two final rules on December 19, 2022, all permit holders will hold one national permit only and must pay annual user fees for one national permit only.

Sections 24.22 and 24.23 of title 19 of the CFR (19 CFR 24.22 and 24.23) provide for and describe the procedures that implement the requirements of the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94, December 4, 2015). Section 32201 of the FAST Act amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by requiring the Secretary of the Treasury to adjust certain customs COBRA user fees and corresponding limitations to reflect certain increases in inflation. Paragraph (k) in section 24.22 (19 CFR 24.22(k)) sets forth the methodology to adjust fees for inflation, and to determine the change in inflation as well as the factor by which the fees and limitations will be adjusted, if necessary. The customs broker permit user fee is set forth in appendix A of part 24, which lists fees and limitations subject to the adjustment. (19 CFR 24.22 appendix A.) On August 1, 2022, CBP published a **Federal Register** notice, CBP Dec. 22–17, which among other things, announced that the annual customs broker permit user fee would increase to $163.71 for calendar year 2023. *See* 87 FR 46973.

As required by 19 CFR 111.96 and 24.22, CBP must provide notice in the **Federal Register** no later than 60 days before the date that the payment is due for each broker permit. This document notifies customs brokers that for calendar year 2023, the due date for payment of the user fee is February 24, 2023.

Dated: December 5, 2022.

AnnMarie R. Highsmith,

Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2022–26940 Filed 12–15–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2294]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before March 16, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2294, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and

Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Metropolitan Government of Nashville and Davidson County,Tennessee and Incorporated Areas Project: 20–04–0044S Preliminary Date: April 28, 2021	
City of Berry Hill	Berry Hill City Hall, 698 Thompson Lane, Nashville, TN 37204.
Metropolitan Government of Nashville and Davidson County	Nashville-Davidson County Metro Water and Sewage Service, 1600 2nd Avenue North, Nashville, TN 37208.

[FR Doc. 2022–27335 Filed 12–15–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2292]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Comments are to be submitted on or before March 16, 2023.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2292, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://*

www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Colusa County, California and Incorporated Areas Project: 15–09–0411S Preliminary Date: June 10, 2022	
City of Colusa	Public Works Department, 425 Webster Street, Colusa, CA 95932.
City of Williams	City Hall, 810 East Street, Williams, CA 95987.
Unincorporated Areas of Colusa County	Public Works Building, 1215 Market Street, Colusa, CA 95932.
Hinsdale County, Colorado and Incorporated Areas Project: 20–08–0053S Preliminary Date: May 20, 2022	
Town of Lake City	Town Hall, 230 North Bluff Street, Lake City, CO 81235.
Unincorporated Areas of Hinsdale County	Hinsdale County Courthouse, 311 Henson Street, Lake City, CO 81235.
Kingsbury County, South Dakota and Incorporated Areas Project: 20–08–0007S Preliminary Date: March 29, 2022	
City of De Smet	City Hall, 106 Calumet Avenue Southeast, De Smet, SD 57231.
City of Iroquois	City Hall, 320 East Washita Street, Iroquois, SD 57353.
Unincorporated Areas of Kingsbury County	Kingsbury County Courthouse, 202 2nd Street Southeast, De Smet, SD 57231.
Klickitat County, Washington and Incorporated Areas Project: 19–10–0013S Preliminary Date: March 31, 2022	
City of Bingen	City Hall, 112 North Ash Street, Bingen, WA 98605.
City of Goldendale	City Hall, 1103 South Columbus Avenue, Goldendale, WA 98620.
City of White Salmon	City Hall, 100 North Main Street, White Salmon, WA 98672.
Unincorporated Areas of Klickitat County	Klickitat County Services Building, 115 West Court Street, Mail Stop 302, Goldendale, WA 98620.
Thurston County, Washington and Incorporated Areas Project: 19–10–0005S Preliminary Date: June 24, 2022	
City of Lacey	City Hall, 420 College Street Southeast, Lacey, WA 98503.
City of Olympia	City Hall, 601 4th Avenue East, Olympia, WA 98501.
City of Rainier	City Hall, 102 Rochester Street West, Rainier, WA 98576.
City of Tumwater	City Hall, 555 Israel Road Southwest, Tumwater, WA 98501.
Unincorporated Areas of Thurston County	Thurston County Courthouse, 2000 Lakeridge Drive Southwest, Building One, Olympia, WA 98502.

[FR Doc. 2022–27336 Filed 12–15–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34995; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before December 3, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 3, 2023.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before December 3, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers

Key: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

CALIFORNIA

San Bernardino County

New City of Mentalphysics Historic District, 59700 Twentyninepalms Hwy., Joshua Tree, SG100008539

MAINE

Penobscot County

Great Fire of 1911 Historic District (Boundary Increase), 29 Franklin St, .Bangor, BC100008538

MINNESOTA

Ramsey County

Henry Hale Memorial Library, Hamline Branch, 1558 Minnehaha Ave. West, St. Paul, SG100008536

MONTANA

Yellowstone County

James F. Battin Federal Building (Courthouse & Federal Office Building), 316 North 26th St., Billings, SG100008535

PENNSYLVANIA

Allegheny County

Koerner, Henry, House, 1055 South Negley Ave., Pittsburgh, SG100008534

Additional documentation has been received for the following resource:

ARIZONA

Pima County

Blenman-Elm Historic District (Additional Documentation), 2116 East Helen St., Tucson, AD03000318

Authority: Section 60.13 of 36 CFR part 60

Dated: December 7, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–27264 Filed 12–15–22; 8:45 am]
BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0069]

Notice of Availability of the Draft Environmental Impact Statement for the Coastal Virginia Offshore Wind (CVOW) Commercial Project

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: BOEM announces the availability of the draft environmental impact statement (DEIS) for the construction and operations plan (COP) submitted by Virginia Electric and Power Company, doing business as Dominion Energy Virginia (Dominion Energy), for its proposed Coastal Virginia Offshore Wind Commercial Project (CVOW Project or Project). The DEIS analyzes the potential environmental impacts of the Project as described in the COP (the proposed action) and alternatives to the proposed action, including no action. This notice of availability announces the start of the public review and comment period, as well as the dates and times for virtual public hearings on the DEIS. After the comment period and public hearings, BOEM will publish a final environmental impact statement (FEIS) addressing comments received on the DEIS. The FEIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the Dominion Energy COP for the CVOW Project.

DATES: Comments must be received no later than February 14, 2023. BOEM will conduct three virtual public meetings. BOEM's virtual public meetings will be held at the following times (eastern time).

- Wednesday, January 25, 2023; 5:00 p.m.
- Tuesday, January 31, 2023; 5:00 p.m.
- Thursday, February 2, 2023; 11:00 a.m.

ADDRESSES: The DEIS and detailed information about the Project, including the COP, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/CVOW-C.*

Comments can be submitted in any of the following ways:

- Orally or in written form during any of the public meetings identified in this notice.
- In written form by U.S. mail or other delivery service, enclosed in an envelope labeled ''CVOW COP DEIS'' and addressed to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.
- Through the regulations.gov web portal: Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2022–0069. Click on the ''Comment'' button below the document link. Enter your information and comment, then click ''Submit Comment.''

For more information about submitting comments, please see ''*Information on Submitting Comments*''

under the **SUPPLEMENTARY INFORMATION** heading below.

Registration for the virtual public meetings may be completed at: *https://www.boem.gov/renewable-energy/state-activities/CVOW-C* or by calling (504) 736–5713. Meeting information will be sent to registrants via their email address provided during registration.

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1730 or *jessica.stromberg@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Dominion Energy seeks approval to construct, operate, and maintain the CVOW Project on the Outer Continental Shelf (OCS) offshore coastal Virginia. The Project includes associated subsea export cables and an onshore cable route. The Project would be developed within the range of design parameters outlined in the CVOW COP, subject to applicable mitigation measures. The Project as proposed in the COP would include up to 205 wind turbine generators; up to 3 offshore high-voltage substations; inter-array cables linking the individual turbines to the offshore substations; up to 9 buried high-voltage, offshore export cables; a single export cable landing point on the Virginia State Military Reservation, Virginia Beach; and an onshore export cable route potentially comprised of combination of overhead and underground transmission facilities with a terminal point of interconnection to the existing Dominion Energy electrical grid at the Fentress Substation in Chesapeake, Virginia. The CVOW Project is located on the OCS approximately 24 nautical miles (27 statute miles, 44 kilometers) east of Virginia Beach, Virginia, within an area defined by Renewable Energy Lease OCS–A 0483 (Lease Area). The offshore export cables would be buried below the seabed surface in the U.S. OCS and Commonwealth of Virginia-owned submerged lands.

Alternatives: BOEM considered seven Project alternatives and six alternate onshore cable routes when preparing the DEIS. BOEM carried forward four of the Project alternatives and two of the alternate cable routes for detailed analysis in the DEIS. The four Project alternatives include three action alternatives and the no action alternative. The alternatives not carried forward for detailed analysis did not meet the purpose and need for the proposed action or did not meet the alternative screening criteria, which are described in DEIS chapter 2. The screening criteria included consistency with law and regulations; technical and economic feasibility; environmental impacts; and geographic considerations.

Availability of the DEIS: The Project DEIS, CVOW COP, and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/CVOW-C.*

BOEM has distributed digital copies of the DEIS to all parties listed in DEIS appendix H. If you require a flash drive or paper copy, BOEM will provide one upon request, as long as supplies are available. You may request a flash drive or paper copy of the DEIS by calling (504) 736–5713.

Cooperating and Consulting Agencies: The following Federal agencies participated as cooperating agencies under the National Environmental Policy Act in the preparation of the DEIS: Bureau of Safety and Environmental Enforcement, U.S. Environmental Protection Agency, National Marine Fisheries Service, U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Defense, and U.S. Department of the Navy. The Advisory Council on Historic Preservation; National Park Service; U.S. Fish and Wildlife Service; and the Virginia Department of Energy are designated as participating agencies.

Information on Submitting Comments: BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes your comments, including your name and address, available for public review online and during regular business hours. You may request that BOEM withhold your name, address, or any other personally identifiable information (PII) included in your comment from the public record; however, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure, such as unwarranted privacy invasion, embarrassment, or injury. Even if BOEM withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under FOIA or relevant court order, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies or if the relevant court order is challenged. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2022–27183 Filed 12–15–22; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0071]

Notice of Availability of a Draft Environmental Impact Statement for Sunrise Wind, LLC's Proposed Sunrise Wind Farm Offshore New York

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: BOEM announces the availability of the draft environmental impact statement (DEIS) for the construction and operations plan (COP) submitted by Sunrise Wind, LLC (Sunrise Wind) for its proposed Sunrise Wind Offshore Wind Farm Project (Project) offshore New York, Massachusetts, and Rhode Island. The DEIS analyzes the potential environmental impacts of the Project as described in the COP (the proposed action) and the alternatives to the proposed action. This notice of availability (NOA) announces the start of the public review and comment period, as well as the dates and times for virtual public hearings on the DEIS. After the comment period and public hearings, BOEM will publish a final environmental impact statement (FEIS) addressing comments received on the DEIS. The FEIS will inform BOEM's decision whether to approve, approve with modifications, or disapprove the COP.

DATES: Comments must be received no later than February 14, 2023. BOEM will conduct three virtual public hearings. BOEM's virtual public hearings will be held at the following times (eastern time).

- Wednesday, January 18, 2023; 5:00 p.m.
- Thursday, January 19, 2023; 5:00 p.m.
- Monday, January 23, 2023; 1:00 p.m.

ADDRESSES: The DEIS and detailed information about the Project, including the COP, can be found on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/sunrise-wind-activities.* Comments can be submitted in any of the following ways:

- Orally or in written form during any of the virtual public hearings identified in this NOA.
- In written form by mail or any other delivery service, enclosed in an envelope labeled ''Sunrise Wind COP DEIS'' and addressed to Program Manager, Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166.
- Through the regulations.gov web portal: Navigate to *https://www.regulations.gov* and search for Docket No. BOEM–2022–0071. Click on the ''Comment'' button below the document link. Enter your information and comment, then click ''Submit Comment.''

For more information about submitting comments, please see ''Information on Submitting Comments'' under the **SUPPLEMENTARY INFORMATION** heading below.

Registration for the virtual public hearings may be completed here: *https://www.boem.gov/renewable-energy/state-activities/sunrise-wind-activities* or by calling (703) 787–1520. Registration for the virtual hearings is required. Meeting information will be sent to registrants via their email address provided during registration.

FOR FURTHER INFORMATION CONTACT: Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787–1730 or *jessica.stromberg@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: Sunrise Wind seeks approval to construct, operate, and maintain a wind energy facility and its associated export cables on the Outer Continental Shelf (OCS) offshore New York, Massachusetts, and Rhode Island. The Project would be developed within the range of design parameters outlined in the Sunrise Wind COP, subject to the applicable mitigation measures. The Project as proposed in the COP would include up to 94 wind turbine generators (WTGs) within 102 potential locations, 1 offshore converter station, inter-array cables linking the individual WTGs to the offshore substation, 1 offshore export cable, 1 onshore converter station, 1 fiber optic cable co-located with the onshore transmission route, and onshore interconnection cables connecting to the existing electrical grid in New York. The WTGs, offshore substation, and inter-array cables would be located on the OCS approximately 16.4 nautical miles (nm) (18.9 statute miles[mi]) south of Martha's Vineyard, Massachusetts, approximately 26.5 nm (30.5 mi) east of Montauk, New York, and 14.5 nm (16.7 mi) from Block Island, Rhode Island, within the area defined by Renewable Energy Lease OCS–A 0487 (Lease Area). The offshore export cables would be buried below the seabed surface on the U.S. OCS and State of New York-owned submerged lands. The onshore export cables, substation, and grid connection would be located in Holbrook, New York.

Alternatives: BOEM considered 16 alternatives when preparing the DEIS and carried forward 3 alternatives for further analysis in the DEIS. These three alternatives include two action alternatives and the no action alternative. BOEM did not analyze in detail 13 of the alternatives because they did not meet the purpose and need for the proposed action or did not meet screening criteria, which are presented in DEIS chapter 2. The screening criteria included consistency with law and regulations; technical and economic feasibility; environmental impacts; and geographic considerations.

Availability of the DEIS: The DEIS, Sunrise Wind COP, and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/sunrise-wind-activities.* BOEM has distributed digital copies of the DEIS to all parties listed in DEIS appendix M. If you require a flash drive or paper copy, BOEM will provide one upon request, as long as supplies are available. You may request a flash drive or paper copy of the DEIS by calling (504) 736–5713.

Cooperating Agencies: The following Federal agencies and State governmental entities participated as cooperating agencies under the National Environmental Policy Act in the preparation of the DEIS: Bureau of Safety and Environmental Enforcement; U.S. Environmental Protection Agency; National Marine Fisheries Service; U.S. Army Corps of Engineers; U.S. Coast Guard; National Park Service; U.S. Fish and Wildlife Service; New York Department of State; Massachusetts Office of Coastal Zone Management; Rhode Island Coastal Resources Management Council; and the Rhode Island Department of Environmental Management.

Information on Submitting Comments: BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes your comments, including your name and address, available for public review online and during regular business hours. You may request that BOEM withhold your name, address, or any other personally identifiable information (PII) included in your comment from the public record; however, BOEM cannot guarantee that it will be able to do so. If you wish your name, address, or other PII to be withheld, you must state your request prominently in a cover letter and explain the harm that you fear from its disclosure such as unwarranted privacy invasion, embarrassment, or injury. Even if BOEM withholds your information in the context of this notice, your comment is subject to the Freedom of Information Act (FOIA) and any relevant court orders. If your comment is requested under the FOIA or relevant court order, your information will only be withheld if a determination is made that one of the FOIA exemptions to disclosure applies or if the relevant court order is challenged. Such a determination will be made in accordance with the Department of the Interior's FOIA regulations and applicable law.

Please label privileged or confidential information as ''Contains Confidential Information,'' and consider submitting such information as a separate attachment. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority: 42 U.S.C. 4231 *et seq.* (NEPA, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2022–27185 Filed 12–15–22; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Integrated Circuits, Components Thereof, and Products Containing the Same, DN 3659;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Realtek Semiconductor Corporation on December 12, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain integrated circuits, components thereof, and products containing the same. The complainant names as respondent: Advanced Micro Devices, Inc. of Santa Clara, CA. The complainant requests that the Commission issue a limited exclusion order and a cease and desist order, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3659'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Issued: December 13, 2022.

Katherine M. Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–27350 Filed 12–15–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0100]

Agency Information Collection Activities; Proposed Collection Comments Requested; Extension Without Change, of a Previously Approved Collection; Claims of U.S. Nationals Referred to the Commission by the Department of State Pursuant to Section 4(A)(1)(C) of the International Claims Settlement Act of 1949, as Amended

AGENCY: Foreign Claims Settlement Commission, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Foreign Claims Settlement Commission (Commission), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 60 days until February 14, 2023.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeremy LaFrancois, Foreign Claims Settlement Commission, 441 G St. NW, Room 6232, Washington, DC 20579 or by phone at: 202–616–6981.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Statement of Claim for filing of Claims Referred to the Commission under Section 4(a)(1)(C) of the International Claims Settlement Act of 1949.

3. *The agency form number:* FCSC–1. Foreign Claims Settlement Commission, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals.

Other: Corporations.

Abstract: Information will be used as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of U.S. nationals, referred to the Commission by the Department of State pursuant to section 4(a)(1)(C) of the International Claims Settlement Act of 1949, as amended, 22 U.S.C. 1623(A)(1)(C).

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 individual respondents will complete the application, and that the amount of time estimated for an average respondent to reply is approximately two hours each.

6. *An estimate of the total public burden (in hours) associated with the collection:* 1,000 annual burden hours.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: December 13, 2022.

Robert Houser,

Department Clearance Officer for PRA, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–27288 Filed 12–15–22; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number: 1103–0117]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension of a Currently Approved Collection; Departmental Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: All components, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Justice will be submitting a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork Reduction Act (PRA).

DATES: The purpose of this notice is to allow 30 days for public comment until January 17, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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;
- Evaluate the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Collection

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

Following is the Department of Justice's projected average estimates for the next three years:

Current Action: Extension.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 42.

Average Number of Respondents per Activity: 51,500.

Annual Responses: 309,000.

Frequency of Response: Once per request.

Average Minutes per Response: 30 min.

Burden Hours: 99,847.

Federal Government Cost: $176,925.

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 Office of Management and Budget control number.

If additional information is required contact: Robert Houser, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 3E.206, Washington, DC 20530.

Dated: December 13, 2022.

Robert Houser,

Department Clearance Officer for PRA, Policy and Planning Staff, Office of the Chief Information Officer, U.S. Department of Justice.

[FR Doc. 2022–27277 Filed 12–15–22; 8:45 am]

BILLING CODE 4410–ML–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–12022]

Z–RIN 1210 ZA07

Posting of Hearing Transcript Regarding Proposed Amendment to Prohibited Transaction Class Exemption 84–14 (the QPAM Exemption) and Closing of Reopened Comment Period

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice of hearing transcript posting and closing of the reopened comment period.

SUMMARY: As discussed in the **DATES** section below, the Department of Labor's Employee Benefits Security Administration (EBSA) is announcing that it has posted the transcript on its website of the virtual public hearing regarding the proposed amendment to prohibited transaction class exemption 84–14 (the QPAM Exemption) and determined the closing date for the proposed amendment's reopened comment period.

DATES: The public hearing transcript was posted to EBSA's website on December 12, 2022, and the reopened comment period for the proposed amendment will close on January 6, 2023.

ADDRESSES: Please submit all written comments to the Office of Exemption Determinations through the Federal eRulemaking Portal at *www.regulations.gov* at Docket ID number: EBSA–2022–0008.

FOR FURTHER INFORMATION CONTACT: Erin Scott Hesse, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor. Telephone: (202) 693–8546 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published a proposed amendment to prohibited transaction class exemption 84–14 (the Proposed QPAM Exemption Amendment) on July 27, 2022, with a 60-day comment period that was set to expire on September 26, 2022.[1] After the publication of the Proposed QPAM Exemption Amendment, the Department received two letters requesting an extension of the comment period for at least an additional 60 days.[2] After carefully considering the extension request, the Department extended the initial comment period for an additional 15 days until October 11, 2022 (for 75-day total initial comment period) in a **Federal Register** notice published on September 9, 2022.[3] The Department received 31 comment letters.

In the same September 9, 2022, **Federal Register** notice, the Department announced on its own motion that it would hold a virtual public hearing on November 17, 2022 (and if necessary, on November 18, 2022), to provide an opportunity for all interested parties to testify on material information and issues regarding the Proposed QPAM Amendment.[4] The Department received 13 requests to testify at the hearing.

The notice also indicated the Department would: (1) reopen the public comment period from the hearing date until approximately 14 days after the Department publishes the hearing transcript on EBSA's website; and (2) publish a **Federal Register** notice announcing that it has posted the

[1] 87 FR 45204.

[2] See Public Comment #1 from American Bankers Association et al. and Public Comment #2 from American Retirement Association. The extension requests can be accessed here: *https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07/*.

[3] 87 FR 54715.

[4] Id.

hearing transcript to EBSA's website and the date the reopened comment period closes.

The Department held the virtual public hearing on November 17, 2022, and reopened the comment period on the hearing date.[5] The Department is hereby providing notice that it posted the hearing transcript to EBSA's website on December 12, 2022, and determined that the reopened comment period will close on January 6, 2023. The hearing transcript may be accessed here: *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07.*

The Department encourages all interested parties to submit comments on the proposed amendment before the reopened comment period closes. All written comments should be identified by Z–RIN 1210 ZA07 and sent to the Office of Exemption Determinations through the Federal eRulemaking Portal: *https://www.regulations.gov* at Docket ID number: EBSA–2022–0008. Please follow the instructions for submitting comments.

All comments on the proposed amendment and requests to testify at the hearing are available to the public without charge online at *https://www.regulations.gov* at Docket ID number: EBSA–2022–0008 and *https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA07.* They also are available for public inspection in EBSA's Public Disclosure Room, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW, Washington, DC 20210.

Signed at Washington, DC, this 12th day of December 2022.

Lisa M. Gomez,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–27334 Filed 12–15–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rate for Range Occupations in 2023

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2023 Adverse Effect Wage Rate (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform herding or production of livestock on the range. AEWRs are the minimum wage rates DOL has determined must be offered and paid by employers to H–2A workers and workers in corresponding employment to help ensure the Department meets its statutory obligation to certify that the employment of H–2A foreign workers will not have an adverse effect on the agricultural wages of workers in the United States (U.S.) similarly employed will not be adversely affected. In this notice, DOL announces the annual update of the AEWR for workers engaged in the herding or production of livestock on the range, as required by the methodology previously established in 2015.

DATES: The rate is effective January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, N–5311, 200 Constitution Ave. NW, Washington, DC 20210, Telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H–2A labor certification from DOL. The H–2A labor certification provides that (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rate for 2023

DOL's H–2A regulations covering the herding or production of livestock on the range, published in the **Federal Register** as the *Temporary Agricultural Employment of H–2A Foreign Workers in the Herding or Production of Livestock on the Range in the United States,* 80 FR 62958 (Oct. 16, 2015), provide that employers must offer, advertise in recruitment, and pay each worker employed under 20 CFR 655.200 through 655.235 a wage that is at least the highest of (1) the monthly AEWR, (2) the agreed-upon collective bargaining wage, or (3) the applicable minimum wage imposed by Federal or State law or judicial action. *See* 20 CFR 655.210(g); 655.211(a)(1). Further, when the monthly AEWR is adjusted during a work contract and is higher than both the agreed-upon collective bargaining wage and the applicable minimum wage imposed by Federal or State law or judicial action in effect at the time the work is performed, the employer must pay that adjusted monthly AEWR upon publication by DOL in the **Federal Register**. *See* 20 CFR 655.211(a)(2).

As provided in 20 CFR 655.211(c)(2), the monthly AEWR for range occupations in all States for a calendar year is based on the monthly AEWR for the previous calendar year ($1,807.23), adjusted by the Employment Cost Index (ECI) for wages and salaries published by the Bureau of Labor Statistics for the preceding annual period. The 12-month change in the ECI for wages and salaries of private industry workers between September 2021 and September 2022 was 5.2 percent, resulting in a monthly AEWR for range occupations in effect for 2023 of $1,901.21.[1] The national monthly AEWR rate for all range occupations in the H–2A program in 2023 is calculated by multiplying the monthly AEWR for calendar year 2022 by the October 2022 ECI adjustment ($1,807.23 × 1.052 = $1,901.21) or $1,901.21. Accordingly, any employer certified or seeking certification for range workers must pay each worker a wage that is at least the highest of the

[5] The hearing did not continue on November 18, 2022, because the Department was able to schedule all witnesses that requested to testify on one day.

[1] The regulation at 20 CFR 655.211(c)(2) states that the monthly AEWR is calculated based on the ECI for wages and salaries ''for the preceding October–October period.'' This regulatory language was intended to identify the Bureau of Labor Statistics' (BLS) October publication of ECI for wages and salaries, which presents data for the September to September period. Accordingly, the most recent 12-month change in the ECI for private sector workers published on October 28, 2022, by BLS was used for establishing the monthly AEWR under the regulations. *See https://www.bls.gov/news.release/archives/eci_10282022.pdf.* The ECI for private sector workers was used rather than the ECI for all civilian workers given the characteristics of the H–2A herder workforce.

monthly AEWR of $1,901.21, the agreed-upon collective bargaining wage, or the applicable minimum wage imposed by Federal or State law or judicial action at the time work is performed on or after the effective date of this notice.

Authority: 20 CFR 655.211(b).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–27333 Filed 12–15–22; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations in 2023

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration of the Department of Labor (DOL) is issuing this notice to announce the 2023 Adverse Effect Wage Rates (AEWR) for the employment of temporary or seasonal nonimmigrant foreign workers (H–2A workers) to perform agricultural labor or services other than the herding or production of livestock on the range. AEWRs are the minimum wage rates the DOL has determined must be offered and paid by employers to H–2A workers and workers in corresponding employment to help ensure the Department meets its statutory obligation to certify that the employment of H–2A foreign workers will not have an adverse effect on the wages of agricultural workers in the United States (U.S.) similarly employed. In this notice, DOL announces updates of the AEWRs and the average AEWR, which is used to calculate adjustments to required bond amounts for H–2A Labor Contractors.

DATES: These rates are applicable *January 1, 2023.*

FOR FURTHER INFORMATION CONTACT: Brian Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5311, Washington, DC 20210, telephone: (202) 693–8200 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone numbers above via TTY/TDD by calling the toll-free Federal Information Relay Service at 1 (877) 889–5627.

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services of the Department of Homeland Security will not approve an employer's petition for the admission of H–2A nonimmigrant temporary and seasonal agricultural workers in the U.S. unless the petitioner has received an H–2A labor certification from DOL. The labor certification provides that: (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the foreign worker(s) in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. *See* 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c)(1), and 1188(a); 8 CFR 214.2(h)(5); 20 CFR 655.100.

Adverse Effect Wage Rates for 2023

DOL's H–2A regulations at 20 CFR 655.122(l) provide that employers must pay their H–2A workers and workers in corresponding employment at least the highest of: (i) the AEWR; (ii) a prevailing wage rate if the Office of Foreign Labor Certification (OFLC) Administrator has approved a prevailing wage survey for the applicable crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity; (iii) the agreed-upon collective bargaining wage rate; (iv) the Federal minimum wage rate; or (v) the State minimum wage rate, whichever is highest, for every hour or portion thereof worked during a pay period. Further, when the AEWR is adjusted during a work contract and is higher than the highest of the previous AEWR, a prevailing rate for the crop activity or agricultural activity and, if applicable, a distinct work task or tasks performed in that activity and geographic area, the agreed-upon collective bargaining wage, the Federal minimum wage rate, or the State minimum wage rate, the employer must pay at least that adjusted AEWR upon the effective date of the new rate, as provided in the applicable **Federal Register** Notice. *See* 20 CFR 655.120(b)(3). Similarly, when the AEWR is adjusted during a work contract and lower than the wage rate that is guaranteed on the job order, the employer must continue to pay at least the wage rate guaranteed on the job order. *See* 20 CFR 655.120(b)(4).

On November 5, 2020, DOL published a final rule, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States,* 85 FR 70445 (2020 AEWR Final Rule), to establish a new methodology for setting hourly AEWRs, effective December 21, 2020. Litigation followed the 2020 AEWR Final Rule's publication. On December 23, 2020—two days after the 2020 AEWR Final Rule went into effect—the court in *United Farm Workers, et al.* v. *Dep't of Labor, et al.,* No. 20–cv–01690 issued an order preliminarily enjoining the Department from further implementing the 2020 AEWR Final Rule and ordering the Department to use the 2010 H–2A Final Rule methodology for establishing hourly AEWRs.[1] On April 4, 2022, the court vacated the 2020 AEWR Final Rule.[2] Accordingly, DOL has used the methodology set forth in the 2010 H–2A Final Rule to determine the 2023 AEWRs.

The 2023 AEWRs for all agricultural employment (except for the herding or production of livestock on the range, which is covered by 20 CFR 655.200 through 655.235) for which temporary H–2A certification is being sought is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) in the State or region as published by the U.S. Department of Agriculture (USDA) in the November 23, 2022, Farm Labor Report. DOL's regulation, 20 CFR 655.120(b)(2), requires that the OFLC Administrator publish the USDA field and livestock worker (combined) wage data as AEWRs in a **Federal Register** Notice. Accordingly, the 2023 AEWRs to be paid for agricultural work performed by H–2A and workers in corresponding employment on and after the effective date of this notice are set forth in the table below:

TABLE—2023 ADVERSE EFFECT WAGE RATES

State 2023 AEWRs	
Alabama	$13.67
Arizona	15.62
Arkansas	13.67
California	18.65
Colorado	16.34
Connecticut	16.95
Delaware	16.55
Florida	14.33
Georgia	13.67
Hawaii	17.25
Idaho	15.68
Illinois	17.17
Indiana	17.17
Iowa	17.54

[1] 509 F. Supp. 3d 1225 (E.D. Cal. 2020).

[2] No. 20–cv–01690–DAD–BAK, 2022 WL 1004855 (E.D. Cal. April 4, 2022).

TABLE—2023 ADVERSE EFFECT WAGE RATES—Continued

State 2023 AEWRs	
Kansas	17.33
Kentucky	14.26
Louisiana	13.67
Maine	16.95
Maryland	16.55
Massachusetts	16.95
Michigan	17.34
Minnesota	17.34
Mississippi	13.67
Missouri	17.54
Montana	15.68
Nebraska	17.33
Nevada	16.34
New Hampshire	16.95
New Jersey	16.55
New Mexico	15.62
New York	16.95
North Carolina	14.91
North Dakota	17.33
Ohio	17.17
Oklahoma	14.87
Oregon	17.97
Pennsylvania	16.55
Rhode Island	16.95
South Carolina	13.67
South Dakota	17.33
Tennessee	14.26
Texas	14.87
Utah	16.34
Vermont	16.95
Virginia	14.91
Washington	17.97
West Virginia	14.26
Wisconsin	17.34
Wyoming	15.68

The AEWRs set forth in the table above are the AEWRs applicable to the SOC 45–2092 (Farmworkers and Laborers, Crop, Nursery, and Greenhouse), published by the OFLC Administrator in accordance with 20 CFR 655.120(b)(2). Accordingly, the simple average of these AEWRs constitutes the average AEWR. *See* 20 CFR 655.103(b) (definition of average AEWR). The simple average is calculated by finding the sum of the AEWRs listed in the table above, then dividing by the total number of AEWRs, which is currently 49 ($790.61/49 = $16.13). On and after the effective date of this notice, the average AEWR to be used to calculate the bond amounts required under 20 CFR 655.132(c)(2)(ii) is $16.13.

Authority: 20 CFR 655.120(b)(2); 20 CFR 655.103(b).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–27332 Filed 12–15–22; 8:45 am]

BILLING CODE 4510–FP–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 22–17]

Report on the Selection of Eligible Countries for Fiscal Year 2023

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: This report is provided in accordance with the Millennium Challenge Act of 2003, as amended. The report is set forth in full below.

SUPPLEMENTARY INFORMATION:

Report on the Selection of Eligible Countries for Fiscal Year 2023

Summary

This report is provided in accordance with section 608(d)(1) of the Millennium Challenge Act of 2003, as amended (the Act) (22 U.S.C. 7707(d)(1)).

The Act authorizes the provision of assistance under section 605 of the Act (22 U.S.C. 7704) to countries that enter into compacts with the United States to support policies and programs that advance the progress of such countries in achieving lasting poverty reduction through economic growth, and are in furtherance of the Act. The Act requires the Millennium Challenge Corporation (MCC) to determine the countries that will be eligible to receive assistance for the fiscal year, based on their demonstrated commitment to just and democratic governance, economic freedom, and investing in their people, as well as on the opportunity to reduce poverty through economic growth in the country. The Act also requires the submission of reports to appropriate congressional committees and the publication of notices in the **Federal Register** that identify, among other things:

1. The countries that are ''candidate countries'' for assistance for fiscal year (FY) 2023 based on their per-capita income levels and their eligibility to receive assistance under U.S. law, and countries that would be candidate countries, but for specified legal prohibitions on assistance (section 608(a) of the Act (22 U.S.C. 7707(a)));

2. The criteria and methodology that the Board of Directors of MCC (the Board) used to measure and evaluate the policy performance of the ''candidate countries'' consistent with the requirements of section 607 of the Act in order to determine ''eligible countries'' from among the ''candidate countries'' (section 608(b) of the Act (22 U.S.C. 7707(b))); and

3. The list of countries determined by the Board to be ''eligible countries'' for FY 2023, with justification for eligibility determination and selection for compact negotiation, including with which of the eligible countries the Board will seek to enter into compacts (section 608(d) of the Act (22 U.S.C. 7707(d))).

This is the third of the above-described reports by MCC for FY 2023. It identifies countries determined by the Board to be eligible under section 607 of the Act (22 U.S.C. 7706) for FY 2023 with which the MCC will seek to enter into compacts under section 609 of the Act (22 U.S.C. 7708), as well as the justification for such decisions. The report also identifies countries selected by the Board to receive assistance under MCC's threshold program pursuant to section 616 of the Act (22 U.S.C. 7715).

Eligible Countries

The Board met on December 8, 2022 to select those eligible countries with which the United States, through MCC, will seek to enter into a Millennium Challenge Compact pursuant to section 607 of the Act (22 U.S.C. 7706). The Board selected the following eligible countries for such assistance for FY 2023: Senegal, The Gambia, and Togo. The Board also selected the following previously selected countries for compact assistance for FY 2023: Côte d'Ivoire, Mozambique, Sierra Leone, and Zambia.

Criteria

In accordance with the Act and with the ''Report on the Criteria and Methodology for Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance in Fiscal Year 2023'' formally submitted to Congress on September 27, 2022, selection was based primarily on a country's overall performance in three broad policy categories: *Ruling Justly, Encouraging Economic Freedom,* and *Investing in People.* The Board relied, to the fullest extent possible, upon transparent and independent indicators to assess countries' policy performance and demonstrated commitment in these three broad policy areas. The Board compared countries' performance on the indicators relative to their income-level peers, evaluating them in comparison to either the group of countries with a GNI per capita equal to or less than $2,045, or the group with a GNI per capita between $2,046 and $4,255.

The criteria and methodology used to assess countries, including the methodology for the annual scorecards, are outlined in the ''Report on the Criteria and Methodology for

Determining the Eligibility of Candidate Countries for Millennium Challenge Account Assistance for Fiscal Year 2023''.[1] Scorecards reflecting each country's performance on the indicators are available on MCC's website at *https://www.mcc.gov/who-we-select/scorecards.*

The Board also considered whether any adjustments should be made for data gaps, data lags, or recent events since the indicators were published, as well as strengths or weaknesses in particular indicators. Where appropriate, the Board took into account additional quantitative and qualitative information, such as evidence of a country's commitment to fighting corruption, investments in human development outcomes, or poverty rates. MCC published a Guide to Supplemental Information [2] to increase transparency about the type of supplemental information the Board uses to assess a country's policy performance. MCC also published web pages [3] regarding how MCC assesses performance on the new Employment Opportunity and revised Natural Resource Protection scorecard indicators. In keeping with legislative directives, the Board also considered the opportunity to reduce poverty and promote economic growth in a country, in light of the overall information available, as well as the availability of appropriated funds.

The Board sees the selection decision as an annual opportunity to determine where MCC funds can be most effectively used to support poverty reduction through economic growth in relatively well-governed, poor countries. The Board carefully considers the appropriate nature of each country partnership—on a case-by-case basis—based on factors related to poverty reduction through economic growth, the sustainability of MCC's investments, and the country's ability to attract and leverage public and private resources in support of development.

This was the fifth year the Board considered the eligibility of countries for concurrent compacts, as permitted under section 609(k) of the Act. In addition to the considerations for compact eligibility detailed above, the Board considered whether a country being considered for a concurrent compact is making considerable and demonstrable progress in implementing the terms of its existing compact.

This was the fourteenth year the Board considered the eligibility of countries for subsequent compacts, as permitted under section 609(l) of the Act. MCC's engagement with partner countries is not open-ended, and the Board is deliberate when selecting countries for follow-on partnerships, particularly regarding the higher bar applicable to subsequent compact countries. While the Board did not select any new countries for subsequent compacts for FY 2023, the Board considered—in addition to the criteria outlined above—a country's performance implementing its prior compact, including the nature of the country's partnership with MCC, the degree to which the country has demonstrated a commitment and capacity to achieve program results, and the degree to which the country implemented the compact in accordance with MCC's core policies and standards. To the greatest extent possible, these factors are assessed using pre-existing monitoring and evaluation targets and regular quarterly reporting. This information is supplemented with direct surveys and consultation with MCC staff responsible for compact implementation, monitoring, and evaluation. MCC published a Guide to the Program Surveys [4] regarding the information collected and assessed for any country with an existing or prior compact or threshold program to ensure transparency about the type of information the Board considers regarding a country's performance on MCC programs, as relevant. The Board also considered a country's commitment to further sector reform, as well as evidence of improved scorecard policy performance.

In addition, this is the seventh year where the Board considered an explicit higher bar for those countries close to the upper end of the candidate pool, looking closely in such cases at a country's access to development financing, the nature of poverty in the country, and its policy performance.

Countries Newly Selected for Compact Assistance

Using the criteria described above, two candidate countries under section 606(a) of the Act (22 U.S.C. 7705(a) were newly selected for assistance under section 607 of the Act (22 U.S.C. 7706): The Gambia and Togo.

The Gambia: The Gambia has been a strong partner for MCC on its current $25 million threshold program and is continuing to strengthen its democracy following the landmark 2016 elections. The Gambia passes the MCC scorecard for the fifth consecutive year in Fiscal Year 2023, passing 14 of 20 indicators overall, including the Control of Corruption and Democratic Rights ''hard hurdles.'' Selecting The Gambia for a compact will allow MCC to deepen its partnership with a country that is demonstrating a clear commitment to MCC's eligibility criteria and to support the Government of The Gambia's efforts to strengthen economic and democratic governance and address its pressing development needs.

Togo: Togo is an engaged MCC partner and has markedly accelerated implementation of its $35 million threshold program over the past year. Togo has also made efforts to strengthen its policy performance on the MCC scorecard over a number of years. In Fiscal Year 2023, Togo passes the scorecard for the seventh consecutive year, passing 14 of 20 indicators overall, with strong performance on the Control of Corruption ''hard hurdle.'' While the Government of Togo has overseen critical economic reforms, its performance on the Democratic Rights indicators on the MCC scorecard has declined in recent years, and it does not pass the Political Rights indicator. Selecting Togo for a compact will provide MCC the opportunity to continue partnering with a motivated government that is pursuing policies to reduce poverty and spur economic growth but is facing critical development challenges.

Country selected for a concurrent compact: In accordance with section 609(k) of the Act, one candidate country was newly selected to explore development of a concurrent compact for purposes of regional integration under section 607 of the Act (22 U.S.C. 7706): Senegal.

Senegal: Senegal is a dedicated MCC partner and is currently implementing a $550 million compact focused on the power sector. Senegal has consistently met MCC's scorecard criteria and in Fiscal Year 2023, it passes 14 of 20 indicators overall, with strong performance on the Control of Corruption and Democratic Rights ''hard hurdles.'' Senegal presents a substantial opportunity to explore potential investments that could promote regional economic integration, increased regional trade, or cross-border collaboration, particularly given its geographic location and ties to key regional organizations. By selecting Senegal for a

[1] Available at *https://www.mcc.gov/resources/doc/report-selection-criteria-methodology-fy23.*

[2] Available at *https://www.mcc.gov/resources/doc/guide-to-supplemental-information.*

[3] Available at *https://www.mcc.gov/who-we-select/indicator/employment-opportunity* and *https://www.mcc.gov/blog/entry/blog-101422-scorecard-indicator-employment* (Employment Opportunity) and *https://www.mcc.gov/who-we-select/indicator/natural-resource-protection* (Natural Resource Protection).

[4] Available at *https://www.mcc.gov/resources/doc/guide-to-program-surveys-fy23.*

concurrent regional compact, MCC can support efforts to strengthen economic growth, reduce poverty, and address development challenges facing both the country, and the wider region.

Countries Selected To Continue Compact Development

Four of the countries selected for compact assistance for FY 2023 were previously selected for FY 2022. Mozambique, Sierra Leone, and Zambia were selected to continue developing compacts. Côte d'Ivoire was selected to continue developing a concurrent compact for purposes of regional integration. Selection of these countries for FY 2023 was based on an assessment of their policy performance since their prior selection and their progress in developing programs with MCC.

Country Selected To Receive Threshold Program Assistance

The Board selected Mauritania to receive threshold program assistance for FY 2023.

Mauritania: Mauritania offers MCC the opportunity to engage with a country that faces significant challenges to economic growth and that is demonstrating a trajectory of reform on the MCC scorecard. While Mauritania does not pass the MCC scorecard in FY 2023 due to not passing the Democratic Rights ''hard hurdle,'' it passes the Control of Corruption ''hard hurdle,'' passes 10 of 20 indicators overall, and has taken steps to improve its performance in recent years. Mauritania's 2019 elections marked its first peaceful transfer of power and provided a further impetus to the country's gradual reform process and efforts to strengthen democratic governance, fight corruption, undertake economic reforms, and address longstanding human rights issues including trafficking in persons and hereditary slavery. By selecting Mauritania for threshold program assistance, MCC can engage with the Government of the Islamic Republic of Mauritania to continue efforts to strengthen its policy performance, make critical policy and institutional reforms, and address the country's development needs for the people of Mauritania.

Country Selected To Continue Developing Threshold Programs

The Board selected Kiribati to continue developing a threshold program. Selection of Kiribati for FY 2023 was based on its continued strong policy performance since its prior selection and its progress developing its threshold program.

Ongoing Review of Partner Countries' Policy Performance

The Board emphasized the need for all partner countries to maintain or improve their policy performance. If it is determined during compact implementation that a country has demonstrated a significant policy reversal, MCC can hold it accountable by applying MCC's Suspension and Termination Policy.[5]

Authority: 22 U.S.C. 7707(d)(2)).

Dated: December 13, 2022.

Thomas G. Hohenthaner,

Acting VP/General Counsel and Corporate Secretary.

[FR Doc. 2022–27345 Filed 12–13–22; 4:15 pm]

BILLING CODE 9211–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Notice of Proposed Information Collection Requests: Internship and Fellowship Program for American Latino Museums Notice of Funding Opportunity

AGENCY: Institute of Museum and Library Services, National Foundation on the Arts and Humanities.

ACTION: Notice, request for comments, collection of information.

SUMMARY: The Institute of Museum and Library Services (IMLS), 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. This pre-clearance consultation program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The purpose of this Notice is to solicit comments concerning a plan to offer a new grant program to support internships and fellowships for American Latino museums. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this Notice.

[5] Available at *https://www.mcc.gov/who-we-select/suspension-or-termination.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before February 14, 2023.

ADDRESSES: Send comments to Connie Bodner, Ph.D., Director of Grants Policy and Management, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone: 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except federal holidays.

Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

FOR FURTHER INFORMATION CONTACT: Gibran Villalobos, Project Manager, Office of Museum Services, Institute of Museum and Library Services, 955 L'Enfant Plaza North, SW, Suite 4000, Washington DC 20024–2135. Gibran Villalobos can be reached by telephone at 202–653–4649, or by email at *gvillalobos@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: IMLS is particularly interested in public comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

I. Background

The Institute of Museum and Library Services is the primary source of federal support for the Nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

II. Current Actions

The goal of the Internship and Fellowship Program for American Latino Museums is to support Hispanic-Serving Institutions and Minority-Serving Institutions in providing learning opportunities for students who are pursuing careers or carrying out studies in the arts, humanities, and sciences in the study of American Latino life, art, history, and culture. The Latino American Museum Program was authorized for creation by the National Museum of the American Latino Act in 2020 (20 U.S.C. 80u) the same Act that authorized the creation of a new Smithsonian National Museum of the American Latino.

Agency: Institute of Museum and Library Services.

Title: Internship and Fellowship Program for American Latino Museums Notice of Funding Opportunity.

OMB Control Number: 3137–NEW.

Agency Number: 3137.

Respondents/Affected Public: Minority-Serving Institutions and Hispanic-Serving Institutions that offer or wish to offer fellowships or internships that focus on museum studies, Latino art, history, and culture.

Total Estimated Number of Annual Respondents: 300.

Frequency of Response: Once per request.

Average Minutes per Response: To be determined.

Total Estimated Number of Annual Burden Hours: To be determined.

Cost Burden (dollars): To be determined.

Public Comments Invited: Comments submitted in response to this Notice will be summarized and/or included in the request for OMB's clearance of this information collection.

Dated: December 16, 2022.

Connie Bodner,

Director, Office of Grants Policy and Management, Institute of Museum and Library Services.

[FR Doc. 2022–27342 Filed 12–15–22; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification issued.

DATES: January 12, 2023 to February 3, 2026.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–4479; email: *ACApermits@nsf.gov*.

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2022–020) to David Rootes, Environmental Manager, Antarctic Logistics and Expeditions, LLC (ALE), on November 29, 2021. The issued permit allows the applicant to operate a remote camp at Union Glacier, Antarctica, and provide logistical support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators.

Then, on September 15, 2022, the Foundation issued a permit modification to continue permitted activities, including minimization, mitigation, and monitoring of waste, for the 2022–2023 Antarctic season.

Now the applicant proposes a modification to the permit to conduct helicopter operations. The helicopters will be operated in the Union Glacier area in order to evaluate the usefulness of the activity to ALE. Helicopters will be flown by pilots with mountain and glacier flight experience. No tourists will be flown in the helicopter. ALE has contingency plans for controlling environmental releases as a part of their existing activities at Union Glacier.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–27305 Filed 12–15–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7027; NRC–2022–0201]

Notice of Intent To Conduct Scoping Process and Prepare Environmental Impact Statement; TRISO–X Special Nuclear Material License

AGENCY: Nuclear Regulatory Commission.

ACTION: Intent to prepare an environmental impact statement and conduct a scoping process; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a license application by letters dated April 5, 2022, and September 23, 2022, from TRISO–X, LLC (TRISO–X) a wholly owned subsidiary of X-energy LLC. By its application, TRISO–X is requesting a license to possess and use special nuclear material for the manufacture of high-assay low-enriched uranium (HALEU) fuel at a fuel fabrication facility (FFF) to be located in Oak Ridge, Roane County, Tennessee. The proposed action is the issuance of a license for the possession and use of special nuclear material. The NRC staff will prepare an environmental impact statement (EIS) to document the potential environmental impacts from the proposed action. As part of the EIS development process, the NRC is seeking comments on the scope of its environmental review.

DATES: Submit comments on the scope of the EIS by February 14, 2023. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*).

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0201. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the For Further Information Contact section of this document.

• *Email comments to:* Comments may be submitted to the NRC electronically using the email address: *TRISOX-EIS@nrc.gov.*

• *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

• *Scoping Meeting:* A local in-person meeting will be held on January 25, 2023, to obtain comments. The details of the meeting will be noticed on the NRC's website at least 10 days prior.

For additional direction on obtaining information, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC, 20555–0001; telephone: 301–415–7674, email: *Jill.Caverly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0201 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this action by the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0201.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

• NRC'S PDR: You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

• *Project web page:* Information related to the TRISO–X license application can be accessed on the NRC's TRISO-X web page at *https://www.nrc.gov/info-finder/fc/triso-x.*

• *Public Library:* A copy of the Environmental Report for the application is available for review at the Oak Ridge Public Library, 1401 Oak Ridge Turnpike, Oak Ridge, TN 37830.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0201 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

By letters dated April 5, 2022 (ADAMS Package Accession No. ML22101A200), September 23, 2022 (ADAMS Package Accession No. ML22266A269), and as supplemented on October 13, 2022 (ADAMS Package Accession No. ML22286A144) and November 4, 2022 (ADAMS Package Accession No. ML22308A251), TRISO–X submitted an application to the NRC requesting a license to possess and use special nuclear material for the manufacture of HALEU fuel at its fuel fabrication facility (FFF) to be located in Oak Ridge, Roane County, Tennessee. TRISO–X seeks to manufacture HALEU to support advanced reactors. If issued, the applicant would receive a special nuclear material license for a term of 40 years, issued pursuant to part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Special Nuclear Material.''

The TRISO-X FFF would be located in the Horizon Center Industrial Park on property abutting portions of Renovare Boulevard, within the western limits of the City of Oak Ridge and in the northeastern portion of Roane County, Tennessee. The site is situated in an area dedicated and zoned for industrial development, on an approximately 110-acre greenfield site.

The NRC staff completed an acceptance review of TRISO–X's license application and determined it contains sufficient information for NRC to conduct a detailed technical review. An acceptance letter was issued to TRISO–X on November 18, 2022. The environmental report can be found on the NRC's project-specific web page at *https://www.nrc.gov/info-finder/fc/triso-x.*

III. Review Process

This notice is to: (1) inform the public that the NRC staff will prepare an EIS as part of its review of TRISO–X's license application in accordance with 10 CFR part 51 ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' and (2) provide the public with an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA). The NRC staff also will document its compliance with other applicable federal statutes.

The EIS will address the potential impacts from the proposed action. The anticipated scope of the EIS will consider both radiological and non-radiological (including chemical) impacts associated with the proposed project and its alternatives. The EIS will also consider unavoidable adverse environmental impacts, the relationship between short-term uses of resources and long-term productivity, and irreversible and irretrievable commitments of resources. The following resource areas tentatively have been identified for analysis in the EIS: land use, transportation, geology and soils, water resources, ecological resources, air quality and climate change, noise, historical and cultural resources, visual and scenic resources, socioeconomics, public and occupational health, waste management, environmental justice, and cumulative

impacts. This list is not intended to be exhaustive, nor is it a predetermination of potential environmental impacts.

The NRC staff will also conduct a safety review to determine TRISO–X's compliance with NRC's regulations, including 10 CFR part 20, ''Standards for Protection Against Radiation'' and 10 CFR part 70. The NRC staff's findings for the safety review will be published in a safety evaluation report.

IV. Request for Comment

As part of its environmental review, the NRC will first conduct a scoping process and, as soon as practicable thereafter, will prepare a draft EIS for public comment. Participation in this scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the draft EIS will be used to accomplish the following:

a. Define the proposed action that is to be the subject of the EIS;

b. Determine the scope of the EIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or are not significant or that have been covered by prior environmental review;

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the EIS under consideration;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the NRC's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the EIS to the NRC and any cooperating agencies; and

h. Describe how the EIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, TRISO–X, LLC.;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian Tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene under 10 CFR 2.309.

Additionally, the NRC will hold a public scoping meeting on January 25, 2023, to receive scoping comments in person in accordance with 10 CFR 51.26. The time and location for the meeting will be noticed on the NRC public website at least 10 days prior at *https://www.nrc.gov/pmns/mtg.*

After the close of the scoping period, the NRC staff will prepare a concise summary of its scoping process, the comments received, as well as the NRC's responses to comments. The Scoping Summary Report will be made available to the public either as a separate document or as an appendix to the draft EIS.

The NRC staff will also have a public comment period for the draft EIS. Availability of the draft EIS and the dates of the public comment period will be announced in a future **Federal Register** notice. The final EIS will include NRC's responses to public comments received on the draft EIS.

Dated: December 9, 2022.

For the Nuclear Regulatory Commission.

John M. Moses,

Deputy Director, Division of Rulemaking, Environmental Review and Financial Review, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–27164 Filed 12–15–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–409 and 72–046; EA–19–077; NRC–2019–0110]

In the Matter of LaCrosse*Solutions*, LLC; La Crosse Boiling Water Reactor

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct transfer of license; extending effectiveness of order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an order to extend the effectiveness of a September 24, 2019, order, which approved the direct transfer of Possession Only License No. DPR–45 for the La Crosse Boiling Water Reactor from the current holder, LaCrosse*Solutions,* LLC, to Dairyland Power Cooperative and approved a conforming license amendment, for 3 months beyond its current December 24, 2022, expiration date.

DATES: The order was issued on December 8, 2022, and was effective upon issuance.

ADDRESSES: Please refer to Docket ID NRC–2019–0110 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–2019–0110. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The request for extending the effectiveness of the transfer order is available in ADAMS under Accession No. ML22335A085. The order extending the effectiveness of the approval of the transfer of license and conforming amendment is available in ADAMS under Accession Package No. ML22321A309.
- *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: Marlayna Doell, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3178; email: *Marlayna.Doell@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: December 12, 2022.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Order Extending the Effectiveness of the Approval of the Transfer of License and Conforming Amendment

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0110]

In the Matter of LaCrosse*Solutions*, LLC; La Crosse Boiling Water Reactor EA–19–077; Docket Nos. 50–409 and 72–046; License No. DPR–45 Order Extending the Effectiveness of the Approval of the Transfer of License and Conforming Amendment

I.

LaCrosse*Solutions,* LLC is the holder of the U.S. Nuclear Regulatory Commission (NRC, the Commission) Possession Only License No. DPR–45, with respect to the possession, maintenance, and decommissioning of the La Crosse Boiling Water Reactor (LACBWR). Operation of the LACBWR is no longer authorized under this license. The LACBWR facility is located in Vernon County, Wisconsin.

II.

By Order dated September 24, 2019 (Transfer Order), the Commission consented to the transfer of the LACBWR license to Dairyland Power Cooperative and approved a conforming license amendment in accordance with Section 50.80, ''Transfer of licenses,'' and Section 50.90, ''Application for amendment of license, construction permit, or early site permit,'' of Title 10 of the *Code of Federal Regulations* (10 CFR). By its terms, the Transfer Order becomes null and void if the license transfer is not completed within 1 year unless, upon application and for good cause shown, the Commission extends the Transfer Order's September 24, 2020, expiration date. By letter dated June 24, 2020, LaCrosse*Solutions,* LLC submitted a request to extend the effectiveness of the Transfer Order by 6 months. By Order dated September 1, 2020 (First Extension Order), the Commission extended the Transfer Order's expiration date to March 24, 2021. By letter dated February 2, 2021, LaCrosse*Solutions,* LLC submitted a request to extend the effectiveness of the Transfer Order by an additional 6 months. By Order dated March 9, 2021 (Second Extension Order), the Commission extended the Transfer Order's expiration date to September 24, 2021. Subsequently, by letter dated August 17, 2021, LaCrosse*Solutions,* LLC submitted a request to extend the effectiveness of the Transfer Order by an additional 12 months. By Order dated August 30, 2021 (Third Extension Order), the Commission extended the Transfer Order's expiration date to September 24, 2022. Subsequently, by letter dated August 16, 2022, LaCrosse*Solutions,* LLC submitted a request to extend the effectiveness of the Transfer Order by an additional 3 months. By Order dated September 9, 2022 (Fourth Extension Order), the Commission extended the Transfer Order's expiration date to December 24, 2022.

III.

By letter dated November 23, 2022, LaCrosse*Solutions,* LLC submitted a request to extend the effectiveness of the Transfer Order by an additional 3 months, until March 24, 2023. As stated in the letter, the extension would allow the NRC staff sufficient time to complete its review of the LACBWR Final Survey Status Reports (FSSRs) and their associated Release Records. LaCrosse*Solutions,* LLC further stated that its responses to NRC staff requests for additional information (RAIs) regarding the LACBWR FSSRs are also under review by the NRC staff, and it is anticipated that additional time will be needed to finalize the staff's Safety Evaluation Report and approve the revised FSSRs. LaCrosse*Solutions,* LLC additionally notes in its letter that the extension would provide the staff with additional time to make a final determination regarding the release of land for unrestricted use. The NRC staff also concludes that the extension would help facilitate preparations to transfer the license from LaCrosse*Solutions,* LLC to Dairyland Power Cooperative.

Based on the above, the NRC has determined that LaCrosse*Solutions,* LLC has shown good cause for extending the effectiveness of the Transfer Order by an additional 3 months, as requested.

IV.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended; Title 42 of the United States Code Sections 2201(b), 2201(i), and 2234; and the Commission's regulations at 10 CFR 50.80, IT IS HEREBY ORDERED that the expiration date of the Transfer Order, as extended by the Fourth Extension Order, is further extended until March 24, 2023. If the subject license transfer from LaCrosse*Solutions,* LLC to Dairyland Power Cooperative is not completed by March 24, 2023, the Transfer Order shall become null and void; provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

Dated this 8th day of December 2022.

For the Nuclear Regulatory Commission.

John W. Lubinski,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–27265 Filed 12–15–22; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice of request for public comments and submission to OMB for proposed collection of information.

SUMMARY: The Peace Corps is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Submit comments on or before January 12, 2023.

ADDRESSES: Address written comments and recommendations for the proposed information collection to Brianna Johnson, Acting FOIA/Privacy Act Officer, by email at *pcfr@peacecorps.gov*. Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Brianna Johnson, Acting FOIA/Privacy Act Officer, at (202) 692–1236, or *PCFR@peacecorps.gov*.

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Awareness and Affinity: National Survey of U.S. Adults.

OMB Control Number: 0420–****.

Form number: PC–2210.

Type of Request: New collection.

Affected Public: Individuals.

Respondents Obligation to Reply: Voluntary.

Respondents: Members of the public and prospective Peace Corps Volunteer applicants.

Burden to the Public:

• Peace Corps Awareness and Affinity: National Survey of U.S. Adults.

(a) *Estimated number of Applicants:* 6,200.

(b) *Frequency of response:* Twice.

(c) *Estimated average burden per response:* .188 hours.

(d) *Estimated total reporting burden:* 2333.32 hours.

(e) *Estimated annual cost to respondents:* 0.00.

General Description of Collection: The Peace Corps experienced unprecedented challenges during the COVID–19 pandemic, including recalling its entire Volunteer workforce in March 2020. The Peace Corps will launch a new national awareness and recruitment campaign as it returns to full service to promote the organization, its mission, goals, and values, and to attract and recruit qualified and diverse Volunteer applicants. The Peace Corps' Office of Communications will use the information collected by the Peace Corps Awareness and Affinity: National Survey of U.S. Adults to help assess the effectiveness of the new campaign. The survey will also collect information to help broaden the pool of potential Volunteers and engage more diverse audiences. This information collection will also be used to gather information and insights to identify key audience segments and help ensure the efficiency and success of future marketing efforts by:

- Identifying levels of awareness, knowledge, attitudes and opinions about the Peace Corps among the general U.S. public and targeted audience segments;
- Collecting insights to inform communications, education, and outreach strategies by understanding which themes resonate most with different audience segments; and,
- Determining the best channels for communication.

The Office of Communications will conduct this survey twice: once to serve as a baseline prior to the launch of its national awareness and recruitment campaign, and once after the campaign has launched to assess campaign impact.

Request for Comment: Peace Corps invites comments on whether the proposed collections of information are necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice is issued in Washington, DC, on December 13, 2022.

Brianna Johnson,

Acting FOIA/Privacy Act Officer, Management.

[FR Doc. 2022–27360 Filed 12–15–22; 8:45 am]

BILLING CODE 6051–01–P

PENSION BENEFIT GUARANTY CORPORATION

Solicitation of Nominations for Appointment to the Advisory Committee of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is soliciting nominations for appointment to the Advisory Committee of the PBGC.

DATES: Nominations must be received on or before January 30, 2023. Please allow three weeks for regular mail delivery to PBGC.

ADDRESSES: Nominations must be submitted electronically to *OfficeOfTheDirector@pbgc.gov* as email attachments in Word or pdf format, or by mail to Office of the Director, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

SUPPLEMENTARY INFORMATION:

The Pension Benefit Guaranty Corporation (PBGC or the Corporation) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(h) of ERISA provides for the establishment of an Advisory Committee to the Corporation. The Advisory Committee consists of seven members appointed by the President from among individuals recommended by the PBGC Board of Directors, which consists of the Secretaries of Labor, Treasury, and Commerce. The Advisory Committee members are as follows: Two representatives of employee organizations; two representatives of employers who maintain pension plans; and three representatives of the general public.

No more than four members of the Committee shall be members of the same political party. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment.

Advisory Committee members must have experience with employee organizations, employers who maintain defined benefit pension plans, the administration or advising of pension plans, or in related fields. Appointments are for 3-year terms. Reappointments are possible but are subject to the appointment process.

The Advisory Committee's prescribed duties include advising the Corporation as to its policies and procedures relating to investment of moneys, and other issues as the Corporation may request or as the Advisory Committee determines appropriate. The Advisory Committee meets at least six times each year. At least one meeting is a joint meeting with the PBGC Board of Directors.

By February 19, 2023, the terms of three of the Advisory Committee members, one representing the general public and two representing employee organizations, will have expired. Therefore, PBGC is seeking nominations for three seats.

PBGC is committed to equal opportunity in the workplace and seeks a broad-based and diverse Advisory Committee.

If you or your organization wants to nominate one or more people for appointment to the Advisory Committee to represent the general public or employee organizations, you may submit nominations to PBGC. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination. PBGC encourages you to include additional supporting letters of nomination. PBGC will not consider self-nominees who have no supporting letters. Please do not include any information that you do not want publicly disclosed.

Nominations, including supporting letters, should: state the person's qualifications to serve on the Advisory Committee (including any specialized knowledge or experience relevant to the nominee's proposed Advisory Committee position to represent the general public or employee organizations); state that the candidate will accept appointment to the Advisory Committee if offered; include the nominee's full name, work affiliation, mailing address, phone number, and email address; include the nominator's full name, mailing address, phone number, and email address; and include the nominator's signature, whether sent by email or otherwise.

PBGC will contact nominees for information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Advisory Committee. Historically, this has meant a commitment of at least 15

days per year. PBGC has a process for vetting nominees under consideration for appointment.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–27267 Filed 12–15–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–75 and CP2023–76.

Ruth B. Stevenson,

Chief Counsel, Ethics & Legal Compliance.

[FR Doc. 2022–27253 Filed 12–15–22; 8:45 am]

BILLING CODE P

POSTAL SERVICE

International Product Change—International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add an International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 9, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 6 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–76 and CP2023–77.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–27251 Filed 12–15–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96476; File No. SR–MRX–2022–20]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 6 To Add Port Fees

December 12, 2022.

On October 11, 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 port fees. The proposed rule change was published for comment in the **Federal Register** on October 18, 2022.[3]

On December 8, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–20).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27256 Filed 12–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96477; File No. SR–MRX–2022–22]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 7 To Add Market Data Fees

December 12, 2022.

On October 14, 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 market data fees. The proposed rule change was published for comment in the **Federal Register** on October 28, 2022.[3]

On December 8, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–22).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27257 Filed 12–15–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96046 (October 12, 2022), 87 FR 63119.

[4] 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. 96144 (October 24, 2022), 87 FR 65273.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96475; File No. SR–NYSECHX–2022–29]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Article 17, Rule 5

December 12, 2022.

On December 1, 2022, the NYSE Chicago, Inc. (''NYSE Chicago'' 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 amend Article 17, Rule 5 of the Exchange's rules to (1) change how Qualified Contingent Trade Cross Orders are handled in the Exchange's Brokerplex® order management system, and (2) make certain non-substantive conforming changes. The proposed rule change was effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on December 9, 2022.[4]

On December 9, 2022, the Exchange withdrew the proposed rule change (SR–NYSECHX–2022–29), which had not yet become operative pursuant to Rule 19b–4(f)(6)(iii).[5]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27255 Filed 12–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34771; File No. 812–15339]

Silver Spike Investment Corp., et al.

December 12, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

APPLICANTS: Silver Spike Investment Corp., Silver Spike Capital, LLC, and Silver Spike Private Credit II, LP.

FILING DATES: The application was filed on May 19, 2022, and amended on October 7, 2022 and December 9, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 6, 2023, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *greg@silverspikecap.com* and *gregory.rowland@davispolk.com.*

FOR FURTHER INFORMATION CONTACT: Barbara T. Heussler, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated December 9, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27266 Filed 12–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96473); File No. SR–IEX–2022–11]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend IEX Rule 2.160 (Registration Requirements and Restrictions on Membership)

December 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 November 28, 2022, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] the Exchange is filing with the Commission a proposed rule change to amend IEX Rule 2.160. The Exchange has designated this proposal as non-controversial pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) thereunder.[7]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 96448 (Dec. 5, 2022), 87 FR 75683 (Dec. 9, 2022).

[5] 17 CFR 240.19b–4(f)(6)(iii).

[6] 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] 15 U.S.C. 78S(B)(1).

[5] 17 CFR 240.19B–4.

[6] 15 U.S.C. 78S(B)(3)(A).

[7] 17 CFR 240.19B–4(F)(6)(III).

office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

IEX is proposing to amend sections of IEX Rule 2.160 that relate to continuing education requirements, lapses of registration of the Securities Industry Essentials (''SIE'') examination, and waivers of examinations for certain individuals working for a financial services affiliate of a Member.[8] The proposed rule change is based on changes to registration and continuing education requirements made by the Financial Industry Regulatory Authority, Inc. (''FINRA''), including a change to require that the Regulatory Element of continuing education be completed annually rather than every three years, and to provide a path through continuing education for individuals to maintain their qualification following the termination of a registration.[9]

1. Background

In IEX Rule 2.160(p), the Exchange sets forth certain continuing education (''CE'') requirements for its Members including requirements to participate in the Regulatory and Firm Elements of training, which are generally based on certain FINRA Rules.[10] The Regulatory Element focuses on regulatory requirements, and the Firm Element focuses on enhancing covered registered persons' securities knowledge, skill, and professionalism. The Regulatory Element CE program is administered to industry participants by FINRA.[11] Furthermore, FINRA's rule filing amended Rules 1210.09 (''Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of a Member'') and 1210.08 (''Lapse of Registration and Expiration of SIE''), which are mirrored by Supplementary Material .01 to IEX Rule 2.160(g) and Rule 2.160(o).[12] The Exchange seeks to amend its rules to more closely mirror FINRA Rules, as amended.[13]

2. Proposed Rule Change

FINRA has participated in extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council'') that has resulted in amendments to FINRA Rules 1210 and 1240.[14] Following these changes, the Exchange seeks to align its registration and continuing education requirements with those of FINRA by making the following changes to IEX Rule 2.160.

A. Transition to Annual Regulatory Element for Registered Persons

Currently, the Regulatory Element prescribed in IEX Rule 2.160(p)(a) sets forth that training must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[15] Therefore, to align the Exchange's Rules with changes made by FINRA and to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes amending IEX Rule 2.160(p)(a) to require registered persons to complete the Regulatory Element annually by December 31, with the first compliance date December 31, 2023.[16] The proposed amendment would also require registered persons to complete the Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[17] Under the proposed rule change, registered representatives will have the flexibility to complete the Regulatory Element sooner than December 31 of each year.[18] Registered persons who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.[19] In addition, subject to specified conditions, registered persons who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[20]

Consistent with current requirements, registered persons who fail to complete their Regulatory Element within the prescribed period would be automatically designated as inactive.[21] However, the proposed rule change preserves the Exchange's ability to extend the time by which a registered persons must complete the Regulatory Element for good cause shown.[22]

The Exchange also proposes amending IEX Rule 2.160(p)(a)(2) to clarify that: (1) individuals who are

---

[8] *SEE* IEX RULE 1.160(S) (DEFINING ''MEMBER'').

[9] *SEE* SECURITIES EXCHANGE ACT RELEASE NO. 93097 (SEPTEMBER 21, 2021), 86 FR 53358 (SEPTEMBER 27, 2021) (SR–FINRA–2021–015) (THE ''FINRA APPROVAL ORDER''). OTHER EXCHANGES HAVE ALSO FILED RULE CHANGES HARMONIZING THEIR REGISTRATION REQUIREMENTS AND CONTINUING EDUCATION RULES WITH THOSE OF FINRA, SO AS TO PROMOTE UNIFORM STANDARDS ACROSS THE SECURITIES INDUSTRY. *SEE E.G.,* SECURITIES EXCHANGE ACT RELEASE NO. 94400 (MARCH 11, 2022), 87 FR 15286 (MARCH 17, 2022) (SR–NASDAQ–2022–021); SECURITIES EXCHANGE ACT RELEASE NO. 94429 (MARCH 16, 2022), 87 FR 16268 (MARCH 22, 2022) (SR–MEMX–2022–05); SECURITIES EXCHANGE ACT RELEASE NO. 95414 (AUGUST 3, 2022), 87 FR 48527 (AUGUST 9, 2022) (SR–BOX–2022–23).

[10] *SEE* FINRA RULE 1210 (REGISTRATION REQUIREMENTS) AND 1240 (CONTINUING EDUCATION REQUIREMENTS).

[11] *SEE* IEX RULE 2.160(P)(A)(6).

[12] *SEE* FINRA APPROVAL ORDER, *SUPRA* NOTE 9.

[13] *ID.*

[14] *ID.*

[15] WHEN THE FINRA CE PROGRAM WAS ORIGINALLY ADOPTED IN 1995, REGISTERED PERSONS WERE REQUIRED TO COMPLETE THE REGULATORY ELEMENT ON THEIR SECOND, FIFTH AND 10TH REGISTRATION ANNIVERSARY DATES. *SEE* SECURITIES EXCHANGE ACT RELEASE NO. 35341 (FEBRUARY 8, 1995), 60 FR 8426 (FEBRUARY 14, 1995) (ORDER APPROVING FILE NOS. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; AND SR–PHLX–94–52). THE CHANGE TO THE CURRENT THREE-YEAR CYCLE WAS MADE IN 1998 TO PROVIDE REGISTERED PERSONS MORE TIMELY AND EFFECTIVE TRAINING, CONSISTENT WITH THE OVERALL PURPOSE OF THE REGULATORY ELEMENT. *SEE* SECURITIES EXCHANGE ACT RELEASE NO. 39712 (MARCH 3, 1998), 63 FR 11939 (MARCH 11, 1998) (ORDER APPROVING FILE NOS. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; AND SR–NYSE–97–33).

[16] *SEE* PROPOSED IEX RULE 2.160(P)(A)(1).

[17] *ID.*

[18] *ID.*

[19] *ID.*

[20] *SEE* PROPOSED IEX RULE 2.160(P)(A)(4).

[21] *SEE* PROPOSED IEX RULE 2.160(P)(A)(2).

[22] THE PROPOSED RULE CHANGE CLARIFIES THAT THE REQUEST FOR AN EXTENSION OF TIME MUST BE IN WRITING AND INCLUDE SUPPORTING DOCUMENTATION, WHICH IS CONSISTENT WITH CURRENT PRACTICE.

designated as inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status; [23] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations; [24] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as prescribed by the Exchange; [25] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable; [26] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[27] The Exchange notes that it also proposes to make conforming changes to IEX Rule 2.160(p)(a) to further align the IEX Rule with FINRA Rule 1240(a).

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

B. Changes to Firm Element

IEX Rule 2.160(p)(b) (Firm Element) currently requires each firm to develop and administer an annual Firm Element training program for any person registered with a Member who has direct contact with customers in the securities business of the Member relating to activity that occurs on the Exchange (a ''covered registered person'').[28] The rule requires firms to conduct an annual needs analysis to determine the appropriate training for covered registered persons.[29] Currently, at a minimum, the Firm Element must cover training in ethics and professional responsibility as well as the following items concerning securities products, services and strategies offered by the member: (1) general investment features and associated risk factors; (2) suitability and sales practice considerations; and (3) applicable regulatory requirements.[30] A firm, consistent with its needs analysis, may determine to apply toward the Firm Element other required training.[31]

To better align the Firm Element requirement with other required training, IEX proposes amending IEX Rule 2.160(p)(b) to expressly allow firms to consider training relating to the AML compliance program and the annual compliance meeting toward satisfying an individual's annual Firm Element requirement.[32] IEX also proposes amending the rule to extend the Firm Element requirement to all registered persons, including individuals who maintain solely a permissive registration consistent with Supplementary Material .01 to IEX Rule 2.160(e), thereby further aligning the Firm Element requirement with other broadly-based training requirements.[33] In conjunction with this proposed change, IEX proposes modifying the current minimum training criteria under IEX Rule 2.160(p)(b) to instead provide that the training must cover topics related to the role, activities, or responsibilities of the registered person and to professional responsibility, and removing the not role-specific current requirements that the Firm Element training at a minimum cover: (1) general investment features and associated risk factors; (2) suitability and sales practice considerations; and (3) applicable regulatory requirements.[34]

C. Termination of Registration

Currently, individuals whose registrations as representatives or principals have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[35] The two-year qualification period was adopted prior to the creation of the CE Program and was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

IEX proposes to amend IEX Rule 2.160(o) to provide that a person whose registration has been terminated for more than two years in a registration

[23] *SEE* PROPOSED IEX RULE 2.160(P)(A)(2).

[24] *ID.*

[25] *SEE* PROPOSED IEX RULE 2.160(P)(A)(3).

[26] *SEE* PROPOSED IEX RULE 2.160(P)(A)(4).

[27] *ID.*

[28] *SEE* IEX RULE 2.160(P)(B)(1).

[29] *SEE* IEX RULE 2.160(P)(B)(2).

[30] *ID.*

[31] *SEE* IEX RULE 2.160(P)(B)(4).

[32] *SEE* PROPOSED IEX RULE 2.160(P)(B)(2)(D).

[33] AS DISCUSSED, *INFRA,* THE EXCHANGE IS PROPOSING TO MAKE THREE NON-SUBSTANTIVE CONFORMING EDITS TO IEX RULE 2.160(P)(A)(1) BY CORRECTING THE REFERENCES TO ''COMMENTARY .02 TO RULE 2.160'' TO PROPERLY CITE TO ''SUPPLEMENTARY MATERIAL .01 TO RULE 2.160(E)'' AND CORRECTING REFERENCES TO ''COMMENTARY .01 TO RULE 2.160(G)'' TO PROPERLY CITE TO ''SUPPLEMENTARY MATERIAL .01 TO RULE 2.160(G).

[34] *SEE* PROPOSED IEX RULE 2.160(P)(B)(2)(B).

[35] *SEE* IEX RULE 2.160(O). THE TWO-YEAR QUALIFICATION PERIOD IS CALCULATED FROM THE DATE INDIVIDUALS TERMINATE THEIR REGISTRATION AND THE DATE FINRA RECEIVES A NEW APPLICATION FOR REGISTRATION. THE TWO-YEAR QUALIFICATION PERIOD DOES NOT APPLY TO INDIVIDUALS WHO TERMINATE A LIMITED REGISTRATION CATEGORY THAT IS A SUBSET OF A BROADER REGISTRATION CATEGORY FOR WHICH THEY REMAIN QUALIFIED. FOR INSTANCE, IT WOULD NOT APPLY TO AN INDIVIDUAL WHO MAINTAINS HIS REGISTRATION AS A GENERAL SECURITIES REPRESENTATIVE BUT WHO TERMINATES HIS REGISTRATION AS AN INVESTMENT COMPANY AND VARIABLE CONTRACTS PRODUCTS REPRESENTATIVE. SUCH INDIVIDUALS HAVE THE OPTION OF REREGISTERING IN THE MORE LIMITED REGISTRATION CATEGORY WITHOUT HAVING TO REQUALIFY BY EXAMINATION OR OBTAIN AN EXAMINATION WAIVER SO LONG AS THEY CONTINUE TO REMAIN QUALIFIED FOR THE BROADER REGISTRATION CATEGORY. FURTHER, THE TWO-YEAR QUALIFICATION PERIOD ONLY APPLIES TO THE REPRESENTATIVE—AND PRINCIPAL-LEVEL EXAMINATIONS; IT DOES NOT EXTEND TO THE SECURITIES INDUSTRY ESSENTIALS (''SIE'') EXAMINATION. THE SIE EXAMINATION IS VALID FOR FOUR YEARS, BUT HAVING A VALID SIE EXAMINATION ALONE DOES NOT QUALIFY AN INDIVIDUAL FOR REGISTRATION AS A REPRESENTATIVE OR PRINCIPAL.

category will not be required to pass a representative qualification examination appropriate to that registration category if the person has maintained his or her qualification status for that registration category in accordance with the maintaining qualifications program detailed infra.[36]

And the Exchange proposes to amend Supplementary Material .01 to IEX Rule 2.160(g), which describes the process for a waiver of examinations for individuals working for a financial services industry affiliate of a Member, to reflect that the waiver program stopped accepting applications on March 15, 2022. IEX makes this proposal because of the proposed changes to the Regulatory Element discussed *supra* that make completion of the Regulatory Element an annual requirement, which would also apply to people eligible for the financial services industry affiliate waiver program (''FSAWP'').

D. Maintenance of Qualification After Termination of Registration

The Exchange proposes adopting subparagraph (c) under IEX Rule 2.160(p) and Supplementary Material .01 and .02 to IEX Rule 2.160(p)(c) to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period set forth in IEX Rule 2.160(p)(a)(2). Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category;[37]
- Individuals could elect to participate when they terminate a registration or within two years from the termination of a registration;[38]
- Individuals would be required to complete annually all prescribed continuing education;[39]
- Individuals would have a maximum of five years in which to reregister;[40]
- Individuals who have been inactive for two consecutive years, or who become inactive for two consecutive years during their participation, would not be eligible to participate or continue;[41] and
- Individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[42]

In addition, the proposed rule change includes a re-eligibility provision that would allow individuals to regain eligibility to participate each time they reregister with a firm for a period of at least one year and subsequently terminate their registration, if they satisfy the other participation conditions and limitations.[43]

E. Conforming Changes

IEX also proposes to make conforming edits to IEX Rule 2.160 to better align the rule text with FINRA Rules 1210 and 1240. Additionally, IEX proposes to make three non-substantive conforming edits to IEX Rule 2.160(p)(a)(1) by correcting the references to ''Commentary .02 to Rule 2.160'' to properly cite to ''Supplementary Material .01 to Rule 2.160(e)'' and correcting references to ''Commentary .01 to Rule 2.160(g)'' to properly cite to ''Supplementary Material .01 to Rule 2.160(g), in order to align the terminology used in these rules with the rest of IEX's rulebook.

F. CE Program Implementation

As stated in the FINRA Approval Order, FINRA and the CE Council also plan to enhance the CE Program in other ways, and these additional enhancements do not require any changes to the FINRA rules.[44] As it relates to the rule changes themselves, the FINRA changes relating to the Maintaining Qualifications Program and the FSAWP had an implementation date of March 15, 2022.[45] The Exchange's proposed changes to the Maintaining Qualifications Program (subparagraph (c) of Rule 2.160(p)) and to the FSAWP (Supplementary Material .01 to Rule 2.160(g)) will become effective on the date this proposed rule change is filed. All other changes related to the FINRA Approval Order and to the Exchange's rules relating to the Regulatory Element, Firm Element and the two-year qualification period, will have an implementation date of January 1, 2023.[46]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Sections 6(b)[47] and 6(b)(5) of the Act,[48] 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.

As noted above, the proposed rule change seeks to align the Exchange Rules with changes to FINRA rules which have been approved by the Commission.[49] The Exchange believes the proposed rule change is consistent with the provisions of section 6(b)(5) of the Act,[50] which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect

[36] *SEE* PROPOSED IEX RULE 2.160(P)(C).

[37] *SEE* PROPOSED IEX RULE 2.160(P)(C)(1).

[38] *SEE* PROPOSED IEX RULE 2.160(P)(C)(2). INDIVIDUALS WHO ELECT TO PARTICIPATE AT THE LATER DATE WOULD BE REQUIRED TO COMPLETE, WITHIN TWO YEARS FROM THE TERMINATION OF THEIR REGISTRATION, ANY CONTINUING EDUCATION THAT BECOMES DUE BETWEEN THE TIME OF THEIR FORM U5 (UNIFORM TERMINATION NOTICE FOR SECURITIES INDUSTRY REGISTRATION) SUBMISSION AND THE DATE THAT THEY COMMENCE THEIR PARTICIPATION.

[39] *SEE* PROPOSED IEX RULE 2.160(P)(C)(3).

[40] *SEE* PROPOSED IEX RULE 2.160(P)(C).

[41] *SEE* PROPOSED IEX RULE 2.160(P)(C)(4) AND (C)(5).

[42] *SEE* PROPOSED IEX RULE 2.160(P)(C)(1) AND (C)(6).

[43] *SEE* PROPOSED SUPPLEMENTARY MATERIAL .01 TO IEX RULE 2.160(P)(C).

[44] *SEE* FINRA APPROVAL ORDER, *SUPRA* NOTE 9. AS DESCRIBED IN MORE DETAIL IN THE FINRA APPROVAL ORDER, FINRA WILL WORK WITH THE CE COUNCIL TO DEVELOP AND INCORPORATE ADDITIONAL RESOURCES IN CONNECTION WITH THE REGULATORY AND FIRM ELEMENTS. SIMILAR TO FINRA, THESE ADDITIONAL ENHANCEMENTS DO NOT REQUIRE ANY CHANGES TO THE EXCHANGE RULES.

[45] *SEE* FINRA REGULATORY NOTICE 21–41 AT *https://WWW.FINRA.ORG/RULES-GUIDANCE/NOTICES/21-41*.

[46] *ID.*

[47] 15 U.S.C. 78F(B).

[48] 15 U.S.C. 78F(B)(5).

[49] *SEE* FINRA APPROVAL ORDER, *SUPRA* NOTE 9.

[50] 15 U.S.C. 78F(B)(5).

investors and the public interest, and section 6(c)(3) of the Act,[51] which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange. The proposed changes are based on the changes approved by the Commission in the FINRA Approval Order,[52] and the Exchange is proposing to adopt such changes substantially in the same form proposed by FINRA with the notable exception that this proposed rule change does not apply retroactively, and the date FINRA implemented the changes to its CE program has already passed.[53] The Exchange believes the proposal is consistent with the Act for the reasons described above and for those reasons cited in the FINRA Approval Order.[54]

The Exchange believes the proposed changes to the Regulatory Element and Firm Element will help ensure that all registered persons receive timely and relevant training, which will, in turn, enhance compliance and investor protection. Further, the Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

Finally, the Exchange believes that the proposed conforming changes to its continuing education and registration rules will enhance compliance and investor protection by better aligning these rules with the rules changed by FINRA, as well as aligning the terminology used within these rules with the IEX Rule Book.

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 Exchange believes that the proposed rule change, which harmonizes its rules with rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[55]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), 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 this proposed rule change may become operative immediately upon filing. In addition, Rule 19b–4(f)(6)(iii)[56] requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay will allow the Exchange to implement the proposed changes to its continuing education and registration rules without delay, thereby eliminating the material differences between FINRA and Exchange continuing education rules, providing more uniform standards across the securities industry, and helping to avoid ongoing confusion for Exchange Members that are also FINRA members. For this reason, 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.[57]

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 change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–IEX–2022–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–IEX–2022–11. This file number should be included in 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

[51] 15 U.S.C. 78F(C)(3).

[52] *SEE* FINRA APPROVAL ORDER, *SUPRA* NOTE 9.

[53] OTHERWISE, IEX'S PROPOSED RULE CHANGES ARE SUBSTANTIALLY SIMILAR TO THE CHANGES IN THE FINRA APPROVAL ORDER, WITH ONLY NON-SUBSTANTIVE DIFFERENCES IN THE NOMENCLATURE AND ORGANIZATION OF IEX'S AND FINRA'S REGISTRATION REQUIREMENT AND CONTINUING EDUCATION RULES (*E.G.,* FINRA RULE 1210.07, WHICH IS PART OF FINRA'S REGISTRATION REQUIREMENT RULE, IS EQUIVALENT TO IEX RULE 2.160(P)(A)(1), WHICH IS PART OF IEX'S CONTINUING EDUCATION RULE).

[54] *SEE* FINRA APPROVAL ORDER, *SUPRA* NOTE 9.

[55] 17 CFR 240.19B–4(F)(6).

[56] 17 CFR 240.19B–4(F)(6)(III).

[57] 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).

Reference Section, 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 will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–IEX–2022–11 and should be submitted on or before January 6, 2023. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–27163 Filed 12–15–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 11942]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Peace and War: The Assyrian Conquest of Lachish'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Peace and War: The Assyrian Conquest of Lachish'' at the Lynn H. Wood Archaeological Museum, Southern Adventist University, Collegedale, Tennessee, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–27254 Filed 12–15–22; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36653]

CSX Transportation, Inc.—Corporate Family Merger Exemption—The Toledo Ore Railroad Company

CSX Transportation, Inc. (CSXT), a Class I carrier, and The Toledo Ore Railroad Company (TORCO), a Class III carrier, (collectively, the Parties) have filed a verified notice of exemption for an intra-corporate family transaction under 49 CFR 1180.2(d)(3). CSXT directly controls and operates TORCO.[1] TORCO owns approximately 2,100 feet of rail track in the State of Ohio. Under the proposed transaction, TORCO will be merged into CSXT with CSXT as the surviving corporate entity.

The Parties state that the purpose of the transaction is to reduce corporate overhead and duplication by eliminating one corporation while retaining the same assets to serve customers. In addition, CSXT will obtain certain savings as a result of the transaction and the accompanying corporate simplification.

Unless stayed, the exemption will be effective on December 31, 2022 (30 days after the verified notice was filed). The Parties state that they intend to consummate the proposed transaction on or after that date. The Parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(3).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 23, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36653, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

According to the Parties, this action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 12, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–27259 Filed 12–15–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36651]

Ventura County Railroad Company—Operation Exemption—Ventura County Railway Company, LLC

Ventura County Railroad Company (VCRR), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.41 to replace a lease between VCRR and Ventura County Railway Company, LLC (VCRC, LLC), with an operating and maintenance agreement that permits VCRR to operate as a common carrier over approximately 12.19 miles of VCRC, LLC's rail line that includes the mainline from milepost 0.0 (at the interchange with Union Pacific

[58] 17 CFR 200.30–3(A)(12).

[1] According to the verified notice, CSXT and Norfolk Southern Railway Company (NSR) have operated TORCO since 1999. CSXT states that it will continue to abide by the agreements entered with NSR governing the operations of TORCO.

Railroad Company) to approximately milepost 5.8 on the docks at Port Hueneme, and three branches: the 1.05-mile Diamond Branch; the 1.71-mile Edison Branch, and the 3.63-mile Patterson Branch in the Port of Hueneme and Oxnard, Cal. (the Line).

According to VCRR, it has been operating over the Line since 1998. *See Ventura Cnty. R.R.—Lease & Operation Exemption—Ventura Cnty. Ry.,* FD 33649 (STB served Sept. 24, 1998).[1] The verified notice states that the new agreement allows VCRR to continue operating over the Line and revises other commercial terms.

VCRR certifies that its projected annual revenue resulting from the proposed transaction will not exceed $5 million and will not exceed those that would qualify it as a Class III rail carrier. VCRR also certifies that the new agreement does not include an interchange commitment.

The transaction may be consummated on or after January 1, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than December 23, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36651, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on VCRR's representative, Eric M. Hocky, Clark Hill PLC, Two Commerce Square, 2001 Market St., Suite 2620, Philadelphia, PA 19103.

According to VCRR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 13, 2022.

[1] The notice of exemption in *Ventura County Railway—Lease & Operation Exemption,* FD 33649, slip op. at 1, identifies the end of the main line as milepost 5.7.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–27429 Filed 12–15–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FRA–2022–1712]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Flight Attendant Fatigue Risk Management Plan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves submission of Fatigue Risk Management Plans (FRMP) for flight attendants of certificate holders operating under Title 14 of the Code of Federal Regulations (CFR) part 121. The certificate holders will submit the information to be collected to the FAA for review and acceptance as required by the FAA Reauthorization Act of 2018.

DATES: Written comments should be submitted by February 14, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Voluntary Programs and Rulemaking Section AFS–260, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra L. Ray by email at: *Sandra.ray@faa.gov*; phone: 412–329–3088.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0789.

Title: Flight Attendant Fatigue Risk Management Plan.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: On October 5, 2018, Congress enacted Public Law 115–254, the FAA Reauthorization Act of 2018 (''the Act''). Section 335(b) of the Act required each certificate holder operating under 14 CFR part 121 to submit to the FAA for review and acceptance a Fatigue Risk Management Plan (FRMP) for each certificate holder's flight attendants. Section 335(b) contains the required contents of the FRMP, including a rest scheme consistent with current flight time and duty period limitations and development and use of methodology to continually assess the effectiveness of the ability of the plan to improve alertness and mitigate performance errors. Section 335(b) requires that each certificate holder operating under 14 CFR part 121 shall update its FRMP every two years and submit the update to the FAA for review and acceptance. Further, section 335(b) of the Act requires each certificate holder operating under 14 CFR part 121 to comply with its FRMP that is accepted by the FAA.

Respondents: 55 Part 121 Air Carriers and 2 new entrants

Frequency: 1 initial submission and then updates every 2 years

Estimated Average Burden per Response: 20 Hours for Initial Submission, 5 Hours for Updates.

Estimated Total Annual Burden: 40 Hours per year for Initial Submission, 275 Hours per year for updates.

Issued in Washington, DC on December 14, 2022.

Sandra L. Ray,

Aviation Safety Inspector, AFS–260.

[FR Doc. 2022–27300 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0036]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 13 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on November 25, 2022. The exemptions expire on November 25, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2022–0036, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On October 14, 2024, FMCSA published a notice announcing receipt of applications from 13 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 198). The public comment period ended on November 14, 2022, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

III. Discussion of Comments

FMCSA received two comments in this proceeding. Both comments were submitted anonymously inquiring about how long it will take for them to receive their exemptions. Exemptions are granted and mailed to the applicants mentioned in this notice upon publication in the **Federal Register**.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, including the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety,'' the 2014 doctoral dissertation by Birgitta Thorslund from the Department of Behavioural Sciences and Learning at Linkoping University, Sweden, entitled ''Effects of Hearing Loss on Traffic Safety and Mobility,'' and FMCSA's experience with hearing exemption holders. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 13 exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Frank Darracott (FL)
Tonette Garza (FL)
Andrew Gibson (TX)
Tyler Harmount (CA)
Maxwell Latin (MD)
Paradise Larizza (OR)
Hank Moore (KS)
Mayur Motiwale (NJ)
Michael Reed (AR)
Chad Smith (OH)
Justin Turner (TX)
Cody Upchurch (TX)
Thomas Williamson (IL)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–27323 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0223]

Agency Information Collection Activities; Renewal of a Currently Approved Information Collection: Unified Registration System, FMCSA Registration/Updates

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew the ICR titled ''Unified Registration System, FMCSA Registration/Updates,'' OMB Control No. 2126–0051. This ICR applies to new registrants seeking initial operating authority from FMCSA. New registrants seeking operating authority must use online Form MCSA–1, accessible via the Unified Registration System (URS).

DATES: Comments on this notice must be received on or before February 14, 2023.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket Number FMCSA–2022–0223 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you 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. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Office of Registration, Chief, Registration, Licensing, and Insurance Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–385–2367; *jeff.secrist@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: FMCSA registers for-hire motor carriers of regulated commodities and of passengers, under 49 U.S.C. 13902(a); surface freight forwarders, under 49 U.S.C. 13903; property brokers, under 49 U.S.C. 13904; and certain Mexico-domiciled motor carriers, under 49 U.S.C. 13902(c). These motor carriers may conduct transportation services in the United States only if they are registered with FMCSA. Each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation (Secretary) determines by regulations.

The final rule titled ''Unified Registration System,'' (78 FR 52608) dated August 23, 2013, implemented statutory provisions for an online registration system for entities that are subject to FMCSA's licensing, registration, and certification regulations. URS streamlines the registration process and serves as a clearinghouse and repository of information on motor carriers, brokers, freight forwarders, intermodal equipment providers, hazardous materials safety permit applicants, and cargo tank facilities required to register with FMCSA. When developing URS, FMCSA planned that the OP–1 series of forms (except for OP–1(MX)) would ultimately be folded into one overarching form (MCSA–1), which would be used by all motor carriers seeking authority.

FMCSA began a phased rollout of URS in 2015. The first phase, which became effective on December 12, 2015, impacts only first-time applicants seeking an FMCSA-issued registration. FMCSA had planned subsequent rollout phases for existing registrants; however, there have been substantial delays, and subsequent phases have not been rolled out to date.

On January 17, 2017, FMCSA issued a final rule titled ''Unified Registration System; Suspension of Effectiveness,'' which indefinitely suspended URS effectiveness dates for existing registrants only (82 FR 5292). Pursuant to this final rule, FMCSA is still

accepting forms OP–1, OP–1(P), OP–1(FF), and OP–1(NNA) for existing registrants wishing to apply for additional authorities. Separately, FMCSA requires Form OP–1(MX) for Mexico-domiciled carriers that wish to operate beyond the U.S. municipalities on the U.S.-Mexico border and their commercial zones.

As described above, only first-time applicants seeking an FMCSA-issued registration must apply for authority via URS, using Form MCSA–1. Under URS, all forms described in the current ICR, except OP–1(MX), are folded into Form MCSA–1. Information collection activities associated with the OP–1 series of forms are covered under a different ICR, titled ''Licensing Applications for Motor Carrier Operating Authority,'' OMB Control No. 2126–0016.

Form MCSA–1 requests information to identify the applicant, the nature and scope of its proposed operations, safety-related details, and information regarding the drivers and vehicles it plans to use in U.S. operations. FMCSA and the States use registration information collected via Form MCSA–1 to track motor carriers, freight forwarders, brokers, and other entities they regulate. Registering motor carriers is essential to being able to identify carriers so that their safety performance can be tracked and evaluated. The data make it possible to link individual trucks to the responsible motor carrier, thus implementing the mandate under 49 U.S.C. 31136(a)(1); that is, ensuring that CMVs are maintained and operated safely). In general, registration information collected via Form MCSA–1 informs prioritization of the Agency's activities and aids in assessing and statistically analyzing the safety outcomes of those activities.

The current information collection supports the DOT Strategic Goal of Safety. It streamlines registration processes and ensures that FMCSA can more efficiently track motor carriers, freight forwarders, brokers, and other entities regulated by the Agency.

Title: Unified Registration System, FMCSA Registration/Updates.

OMB Control Number: 2126–0051.

Type of Request: Renewal of a currently approved ICR.

Respondents: Carrier compliance officer or equivalent from transportation entities subject to FMCSA's licensing, registration, and certification regulations.

Estimated Number of Respondents: 283,857 (94,619 annualized).

Estimated Time per Response: 1.34 hours.

Expiration Date: April 30, 2023.

Frequency of Response: One-time information collection.

Estimated Total Annual Burden: 380,368 (126,789 annualized).

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–27303 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0039]

Agency Information Collection Activity Under OMB Review: Passenger Ferry Grant Program, Electric or Low-Emitting Ferry Pilot Program and Ferry Service for Rural Communities

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

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before January 17, 2023.

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.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 27, 2022, FTA published a 60-day notice (87 FR 58638) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. FTA began the All Stations Accessibility Program (ASAP) in June 2022 under OMB emergency approval and is seeking renewal of this approval through OMB's standard PRA clearance process. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should

submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: Passenger Ferry Grant Programs, Electric or Low Emitting Ferry Pilot Program, and Ferry Service for Rural Communities Program.

OMB Control Number: 2132–0583.

Background: The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act, established two new grant programs Electric or Low-Emitting Ferry Pilot Program (IIJA 71102) and Ferry Service for Rural Communities (IIJA 71103). Funding for these two new programs was announced on July 11, 2022, in a joint Notice of Funding Opportunity (NOFO) with FTA's existing Passenger Ferry Grant Program (49 U.S.C. 5307(h)). The Passenger Ferry Grant Program provides competitive funding for projects that support passenger ferry systems in urbanized areas. The Electric or Low-Emitting Ferry Pilot Program makes Federal funds available competitively to projects that support the purchase of electric or low-emitting ferry vessels. The Ferry Service for Rural Communities Program makes Federal funds available competitively to States and territories to ensure basic essential ferry service is provided to rural areas. FTA will use an online, web-based grant management system to collect the following information:

- Legal name of the applicant (*i.e.,* the legal name of the business entity), as well as any other identities under which the applicant may be doing business.
- Address, telephone, and email contact information for the applicant.
- Legal authority under which the applicant is established.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications).
- DOT may also require the identity of external parties involved in preparation of the application, including outside accountants, attorneys, or auditors who may be assisting the business entity that is applying for assistance under this program.
- The specific statutory criteria that the applicant meets for eligibility under this program. The statute defines eligible applicants to include municipalities or community owned utilities excluding for-profit entities. Accordingly, DOT will require the applicant to identify which of these categories they meet, and how.
- Location where the applicant was legally established, created, or organized to do business. This information and supporting documentation will be required to demonstrate how the applicant meets the statutory requirement to be ''established, created, or organized in the United States or under the laws of the United States.''
- Other identification numbers, including but not limited to the Employer/Taxpayer Identification Number (EIN/TIN), Data Universal Numbering System (DUNS) number, Unique Entity Identifier under 2 CFR part 25, etc. All applicants will be required to have pre-registered with the System for Award Management (SAM) at *https://sam.gov/SAM/.*
- Description of the applicant's business operations, in sufficient detail to demonstrate how the applicant meets the statutory requirement as a municipality or community owned utility.
- Responses to the evaluation criteria and selection consideration statements as outlined in the NOFO.

FTA estimates that it will take applicants approximately 10 hours to complete the application process. FTA estimates that grant recipients will spend another 4 hours, annually, submitting post-award reports. The burden estimate below accounts for the total amount of effort involved.

Respondents: Public transportation providers, local governmental entities, States, and federally recognized Tribes that operate a public ferry system.

Estimated Average Total Annual Respondents: 30.

Estimated Average Total Responses: 60.

Estimated Annual Burden Hours: 420.

Estimated Annual Burden per Respondent: 14 Hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–27358 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0040]

Agency Information Collection Activity Under OMB Review: All Stations Accessibility Program

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

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describe the nature of the information collection and their expected burdens.

DATES: Comments must be submitted on or before January 17, 2023.

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.

Comments are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tia Swain, Office of Administration, Management Planning Division, 1200 New Jersey Avenue SE, Mail Stop TAD–10, Washington, DC 20590 (202) 366–0354 or *tia.swain@dot.gov.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 27, 2022, FTA published a 60-day notice (87 FR 58637) in the **Federal Register** soliciting comments on the ICR that the agency was seeking OMB approval. FTA received no comments after issuing this 60-day notice. FTA began the All Stations Accessibility Program (ASAP)

in June 2022 under OMB emergency approval and is seeking renewal of this approval through OMB's standard PRA clearance process. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The requirements are being submitted for clearance by OMB as required by the PRA.

Title: All Stations Accessibility (ASAP).

OMB Control Number: 2132–0582.

Background:

The Bipartisan Infrastructure Law, enacted as the Infrastructure Investment and Jobs Act (Pub. L. 117–58), established a new All Stations Accessibility Program (ASAP) to provide Federal competitive grants to assist eligible entities in financing capital and planning projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems for people with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities for passenger use that meet or exceed the new construction standards of Title II of the Americans with Disabilities Act of 1990. Funding under this program can be used to repair, improve, modify, retrofit, or relocate infrastructure of legacy stations or facilities for passenger use, including load-bearing members that are an essential part of the structural frame, to meet or exceed current ADA standards for buildings and facilities; or planning related to pursuing public transportation accessibility projects, assessments of accessibility, or assessments of planned modifications to legacy stations or facilities for passenger use.

FTA will use an online, grant management system to collect the following information:

- Legal name of the applicant (*i.e.,* the legal name of the business entity), as well as any other identities under which the applicant may be doing business.
- Address, telephone, and email contact information for the applicant.
- Legal authority under which the applicant is established.
- Name and title of the authorized representative of the applicant (who will attest to the required certifications).
- DOT may also require the identity of external parties involved in preparation of the application, including outside accountants, attorneys, or auditors who may be assisting the business entity that is applying for assistance under this program.
- The specific statutory criteria that the applicant meets for eligibility under this program. The statute defines eligible applicants as state or local government authorities. Accordingly, DOT will require the applicant to identify which of these categories they meet, and how.
- Other identification numbers, including but not limited to the Employer/Taxpayer Identification Number (EIN/TIN), Data Universal Numbering System (DUNS) number, Unique Entity Identifier under 2 CFR part 25, etc. All applicants will be required to have pre-registered with the System for Award Management (SAM) at *https://sam.gov/SAM/.*
- Description of the applicant's business operations, in sufficient detail to demonstrate how the applicant meets the statutory requirement as a municipality or community owned utility.
- Responses to evaluation criteria listed in the Notice of Funding Opportunity.

FTA estimates that it will take applicants approximately 10 hours to complete the application process. FTA estimates that grant recipients will spend another 4 hours, annually, submitting post-award reports. The burden estimate below accounts for the total amount of effort involved.

Respondents: States and Local Government Authority.

Estimated Average Total Annual Respondents: 20.

Estimated Average Total Responses: 40.

Estimated Annual Burden Hours: 280.

Estimated Annual Burden Hours per Respondent: 14 Hours.

Frequency: Annually.

Nadine Pembleton,

Deputy Associate Administrator, Office of Administration.

[FR Doc. 2022–27357 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[DOT–NHTSA–2022–0104]

National Emergency Medical Services Advisory Council Notice of Public Meeting

AGENCY: National Highway Traffic Safety Administration, U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Emergency Medical Services Advisory Council (NEMSAC).

DATES: This meeting will be held in-person and simultaneously transmitted via virtual interface. It will be held on February 15–16, 2023, from 12 p.m. to 5 p.m. ET. Pre-registration is required to attend this meeting. A link permitting access to the meeting will be distributed to registrants within 24 hours of the meeting start time. If you wish to speak during the meeting, you must submit a written copy of your remarks to DOT by February 2, 2023.

Notifications containing specific details for this meeting will be published in the **Federal Register** no later than 30 days prior to the meeting dates.

ADDRESSES: General information about the Council is available on the NEMSAC internet website at *www.ems.gov*. The registration portal and meeting agenda will be available on the NEMSAC internet website at *www.ems.gov* at least one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Clary Mole, EMS Specialist, National Highway Traffic Safety Administration, U.S. Department of Transportation is available by phone at (202) 868–3275 or by email at *Clary.Mole@dot.gov*. Any committee-related requests should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The NEMSAC was established pursuant to Section 31108 of the Moving Ahead for Progress in the 21st Century (MAP–21) Act of 2012, under the Federal Advisory Committee Act. The purpose of NEMSAC is to serve as

a nationally recognized council of emergency medical services (EMS) representatives to provide advice and consult with:

a. The Federal Interagency Committee on Emergency Medical Services (FICEMS) on matters relating to EMS issues; and

b. The Secretary of Transportation on matters relating to EMS issues affecting DOT.

The NEMSAC provides an important national forum for the non-Federal deliberation of national EMS issues and serves as a platform for advice on DOT's national EMS activities. NEMSAC also provides advice and recommendations to the FICEMS. NEMSAC is authorized under Section 31108 of the MAP–21 Act of 2012, codified at 42 U.S.C. 300d–4.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Updates from Federal Emergency Medical Services Liaisons
- Updates on the FICEMS Initiatives
- Updates on NHTSA Initiatives
- Subcommittee Reports

III. Public Participation

This meeting will be open to the public. We are committed to providing equal access to this meeting for all participants. Persons with disabilities in need of an accommodation should send a request to the individual in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than February 2, 2023.

A period of time will be allotted for comments from members of the public joining the meeting. Members of the public may present questions and comments to the Council using the live chat feature available during the meeting. Members of the public may also submit materials, questions, and comments in advance to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Members of the public wishing to reserve time to speak directly to the Council during the meeting must submit a request. The request must include the name, contact information (address, phone number, and email address), and organizational affiliation of the individual wishing to address NEMSAC; it must also include a written copy of prepared remarks and must be forwarded to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than February 2, 2023.

All advance submissions will be reviewed by the Council Chairperson and Designated Federal Officer. If approved, advance submissions shall be circulated to NEMSAC representatives for review prior to the meeting. All advance submissions will become part of the official record of the meeting.

Authority: 42 U.S.C. 300d–4(b); 49 CFR part 1.95(i)(4).

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2022–27354 Filed 12–15–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing the name of persons whose property and interests in property have been unblocked or whose identifying information currently included on the SDN List has been updated.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 12, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authorities listed below.

Individuals

1. CHIMUKA, Obey, 25 Northolt Bluffhill, Harare, Zimbabwe; DOB 15 Jan 1975; POB Makoni, Zimbabwe; nationality Zimbabwe; citizen Zimbabwe; Gender Male; Passport EN899508 (Zimbabwe) expires 15 Mar 2026; National ID No. 58158115R42 (Zimbabwe) (individual) [ZIMBABWE] (Linked To: TAGWIREI, Kudakwashe Regimond; Linked To: FOSSIL AGRO; Linked To: FOSSIL CONTRACTING).

Designated pursuant to section 1(a)(viii) of E.O. 13469 for having acted or purported to act for or on behalf of, directly or indirectly, Kudakwashe Regimond Tagwirei, Fossil Agro and Fossil Contracting, persons whose property and interests in property are blocked pursuant to E.O. 13469.

2. MAGWIZI, Nqobile, Unwinsdale Dr., Corner Luna Road, Plot 134, Harare, Zimbabwe; DOB 22 Jan 1979; POB Gokwe, Zimbabwe; nationality Zimbabwe; citizen Zimbabwe; Gender Male; Passport FN557746 (Zimbabwe) expires 19 Feb 2028; National ID No. 6310449T26 (Zimbabwe); Project Coordinator Sakunda Holdings (individual) [ZIMBABWE] (Linked To: SAKUNDA HOLDINGS).

Designated pursuant to section 1(a)(viii) of E.O. 13469 for having acted or purported to act for or on behalf of, directly or indirectly, Sakunda Holdings, a person whose property and interests in property are blocked pursuant to E.O. 13469.

3. MNANGAGWA, JR., Emmerson Dambudzo, 41 Dacomb Drive, Chisipite, Harare, Zimbabwe; DOB 20 Dec 1984; POB Harare, Zimbabwe; nationality Zimbabwe; citizen Zimbabwe; Gender Male; Passport AD005865 (Zimbabwe) expires 25 Feb 2023; National ID No. 632149596A67 (Zimbabwe) (individual) [ZIMBABWE] (Linked To: MNANGAGWA, Emmerson Dambudzo).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13391, for being an immediate family member of Emmerson Mnangagwa, person whose property and interests in property are blocked pursuant to this order.

4. MPUNGA, Sandra, 4 Luna Road, Borrowdale, Harare, Zimbabwe; DOB 19 Nov 1971; POB Mutasa, Zimbabwe; nationality Zimbabwe; citizen Zimbabwe; Gender Female; Passport DN056388 (Zimbabwe) expires 16 Oct 2022; National ID No. 63846615T50 (Zimbabwe) (individual) [ZIMBABWE] (Linked To: TAGWIREI, Kudakwashe Regimond).

Designated pursuant to section 1(a)(vi) of E.O. 13469 for being the spouse of Kudakwashe Regimond Tagwirei, a person whose property and interests in property are blocked pursuant to E.O. 13469.

Entities

1. FOSSIL AGRO (a.k.a. FOSSIL AGRO (PRIVATE) LIMITED), 42 McChlery Avenue, Eastlea, Harare, Zimbabwe; 521 Access Road, Msasa Industrial Area, Harare, Zimbabwe; website *https://fossilagro.com/;* Organization Type: Post-harvest crop activities [ZIMBABWE].

Designated pursuant to section 1(a)(vii) of E.O. 13469 for having materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the Government of Zimbabwe.

2. FOSSIL CONTRACTING, 5 Loreley Crescent, Harare, Zimbabwe; 5 Loreley Close, Beverly, Msasa, Harare, Zimbabwe; website *https://www.fossilcontracting.org/;* Organization Established Date 01 Jan 2010; Organization Type: Construction of other civil engineering projects; Business Number 200114146 (Zimbabwe); Registration Number 5268/2011 (Zimbabwe) [ZIMBABWE].

Designated pursuant to section 1(a)(vii) of E.O. 13469 for having materially assisted, sponsored, or provided financial, material, logistical, or technical support for, or goods or services in support of, the Government of Zimbabwe.

On December 12, 2022, OFAC determined that determined that the following persons should be removed from the SDN List under the relevant sanctions authority listed below and that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked.

Individuals

1. BUKA, Flora; DOB 25 Feb 1968; Minister of State for Special Affairs, Land and Resettlement Program (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

2. CHAPFIKA, David; DOB 07 Apr 1957; Passport ZL037165 (Zimbabwe); Deputy Minister of Finance (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

3. CHIHOTA, Phineas; DOB 23 Nov 1950; Deputy Minister of Industry and International Trade (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

4. CHIMUTENGWENDE, Chenhamo Chakezha Chen; DOB 28 Aug 1943; Passport ZD001423 (Zimbabwe); alt. Passport AN288614 (Zimbabwe); Minister of State for Public and Interactive Affairs (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

5. CHINAMASA, Gamuchirai, 2 Honeybear Lane, Borrowdale, Zimbabwe; DOB 11 Nov 1991; Passport AN634603 (Zimbabwe); Child of Patrick Chinamasa (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

6. CHOMBO, Ignatius Morgan; DOB 01 Aug 1952; Passport AD000500 (Zimbabwe); Minister of Local Government, Public Works and National Housing (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

7. DAMASANE, Abigail; DOB 27 May 1952; Deputy Minister for Women's Affairs, Gender and Community Development (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

8. GOCHE, Nicholas Tasunungurwa; DOB 01 Aug 1946; Minister of Public Works, Labour and Social Welfare (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

9. GONO, Hellin Mushanyuri; DOB 06 May 1962; Passport AN548299 (Zimbabwe); Spouse of Gideon Gono (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

10. GUMBO, Aleck Rugare Ngidi, Montrolse Farm, PO Box 1175, Gweru, Zimbabwe; DOB 08 Mar 1940; Minister of Economic Development (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

11. LANGA, Andrew; DOB 13 Jan 1965; Deputy Minister of Environment and Tourism (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

12. MACHAYA, Jaison Max Kokerai; DOB 13 Jun 1952; Member of Parliament for Gokwe Kana (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

13. MARUMAHOKO, Rueben, 11 Douglas Clark Avenue, The Grange, Harare, Zimbabwe; DOB 04 Apr 1948; Deputy Minister for Home Affairs (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

14. MURERWA, Herbert Muchemwa; DOB 31 Jul 1941; Passport AD001167 (Zimbabwe); Minister of Finance (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

15. MURERWA, Ruth Chipo, 321 Ard-Na-Lea Close, Glen Lorne, Chisipite, Zimbabwe; DOB 27 Jul 1947; Passport AD001244 (Zimbabwe) expires 19 Aug 2009; Spouse of Herbert Murerwa (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

16. MUTIWEKUZIVA, Kenneth Keparadza; DOB 27 May 1948; Deputy Minister for Small and Medium Enterprise Development (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

17. SIBANDA, Levy; Deputy Police Commissioner (individual) [ZIMBABWE].

Pursuant to Sec. 6 of E.O. 13288 as amended by E.O. 13391, circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property or interests in property of that person are therefore no longer blocked pursuant to section 1(a) of E.O. 13288.

Dated: December 12, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–27315 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form T, Forest Activities Schedule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form T, Forest Activities Schedule.

DATES: Written comments should be received on or before February 14, 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 Control No. 1545–1276 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov*.

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Forest Activities Schedule.

OMB Number: 1545–0007.

Form Number: Form T.

Abstract: Taxpayers use Form T to provide information on timber accounts when a sale or deemed sale under Internal Revenue Code (IRC) sections 631(a), 631(b), or other exchange has occurred during the tax year. The IRS uses this information to determine if the taxpayer reported the correct amount of income and deductions.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Responses: 10.

Estimated Time per Respondent: 36 hours, 11 minutes.

Estimated Total Annual Burden Hours: 362.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–27364 Filed 12–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on TD 8649, Netting Rule for Certain Conversion 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 general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning final regulations in Treasury Decision (TD) 8649, Netting Rule for Certain Conversion Transactions.

DATES: Written comments should be received on or before February 14, 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 Control No. 1545–1276 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: TD 8649, Netting Rule for Certain Conversion Transactions.

OMB Number: 1545–1452.

Abstract: Internal Revenue Code (IRC) section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. Treasury Regulations section 1.1258–1 provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized. To be eligible for netting relief, the taxpayer must identify on its books and records all the positions that are part of the conversion transaction before the close of the day on which the positions become part of the conversion transaction.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, business or other for-profit organizations.

Estimated Number of Responses: 50,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 5,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long

as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–27362 Filed 12–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 3520 and 3520–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning annual return to report transactions with foreign trusts and receipt of certain foreign gifts and for annual information return of a foreign trust with a U.S. owner.

DATES: Written comments should be received on or before February 14, 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 1545–0159 or Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts and Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts and Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

OMB Number: 1545–0159.

Form Numbers: Forms 3520 and 3520–A.

Abstract: U.S. persons file Form 3520 to report certain transactions with foreign trusts, ownership of foreign trusts under the rules of Internal Revenue Code sections 671 through 679, and receipt of certain large gifts or bequests from certain foreign persons. Form 3520–A is the annual information return of a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust under the grantor trust rules.

Current Actions: There are no changes to the form at this time, we are submitting this collection for approval.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,820.

Estimated Time Per Respondent: 51 hours, 56 minutes.

Estimated Total Annual Burden Hours: 94,537.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2022.

Molly J. Stasko,

Supervisory Tax Analyst.

[FR Doc. 2022–27246 Filed 12–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on TD 7918, Creditability of Foreign Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning final regulations in Treasury Decision (TD) 7918 relating to the creditability of foreign taxes.

DATES: Written comments should be received on or before February 14, 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 Control No. 1545–1276 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: TD 7918, Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Regulation Project Number: TD 7918.

Abstract: Internal Revenue Code (IRC) section 901 allows a taxpayer a tax credit for the amount of any income, war profits, or excess profits taxes it has paid or accrued during the taxable year. Treasury Regulations section 1.901–2A(e) allows a dual capacity taxpayer to apply the safe harbor formula to qualifying levies when determining the credit. Section 1.901–2A(d) requires the taxpayer to provide a statement electing to use the safe harbor formula.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, estates, and trusts.

Estimated Number of Responses: 120.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 41.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 13, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–27363 Filed 12–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning generation-skipping transfer tax return for distributions.

DATES: Written comments should be received on or before February 14, 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 1545–1144 or Generation-Skipping Transfer Tax Return for Distributions.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax Return for Distributions.

OMB Number: 1545–1144.

Form Number: Form 706–GS (D).

Abstract: Form 706–GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code section 2601. IRS uses the information to verify that the tax has been properly computed.

Current Actions: There are no changes being made to the form that would affect burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 59 minutes.

Estimated Total Annual Burden Hours: 980 hours.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2022.

Molly J. Stasko,

Supervisory Tax Analyst.

[FR Doc. 2022–27245 Filed 12–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection Tools

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Currently, the IRS is soliciting comments concerning Form 972, Consent of Shareholder To Include Specific Amount in Gross Income.

DATES: Written comments should be received on or before February 14, 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 1545–0043 or Consent of Shareholder To Include Specific Amount in Gross Income in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202)317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consent of Shareholder To Include Specific Amount in Gross Income.

OMB Number: 1545–0043.

Form Number: 972.

Abstract: Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 3 hrs, 51 min.

Estimated Total Annual Burden Hours: 385.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 12, 2022.

Molly J. Stasko,

Supervisory Tax Analyst.

[FR Doc. 2022–27247 Filed 12–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Survey of U.S. Ownership of Foreign Securities as of December 31, 2022

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

Summary: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2022. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. The reporting form SHCA (2022) and instructions may be printed from the internet at:*https://home.treasury.gov/data/treasury-international-capital-tic-system-home-page/tic-forms-instructions/forms-shc.*

Definition: Pursuant to 22 U.S.C. 3102(3) and (4): a person means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency); and a United States person means any person resident in the United States or subject to the jurisdiction of the United States.

Who Must Report: The reporting panel is based upon the data submitted for the 2021 Benchmark survey and the June 2022 TIC report ''Aggregate Holdings of Long-Term Securities by U.S. and Foreign Residents'' (TIC SLT). Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What to Report: This report will collect information on holdings by U.S. residents of foreign securities, including equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

How to Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the website address given above in the Summary. Completed reports can be submitted electronically or via email at *SHC.help@ny.frb.org.* Inquiries can be made to the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or email: *SHC.help@ny.frb.org.* Inquiries can also be made to Dwight Wolkow at (202) 622–1276, email: *comments2TIC@do.treas.gov*.

When to Report: Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 3, 2023.

Paperwork Reduction Act Notice: This data collection has been approved by

the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0146. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 49 hours per respondent for end-investors and custodians that file Schedule 3 reports covering their foreign securities entrusted to U.S. resident custodians, 146 hours per respondent for large end-investors filing Schedule 2 reports, and 546 hours per respondent for large custodians of securities filing Schedule 2 reports. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention: Administrator, International Portfolio Investment Data Reporting Systems, Room 1050, Washington, DC 20220, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. In light of the current pandemic, please also email comments to Dwight Wolkow at: *comments2TIC@do.treas.gov.*

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 2022–27258 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Family, Caregiver, and Survivor Advisory Committee, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, that the Veterans' Family, Caregiver and Survivor Advisory Committee will meet in-person on January 25–26, 2023. The meeting will be held at the American Red Cross, 430 17th Street NW, Washington, DC 20006. The meeting sessions will begin and end as follows:

Date	Time
January 25, 2023	9 a.m. to 4:30 p.m. EST.
January 26, 2023	9 a.m. to 2 p.m. EST.

The meetings are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters related to: the need of Veterans' families, caregivers and survivors across all generations, relationships, and Veterans status; the use of VA care, benefits and memorial services by Veterans' families, caregivers and survivors, and opportunities for improvements to the experience using such services; VA policies, regulations, and administrative requirements related to the transition of Servicemembers from the Department of Defense (DoD) to enrollment in VA that impact Veterans' families, caregivers and survivors; and factors that influence access to, quality of, and accountability for services, benefits and memorial services for Veterans' families, caregivers and survivors.

On Wednesday, January 25 and Thursday, January 26, 2023, the agenda will include opening remarks from the Committee Chair and the Chief Veterans Experience Officer. There will be updates on the Caregiver Support Program, PACT Act and briefings by the subcommittee chairs on the proposed recommendations for approval by the Committee.

Time will be allocated for receiving public comments on January 25, 2023, 3:30 p.m. to 4:30 p.m. EST. Individuals wishing to make public comments should contact Dr. Betty Moseley Brown at (210) 392–2505 or at *VEOFACA@va.gov* and are requested to submit a 1–2 page summary of their comments for inclusion in the official meeting record. In the interest of time, each speaker will be held to a 5-minute time limit. The Committee will accept written comments from interested parties on issued outlined in the meeting agenda until Friday, January 20, 2023 at 5 p.m. EST. Each public speaker will receive a confirmed time for speaking via email from the Designated Federal Official.

Members of the public interested in attending should submit their name to *VEOFACA@va.gov* by Friday, January 20, 2023, to help expedite the sign-in process. Any member of the public seeking additional information should contact Betty Moseley Brown, Designated Federal Official, at *Betty.MoseleyBrown@va.gov* or (210) 392–2505.

Dated: December 12, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–27243 Filed 12–15–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Friday,
No. 241 December 16, 2022

Part II

Securities and Exchange Commission

17 CFR Parts 270 and 274
Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N–PORT Reporting; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release Nos. 33–11130; IC–34746; File No. S7–26–22]

RIN 3235–AM98

Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N–PORT Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to its current rules for open-end management investment companies (''open-end funds'') regarding liquidity risk management programs and swing pricing. The proposed amendments are designed to improve liquidity risk management programs to better prepare funds for stressed conditions and improve transparency in liquidity classifications. The amendments are also designed to mitigate dilution of shareholders' interests in a fund by requiring any open-end fund, other than a money market fund or exchange-traded fund, to use swing pricing to adjust a fund's net asset value (''NAV'') per share to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. In addition, to help operationalize the proposed swing pricing requirement, and to improve order processing more generally, the Commission is proposing a ''hard close'' requirement for these funds. Under this requirement, an order to purchase or redeem a fund's shares would be executed at the current day's price only if the fund, its designated transfer agent, or a registered securities clearing agency receives the order before the pricing time as of which the fund calculates its NAV. The Commission also is proposing amendments to reporting and disclosure requirements on Forms N–PORT, N–1A, and N–CEN that apply to certain registered investment companies, including registered open-end funds (other than money market funds), registered closed-end funds, and unit investment trusts. The proposed amendments would require more frequent reporting of monthly portfolio holdings and related information to the Commission and the public, amend certain reported identifiers, and make other amendments to require additional information about funds' liquidity risk management and use of swing pricing.

DATES: Comments should be received on or before February 14, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–26–22 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–26–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments 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 we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on our website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Mykaila DeLesDernier, Y. Rachel Kuo, James Maclean, Nathan R. Schuur, Senior Counsels; Angela Mokodean, Branch Chief; Brian M. Johnson, Assistant Director, at (202) 551–6792 or *IM-Rules@sec.gov,* Investment Company Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend the following rules and forms:

Commission reference	CFR citation (17 CFR)
Investment Company Act of 1940 (''Act'' or ''Investment Company Act''): [1]	
Rule 22c–1	§ 270.22c–1.
Rule 22e–4	§ 270.22e–4.
Rule 30b1–9	§ 270.30b1–9.
Rule 31a–2	§ 270.31a–2.
Form N–PORT	§ 274.150.
Form N–CEN	§ 274.101.
Securities Act of 1933 (''Securities Act'') [2] and Investment Company Act:	
Form N–1A	§§ 239.15A and 274.11A.

Table of Contents

[1] 15 U.S.C. 80a–1 *et seq.* Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act are to title 17, part 270 of the Code of Federal Regulations [17 CFR part 270].

[2] 15 U.S.C. 77a *et seq.*

I. Introduction

When the Investment Company Act was enacted, a primary concern was the potential for dilution of shareholders' interests in open-end investment companies.[3] In addition, the ability of shareholders to redeem their shares in an investment company on demand is a defining feature of open-end investment funds.[4] Section 22 of the Act reflects these concerns and priorities. For example, section 22(c) gives the Commission broad powers to regulate the pricing of redeemable securities for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of outstanding fund shares.[5] Section 22(e) of the Act establishes a shareholder right of prompt redemption in open-end funds by requiring such funds to make payments on shareholder redemption requests within seven days of receiving the request.[6]

The open-end fund industry has grown significantly over the last six years as more Americans rely on funds to gain exposure to financial markets while having the ability to quickly redeem their investments.[7] At the end of 2021, assets in open-end funds (excluding money market funds) were approximately $26 trillion, having grown from about $15 trillion at the end of 2015.[8] An estimated 102.6 million Americans owned mutual funds at the end of 2021, up from an estimated 91 million individual investors at the end of 2015.[9] Open-end funds continue to be an important part of the financial markets, and as those markets have grown more complex, some funds are pursuing more complex investment strategies, including fixed income and

[3] *See* Investment Trusts and Investment Companies: Hearings on S. 3580 before a Subcomm. of the Senate Comm. on Banking and Currency, 76th Cong., 3d Sess. (1940), at 37, 137–145 (stating that among the abuses that served as a backdrop for the Act were practices that resulted in substantial dilution of investors' interests, including backward pricing by fund insiders to increase investment in the fund and thus enhance management fees, but causing dilution of existing investors in the fund) (statements of Commissioner Healy and Mr. Bane).

[4] *See* Investment Trusts and Investment Companies: Letter from the Acting Chairman of the SEC, A Report on Abuses and Deficiencies in the Organization and Operation of Investment Trusts and Investment Companies (1939), at n.206 (''[T]he salient characteristic of the open-end investment company. . .was that the investor was given a right of redemption so that he could liquidate his investment at or about asset value at any time that he was dissatisfied with the management or for any other reason.''). An open-end investment company is required to redeem its securities on demand from shareholders at a price approximating their proportionate share of the fund's net asset value (''NAV'') next calculated by the fund after receipt of such redemption request. *See* section 22 of the Act; rule 22c–1.

[5] Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company related to the method of computing purchase and redemption prices of redeemable securities for the purpose of eliminating or reducing so far as reasonably practicable any dilution of the value of other outstanding securities of the fund or any other result of the purchase or redemption that is unfair to investors in the fund's other outstanding securities. *See also* section 22(a) of the Act (authorizing a securities association registered under section 15A of the Securities Exchange Act of 1934 (''Exchange Act'') similarly to prescribe the prices at which a member may purchase or redeem an investment company's redeemable securities for the purposes of addressing dilution).

[6] Section 22(e) of the Act provides, in part, that no registered investment company shall suspend the right of redemption or postpone the date of payment upon redemption of any redeemable security in accordance with its terms for more than seven days after tender of the security absent specified unusual circumstances.

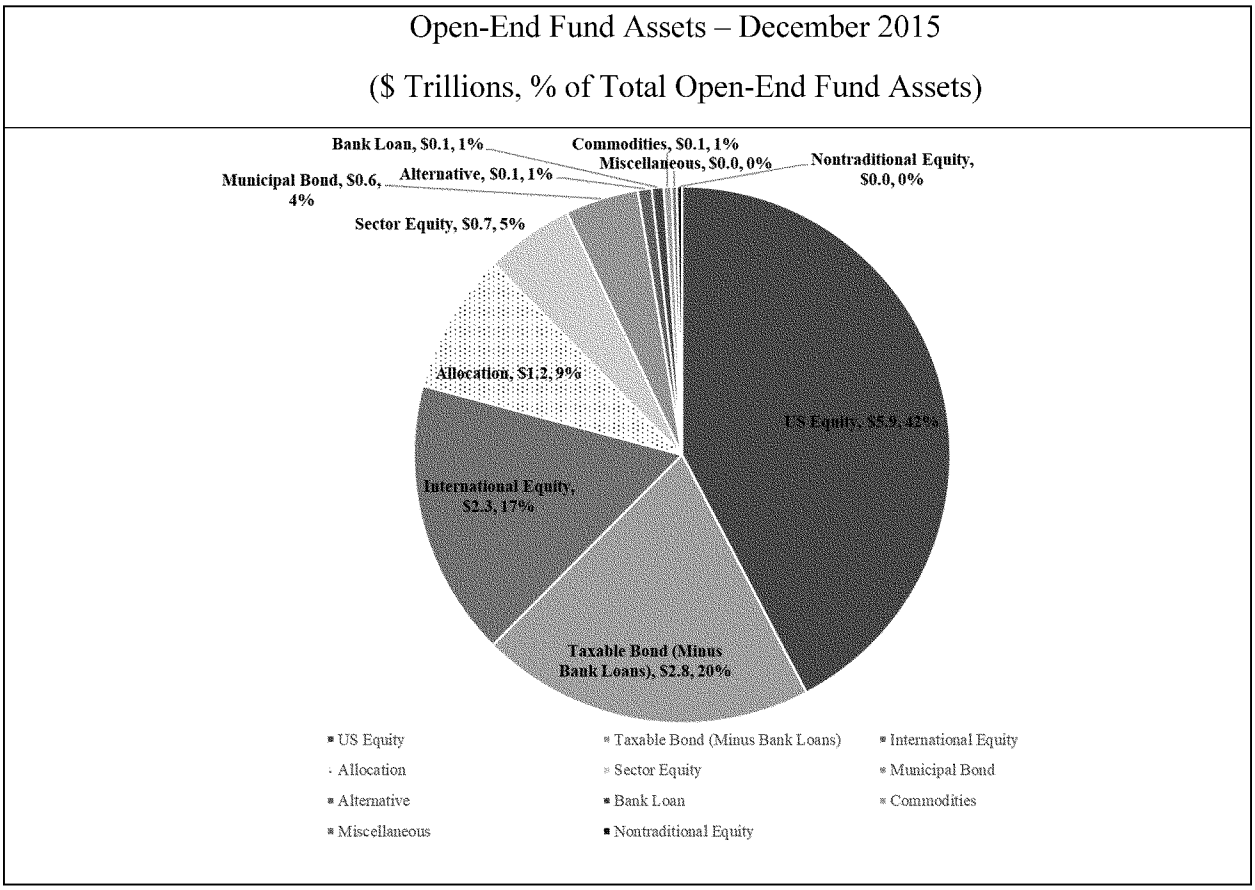
[7] For purposes of this release, the term ''fund'' or ''open-end fund'' generally refers to an open-end management investment company registered on Form N–1A or a series thereof, excluding money market funds, unless otherwise specified. Mutual funds and most exchange-traded funds (''ETFs'') are open-end management companies registered on Form N–1A. An open-end management investment company is an investment company, other than a unit investment trust or face-amount certificate company, that offers for sale or has outstanding any redeemable security of which it is the issuer. *See* sections 4 and 5(a)(1) of the Investment Company Act [15 U.S.C. 80a–4 and 80a–5(a)(1)]. While a money market fund is an open-end management investment company, money market funds generally are not subject to the amendments we are proposing and thus are not included when we refer to ''funds'' or ''open-end funds'' in this release except where specified. Although unit investment trusts, like open-end funds, issue redeemable securities, they are not included when we refer to open-end funds in this release, unless otherwise specified.

[8] The $26 trillion figure is based on Form N–CEN filing data as of Dec. 2021. Of the $26 trillion in assets, ETFs had $5.1 trillion in assets. *See* Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (Oct. 13, 2016) [81 FR 82142 (Nov. 18, 2016)] (''Liquidity Rule Adopting Release''), at text accompanying n.1046 (estimating open-end fund assets of approximately $15 trillion at the end of 2015).

[9] *See* Investment Company Institute, 2022 Investment Company Fact Book (2022) (''2022 ICI Fact Book''), at 44, *available at https://www.icifactbook.org/;* Investment Company Institute, 2016 Investment Company Fact Book (2016), at 110, *available at https://www.ici.org/fact-book*. Retail investors hold the vast majority of mutual fund net assets. *See* 2022 ICI Fact Book, at 48 (estimating that retail investors held 88% of mutual fund assets at year end 2021). An estimated 13.9 million U.S. households held ETFs in 2021, in addition to many institutional investors. *See id*. at 83.

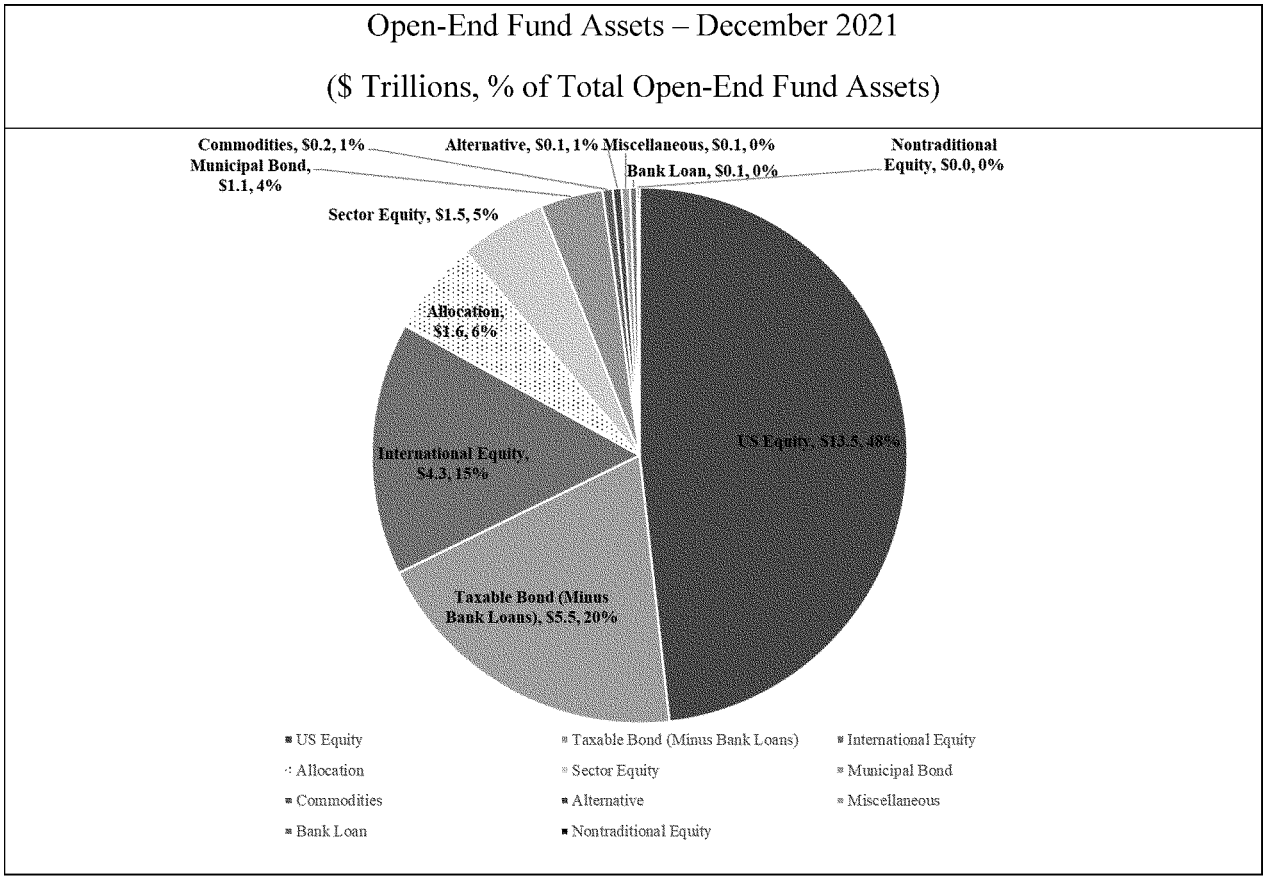
alternative investment strategies focused on less liquid asset classes. For example, as of December 2021, bond funds had assets of more than $6 trillion, funds with alternative investment strategies had about $15 billion in assets, and bank loan funds had around $12 billion in assets.[10] Figure 1 below shows the amount of assets held by different types of open-end funds.

Figure 1: Open-End Fund Assets by Fund Type



Source: Morningstar

[10] Based on Morningstar data. Unless otherwise indicated, data discussed throughout this section is based on Morningstar data. Bond funds include funds that invest in taxable bonds (approximately $5.5 trillion in assets) and funds that invest in municipal bonds (approximately $1 trillion in assets).



Source: Morningstar

Without effective liquidity risk management, a fund may not be able to make timely payment on shareholder redemptions, and sales of portfolio investments to satisfy redemptions may result in the dilution of outstanding fund shares. Moreover, even when a fund is managing its liquidity effectively, the transaction costs associated with meeting redemption requests or investing the proceeds of subscriptions can create dilution for fund shareholders. These concerns are particularly heightened in times of stress or in funds invested in less liquid investments. To that end, the ability of funds to meet investor redemptions, while mitigating the impact of this redemption activity on remaining shareholders, is an important aspect of the regulatory regime for open-end funds.

Commission rules currently provide open-end funds with several tools to mitigate dilution from shareholder purchase or redemption activity and facilitate a fund's ability to meet shareholder redemptions in a timely manner. These tools include a fund's liquidity risk management program, the option to use swing pricing for certain funds, the ability to impose purchase or redemption fees, and/or the ability to redeem in kind.[11] In March 2020, in connection with the economic shock from the onset of the COVID–19 pandemic, U.S. open-end funds faced a significant volume of investor redemptions.[12] As investors sought to redeem fund investments to free up cash during a time of market uncertainty, open-end funds faced significant redemptions and liquidity concerns.[13]

In light of these events, we have reviewed the effectiveness of funds' current tools for managing liquidity and limiting dilution, including through staff outreach and review of information funds are required to report to the Commission.[14] We have identified weaknesses in funds' liquidity risk management programs that can cause delays in identifying liquidity issues in stressed periods and cause funds to over-estimate the liquidity of their investments, as well as limited use of tools such as redemption fees or swing pricing that are designed to limit dilution resulting from a fund's trading of portfolio investments in response to shareholder redemptions or purchases. As a result, we are proposing amendments to enhance funds' liquidity risk management to help better prepare them for stressed market conditions and to require the use of swing pricing for certain funds in certain circumstances to limit dilution. We believe the proposed amendments would enhance open-end fund resilience in periods of market stress by promoting funds' ability to meet redemptions in a timely manner while limiting dilution of remaining shareholders' interests in the fund.

A. Open-End Funds and Existing Regulatory Framework

Open-end funds are a popular investment choice for investors seeking to gain professionally managed, diversified exposure to the capital

[11] *See* Liquidity Rule Adopting Release, *supra* note 8; Investment Company Swing Pricing, Investment Company Act Release No. 32316 (Oct. 13, 2016) [81 FR 82084 (Nov. 18, 2016)] (''Swing Pricing Adopting Release'').

[12] *See infra* section I.B for a discussion of the fund flows for different types of open-end funds during the Mar. 2020 period.

[13] *See infra* section I.B discussing the events of Mar. 2020.

[14] The review consisted of outreach with funds, advisers, and liquidity vendors that funds use to help classify the liquidity of their investments. In addition, staff reviewed data provided on Form N–PORT, Form N–CEN, and Form-RN.

markets while preserving liquidity.[15] There are two kinds of open-end funds: mutual funds and ETFs. Open-end funds offer investors daily liquidity, but may invest in assets that cannot be liquidated quickly without significantly affecting market prices. Since the 1940s, the Commission has stated that open-end funds should maintain highly liquid portfolios and recognized that this may limit their ability to participate in certain transactions in the capital markets.[16]

While the Act requires open-end funds to pay redemptions within seven days, as a practical matter most investors expect to receive redemption proceeds in fewer than seven days. For example, many mutual funds represent in their prospectuses that they will pay redemption proceeds on the next business day after the redemption. In addition, open-end funds redeemed through broker-dealers must meet redemption requests within two business days because of rule 15c6–1 under the Exchange Act, which establishes a two-day (T+2) settlement period for trades effected by broker-dealers.[17]

In terms of pricing, an order to purchase or redeem fund shares must receive a price based on the current NAV next computed after receipt of the order.[18] Open-end funds typically calculate their NAVs once a day. Purchase and redemption requests submitted throughout the day receive the NAV calculated at the end of that day, which is typically calculated as of 4 p.m. ET.[19] These provisions are designed to promote equitable treatment of fund shareholders when buying and selling fund shares.

A characteristic of open-end funds is that fund shareholders share the gains and losses of the fund, as well as the costs. As a result, there are circumstances in which the transaction activity of certain investors leads to costs that are distributed across all shareholders, unfairly reducing the value (or ''diluting'') the interests of shareholders who did not engage in the underlying transactions. For example, while redemption orders receive the next computed NAV, the fund may incur costs on subsequent days to meet those redemptions, because the fund may engage in trading activity and make other changes in its portfolio holdings over multiple business days following the redemption order. As a result, the costs of providing liquidity to redeeming investors can be borne by the remaining investors in the fund and dilute the interests of non-redeeming shareholders. Similarly, when shareholders purchase shares in the fund, costs may arise when the fund buys portfolio investments to invest the proceeds of the purchase, and the fund and its shareholders may bear those costs in days following the purchase request, diluting the interests of the non-purchasing shareholders.

Transaction costs associated with redemptions or purchases can vary. The less liquid the fund's portfolio holdings, the greater the liquidity costs associated with redemption and purchase activity can become and the greater the possibility of dilution effects on fund shareholders. For example, during times of heightened market volatility and wider bid-ask spreads for the fund's underlying holdings, selling fund investments to meet investor redemptions results in greater costs to the fund. Moreover, funds also incur transaction costs outside of stressed periods. Although these costs would generally be smaller than in times of heighted market volatility, they also are borne by fund investors and, particularly over time, also can result in dilution.

In times of liquidity stress, there may be incentives for shareholders to redeem fund shares quickly to avoid further losses, to redeem fund shares for cash in times of uncertainty, or to obtain a ''first-mover'' advantage by avoiding anticipated trading costs and dilution associated with other investors' redemptions. This perceived advantage may lead to increasing outflows, further exacerbating the effect on remaining shareholders and incentivizing increased shareholder redemptions. Whether investors redeem because they need cash or want to capitalize on a first-mover advantage, the remaining investors in the fund may, particularly in times of stress, experience dilution of their interests in the fund.

1. Liquidity Risk Management

In 2016, the Commission adopted rule 22e–4 under the Act (the ''liquidity rule'') to require open-end funds to adopt and implement liquidity risk management programs. Rule 22e–4 was designed to address concerns that open-end funds investing in less liquid securities may have difficulty meeting redemption requests without significant dilution of remaining investors' interests in the fund.[20] Rule 22e–4 requires: (1) assessment, management, and periodic review of a fund's liquidity risk; (2) classification of the liquidity of each of a fund's portfolio investments into one of four prescribed categories—ranging from highly liquid investments to illiquid investments—including at-least-monthly reviews of these classifications; (3) determination and periodic review of a highly liquid investment minimum for certain funds; (4) limitation on illiquid investments; and (5) board oversight.

Funds are also subject to related reporting requirements. For example, funds must report the liquidity classifications of their holdings confidentially to the Commission on Form N–PORT. A fund also must immediately report to the Commission on Form N–RN and to the fund's board if its portfolio becomes more than 15% illiquid, as well as if the fund breaches a highly liquid investment minimum

[15] *See* Liquidity Rule Adopting Release, *supra* note 8. *See also supra* note 9 and accompanying text (discussing an estimated number of Americans who invest in mutual funds).

[16] *See* Investment Trusts and Investment Companies: Report of the Securities and Exchange Commission (1942), at 76 (''Open-end investment companies, because of their security holders' right to compel redemption of their shares by the company at any time, are compelled to invest their funds predominantly in readily marketable securities. Individual open-end investment companies, therefore, as presently constituted, could participate in the financing of small enterprises and new ventures only to a very limited extent.'').

[17] The Commission has proposed to amend rule 15c6–1 to establish a T+1 settlement period for broker-dealer trades. *See* Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 34–94196 (Feb. 9, 2022) [87 FR 10436 (Feb. 24, 2022)].

[18] Rule 22c–1 under the Act. The process of calculating or ''striking'' the NAV of the fund's shares on any given trading day is based on several factors, including the market value of portfolio securities, fund liabilities, and the number of outstanding fund shares, among others. Rule 2a–4 requires, when determining the NAV, that funds reflect changes in holdings of portfolio securities and changes in the number of outstanding shares resulting from distributions, redemptions, and repurchases no later than the first business day following the trade date. As indicated in the adopting release for rule 2a–4, this calculation method provides funds with additional time and flexibility to incorporate last-minute portfolio transactions into their NAV calculations on the business day following the trade date, rather than on the trade date. *See* Adoption of Rule 2a–4 Defining the Term ''Current Net Asset Value'' in Reference to Redeemable Securities Issued by a Registered Investment Company, Investment Company Act Release No. 4105 (Dec. 22, 1964) [29 FR 19100 (Dec. 30, 1964)].

[19] Commission rules do not require that a fund calculate its NAV at, or as of, a specific time of day. Current NAV must be computed at least once daily, subject to limited exceptions, Monday through Friday, at the pricing time set by the board of directors. *See* rule 22c–1(b)(1).

[20] *See* Liquidity Rule Adopting Release, *supra* note 8, at section II.B.

established as part of its liquidity risk management program for seven consecutive days.[21] While the compliance dates for specific provisions of rule 22e–4 varied, most funds were required to be in compliance with all requirements of the rule in 2019.[22]

In 2018, the Commission adopted amendments designed to improve the reporting and disclosures of liquidity information by open-end funds.[23] These amendments modified certain aspects of the liquidity framework by requiring funds to disclose information about the operation and effectiveness of their liquidity risk management program in their shareholder reports instead of requiring funds to disclose aggregate liquidity classifications publicly in Form N–PORT.[24] Since that time, some individual investors have stated that they care about being able to redeem but do not need narrative information about how a fund manages its liquidity, while some other commenters have suggested that aggregate liquidity classifications would be more helpful than narrative shareholder report disclosure.[25] We recently removed the narrative disclosure requirement because, in practice, it did not meaningfully augment other information already available to shareholders.[26]

When the Commission adopted the 2018 amendments, it stated that Commission staff would continue to monitor and solicit feedback on the implementation of the liquidity framework and inform the Commission what steps, if any, the staff recommends in light of this monitoring.[27] The Commission stated its expectation that this evaluation would take into account at least one full year's worth of liquidity classification data from large and small entities to allow funds and the Commission to gain experience with the classification process and to allow analysis of its benefits and costs based on actual practice. As discussed below, we have had the opportunity since the adoption of these amendments to evaluate the liquidity framework while taking into account the data available to us regarding funds' liquidity risk management programs.[28] We discuss our evaluation of the current liquidity framework throughout this release.

2. Swing Pricing

In 2016, the Commission adopted a rule permitting registered open-end funds (except money market funds or ETFs), under certain circumstances, to use swing pricing, which is the process of adjusting the price above or below a fund's NAV per share to effectively pass on the costs stemming from shareholder purchase or redemption activity to the shareholders associated with that activity.[29] When a shareholder purchases or redeems fund shares, the price of those shares does not typically account for the transactions costs, including trading costs and changes in market prices, that may arise when the fund buys portfolio investments to invest proceeds from purchasing shareholders or sells portfolio investments to meet shareholder redemptions.[30] Swing pricing is an investor protection tool currently available to funds to mitigate potential dilution and manage fund liquidity as a result of investor redemption and purchase activity.

The 2016 swing pricing rule requires that, for funds choosing to use swing pricing, the fund's NAV is adjusted by a specified amount (the ''swing factor'') once the level of net purchases into or net redemptions from the fund has exceeded a specified percentage of the fund's NAV (the ''swing threshold''). A fund's swing factor is permitted to take into account only the near-term costs expected to be incurred by the fund as a result of net purchases or net redemptions on that day and may not exceed an upper limit of 2% of the NAV per share. The rule also requires a fund that uses swing pricing to adopt swing pricing policies and procedures that specify the process for determining the fund's swing factor and swing threshold. The fund's board must approve the fund's swing pricing policies and procedures, the fund's swing factor upper limit, and the swing threshold. The board also must review a written report on the adequacy and effectiveness of the fund's swing pricing policies and procedures at least annually.

In the time since the adoption of the rule, no U.S. funds have implemented swing pricing. While swing pricing has been a commonly employed anti-dilution tool in Europe, including among U.S.-based fund managers that also operate funds in Europe, U.S. funds face unique operational obstacles in its implementation. When considering the adoption of the 2016 swing pricing rule, the Commission received comment letters articulating the operational issues that funds may encounter if they implemented swing pricing.[31] In response to the concerns raised by commenters, the Commission adopted an extended effective date to allow for the creation of industry-wide operational solutions to facilitate the implementation of swing pricing more effectively. In that release, the Commission stated that it had directed Commission staff to review, two years after the rule's effective date, market practices associated with funds' use of swing pricing to mitigate dilution and to provide the Commission with the results of its review.[32] Since that time, we have evaluated market practices associated with funds' lack of use of swing pricing, and this release reflects that evaluation. Despite over five years passing since adoption, the industry has not developed an operational solution to facilitate implementation of swing pricing, nor have individual market participants.[33]

[21] Form N–RN was previously titled Form N–LIQUID. *See* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2020) [85 FR 83162 (Dec. 21, 2020)] (''Derivatives Adopting Release'').

[22] Small entities were required to be in compliance with the reporting requirements under Form N–PORT by Mar. 1, 2020. *See* Investment Company Liquidity Disclosure, Investment Company Act Release No. 33142 (June 28, 2018) [83 FR 31859 (July 10, 2018)] (''2018 Liquidity Disclosure Adopting Release'').

[23] *Id.*

[24] The Commission also adopted amendments to Form N–PORT to allow funds classifying the liquidity of their investments pursuant to their liquidity risk management programs to report multiple liquidity classification categories for a single position under specified circumstances. *See* 2018 Liquidity Disclosure Adopting Release, *supra* note 22.

[25] *See infra* notes 303 to 305 and accompanying text (discussing these comments in more detail).

[26] *See* Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, Investment Company Act Release No. 34731 (Oct. 26, 2022) (''Tailored Shareholder Reports Adopting Release'') at nn.462–472 and accompanying text.

[27] *See* 2018 Liquidity Disclosure Adopting Release, *supra* note 22, at paragraph accompanying n.125.

[28] *See infra* sections I.B and II.A.

[29] Swing Pricing Adopting Release, *supra* note 11; rule 22c–1(a)(3).

[30] *See* Swing Pricing Adopting Release, *supra* note 11, at section II.A.1.

[31] *See* Comment Letter of BlackRock on Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Investment Company Act File No. 31835 (Sep. 22, 2015) [80 FR 62274 (Oct. 15, 2015)] (''2015 Proposing Release''), File No. S7–16–15; Comment Letter of Dodge & Cox on 2015 Proposing Release, File No. S7–16–15; Comment Letter of Pacific Investment Management Company LLC on 2015 Proposing Release, File No. S7–16–15; Comment Letter of Securities Industry and Financial Markets Association on 2015 Proposing Release, File No. S7–16–15. The comment file for the 2015 Proposing Release, where these comment letters can be accessed, is *available at https://www.sec.gov/comments/s7-16-15/s71615.shtml.*

[32] *See* Swing Pricing Adopting Release, *supra* note 11, at section II.A.1.

[33] After the Commission adopted the current swing pricing rule, the industry formed working

Continued

We understand that the industry has been unable to develop an operational solution to implement swing pricing largely because funds currently are unable to obtain sufficient fund flow information before they finalizes their NAVs, a necessary precursor to determining whether a fund needs to use swing pricing on any particular day. Generating fund flow information involves a broad network of market participants with multiple layers of systems, including, among others, funds, transfer agents, broker-dealers, retirement plan recordkeepers, banks, and the National Securities Clearing Corporation (''NSCC''). In general, many mutual funds use prices as of 4 p.m. ET (or the ''pricing time'') to value the funds' underlying holdings for purposes of computing their NAVs for the current day. This time is established by the fund's board of directors. Typically, investors may place orders to purchase or redeem mutual fund shares with the fund's transfer agent or with intermediaries as late as 3:59 p.m. ET for execution at that day's NAV. When the transfer agent or an intermediary receives an order before the pricing time, that order typically receives that day's price. An investor who submits an order after the pricing time must receive the next day's price.

While some investors may place orders by opening an account directly with the fund's transfer agent, we understand that the majority of mutual fund orders are placed with intermediaries, such as broker-dealers, banks, and retirement plan recordkeepers.[34] Some intermediaries do not transmit flow details to the fund's transfer agent or the clearing agency until after the fund has finalized its NAV calculation and disseminated the NAV to pricing vendors, media, and intermediaries (''NAV dissemination''). NAV dissemination tends to occur between 6 p.m. ET and 8 p.m. ET. Indeed, the fund's transfer agent or the clearing agency often do not receive a significant portion of orders until after midnight—*i.e.,* the next day.[35] This contributes to a mismatch between the extent of flow information funds require to implement swing pricing and the flow information funds currently have before the pricing time. For example, based on staff outreach, we understand that some funds receive only around half of their daily volume by 6 p.m. ET.[36] We are also aware of a separate review of funds' receipt of flow data for a quarter in 2016, which found that only 70% of actual and estimated trade flow could be delivered by 6 p.m. ET.[37] Without sufficient actual or estimated flow information before the fund finalizes its NAV, funds cannot implement swing pricing because the determination of whether to swing the fund's NAV depends on the size of net flows.

B. March 2020 Market Events

In March 2020, at the onset of the COVID–19 pandemic in the United States, most segments of the open-end fund market witnessed large-scale investor outflows. Investors' concerns about the potential impact of the COVID–19 pandemic led investors to reallocate their assets into cash and short-dated, near-cash investments.[38] The resulting outflows from many open-end funds placed pressure on these funds to generate liquidity quickly in order to meet investor redemptions. Equity and debt security prices fell as yields rose. Uncertainty throughout the U.S. economy and asset-price volatility rose, and credit spreads and bid-ask spreads widened.[39] The large outflows open-end funds faced during March 2020, combined with the widening bid-ask spreads funds encountered when purchasing or selling portfolio investments at that time, likely contributed to dilution of the value of funds' shares for remaining investors.[40]

Open-end funds are a large and important component of U.S. markets. At the end of 2019, assets in open-end funds totaled $21 trillion.[41] Fixed-income funds accounted for $5.3 trillion, or 25% of total open-end fund assets.[42] Bank loan assets were nearly $100 billion, or less than 2% of total fixed-income fund assets. At the end of March 2020, following the height of the COVID–19 related market stress, assets in open-end funds (including ETFs) fell

groups to explore potential operational solutions to facilitate funds' ability to implement swing pricing. *See* Evaluating Swing Pricing: Operational Considerations, Addendum (June 2017), *available at https://www.ici.org/system/files/attachments/ppr_17_swing_pricing_summary.pdf* (''2017 ICI Swing Pricing White Paper'').

[34] In 2021, an estimated 18% of U.S. households owning mutual funds purchased them directly from the mutual fund company. *See* 2022 ICI Fact Book, *supra* note 9, at Figure 7.8.

[35] NSCC currently is the only registered clearing agency for fund shares. A significant portion of mutual fund orders are processed through NSCC's Fund/SERV platform. *See* Depositary Trust and Clearing Corporation 2021 Annual Report, *available at https://www.dtcc.com/annuals/2021/performance/dashboard* (stating that the value of transactions Fund/SERV processed in 2021 was $8.5 trillion and the volume for this period was 261 million transactions). A part of the platform, referred to as Defined Contribution Clearance & Settlement, focuses on purchase, redemption, and exchange transactions in defined contribution and other retirement plans. This service handled a volume of nearly 154 million transactions in 2021. *See id.*

[36] We understand based on staff outreach that the time by which a fund receives flow information varies to some extent based on the fund's investor base. For example, funds with large investments by retirement plans generally receive a larger portion of their flow information after 6 p.m. ET than other funds.

[37] *See* 2017 ICI Swing Pricing White Paper, *supra* note 33 (stating that, for instance, intermediaries trading via traditional Fund/SERV, such as traditional brokerage and managed account activity, transmit orders to the fund by 7 p.m. ET but, with system and procedural enhancements, processing and submission of orders as actual trades might be able to occur prior to 6 p.m. ET). This paper also suggested that 90% to 100% of trade flow (actual or estimated) is required to apply swing pricing between 4 p.m. and 6 p.m. ET.

[38] *See* SEC Staff Report on U.S. Credit Markets Interconnectedness and the Effects of the COVID–19 Economic Shock (Oct. 2020) (''SEC Staff Interconnectedness Report''), at 17 to 18, *available at https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf.* Staff reports and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person.

[39] *See id.,* at 3 and 6 to 8 (discussing that the market structure of certain segments of the credit market contributed to market stress in Mar. 2020, including reduced dealer inventories and reluctance to accommodate customer demand in some cases). On Apr. 1, 2020, the Board of Governors of the Federal Reserve System (''Federal Reserve'') made a temporary change to its supplementary leverage ratio rule to allow banking organizations to expand their balance sheets as appropriate to continue to serve as financial intermediaries, stating that the rule's regulatory restrictions may constrain the firms' ability to continue to serve as financial intermediaries and to provide credit to households and businesses in the face of rapid deteriorations in Treasury market liquidity conditions and significant inflows of customer deposits and increased reserve levels. *See* Federal Reserve Board Announces Temporary Changes to its Supplementary Leverage Ratio Rule to Ease Strains in the Treasury Market Resulting from the Coronavirus and Increase Banking Organizations' Ability to Provide Credit to Households and Businesses (Apr. 1, 2020), *available at https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200401a.htm.*

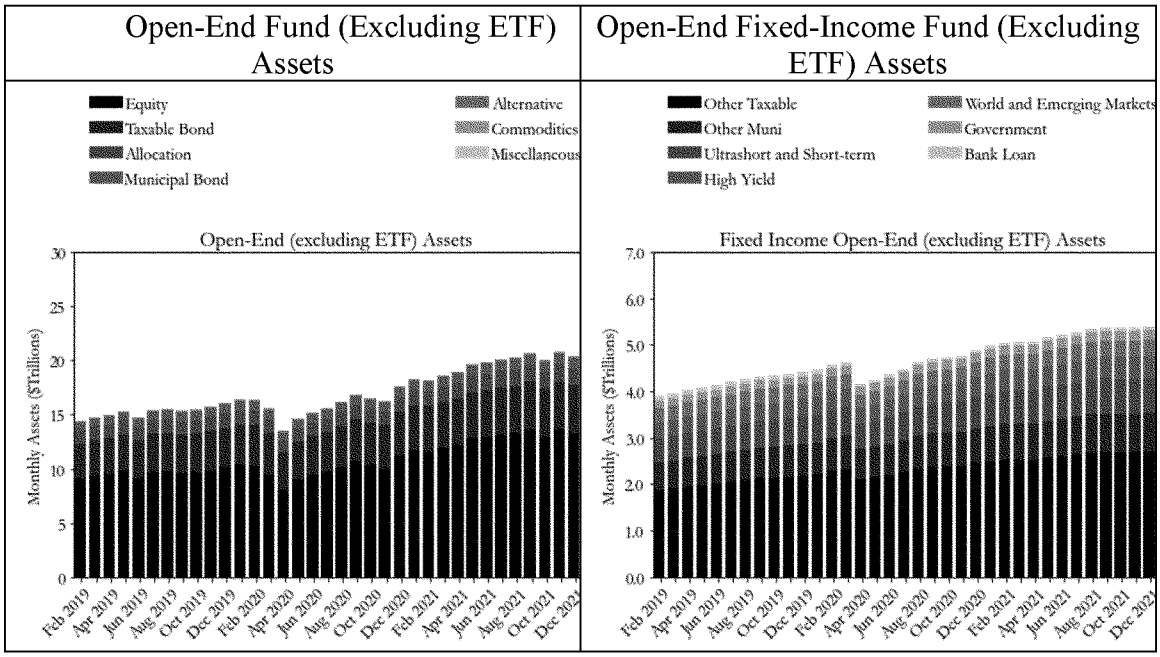
[40] We do not have specific data about the dilution fund shareholders experienced in Mar. 2020 because funds do not report information about their trading activity and the prices at which they purchase and sell each instrument. However, European funds experienced similar market conditions as U.S. funds and, to mitigate dilution during this period, many European funds increased their use of swing pricing and the size of their swing factors. *See infra* paragraph accompanying note 60. European funds are subject to regulatory regimes that differ in some respects from the U.S. regime for open-end funds. We are not aware, however, of differences between the regimes that would have significantly reduced dilution for U.S. funds relative to European funds during this period, such that European funds needed to use swing pricing to mitigate dilution that U.S. funds were not experiencing due to regulatory or other differences.

[41] Of this amount, ETFs had assets of $4.4 trillion and other open-end funds had assets of $16.4 trillion. Money market funds and funds of funds are excluded from calculations relating to the size and redemptions of open-end funds.

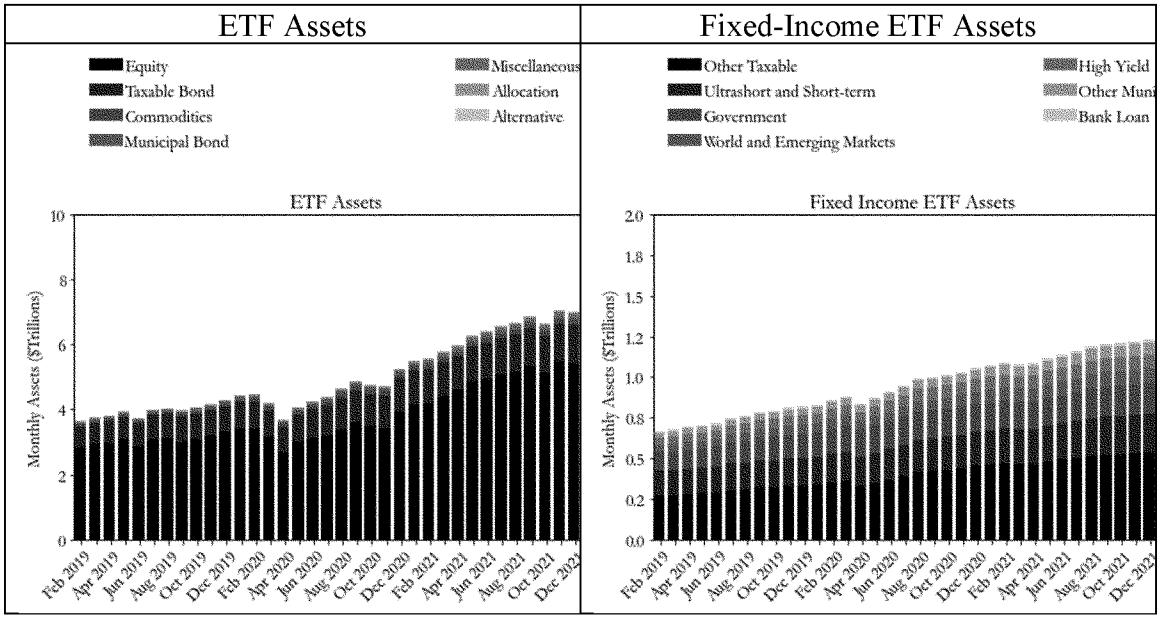
[42] Fixed-income funds, excluding ETFs, had assets of $4.5 trillion, and fixed-income ETFs had assets of $800 billion.

17% ($3.6 trillion) from $20.8 trillion in December 2019 to a total of $17.2 trillion. Assets of open-end funds excluding ETFs fell 18% ($2.9 trillion) from $16.4 trillion to $13.5 trillion, and ETF assets fell 17% (approximately $760 billion) from $4.4 trillion to $3.7 trillion. Of this amount, fixed-income mutual fund assets fell 5.5%, although fixed-income ETFs' assets increased slightly.[43] In addition, bank loan fund assets fell by 30% in March 2020, or from $100 billion to $70 billion, compared to the level of assets reported in December 2019.

Figure 2: Trends in Open-End Fund Assets



Source: Morningstar



Source: Morningstar

[43] Fixed-income funds, excluding ETFs, had assets of approximately $4.1 trillion, while fixed-income ETFs' assets increased slightly from Dec. 2019 levels to $830 billion.

The market disruptions of the March 2020 period included significant redemption activity in open-end funds.[44] Throughout 2019, net flows into open-end funds averaged approximately $32.4 billion, or 0.2% per month.[45] During this same period, fixed-income funds experienced a steady inflow of approximately $41.7 billion, or 0.9% per month on average.[46] In March 2020, however, open-end funds had outflows totaling $329.4 billion, or 1.7% of prior period assets.[47] The majority of these outflows were from fixed-income funds, which had $286.6 billion in outflows.[48] Taxable bond funds had outflows of $241.7 billion (or 5.2% of prior period assets), of which, bank loan funds had outflows of $12.4 billion (or 13.4% of prior period assets in these funds).[49] Municipal bond funds had $44.9 billion in outflows (or 4.9% of prior period assets).[50]

[44] Open-end funds also experienced heightened outflows in other stressed periods, such as the last quarter of 2008, but outflows in March 2020 surpassed those witnessed in these other periods. For example, during the last quarter of 2008, investors withdrew $65 billion from bond funds. Total outflows for bond funds during this period never exceeded 1.5% of total net assets. *See* ICI, 2009 Investment Company Fact Book, Figure 2.10 and accompanying text, *available at https://www.ici.org/system/files/attachments/2009_factbook.pdf* (calculating net flows as a three-month moving average of net flows as a percentage of previous month-end assets, and excluding high yield bond funds).

[45] Open-end funds (excluding ETFs) had average net flows of approximately $4.8 billion (or 0.04% per month). ETFs had average net flows of approximately $27.7 billion (or 0.7% per month).

[46] Fixed-income funds (excluding ETFs) had inflows of $28.8 billion (or 0.7% per month on average). Fixed-income ETFs had inflows of $12.5 billion (or 1.7% per month on average).

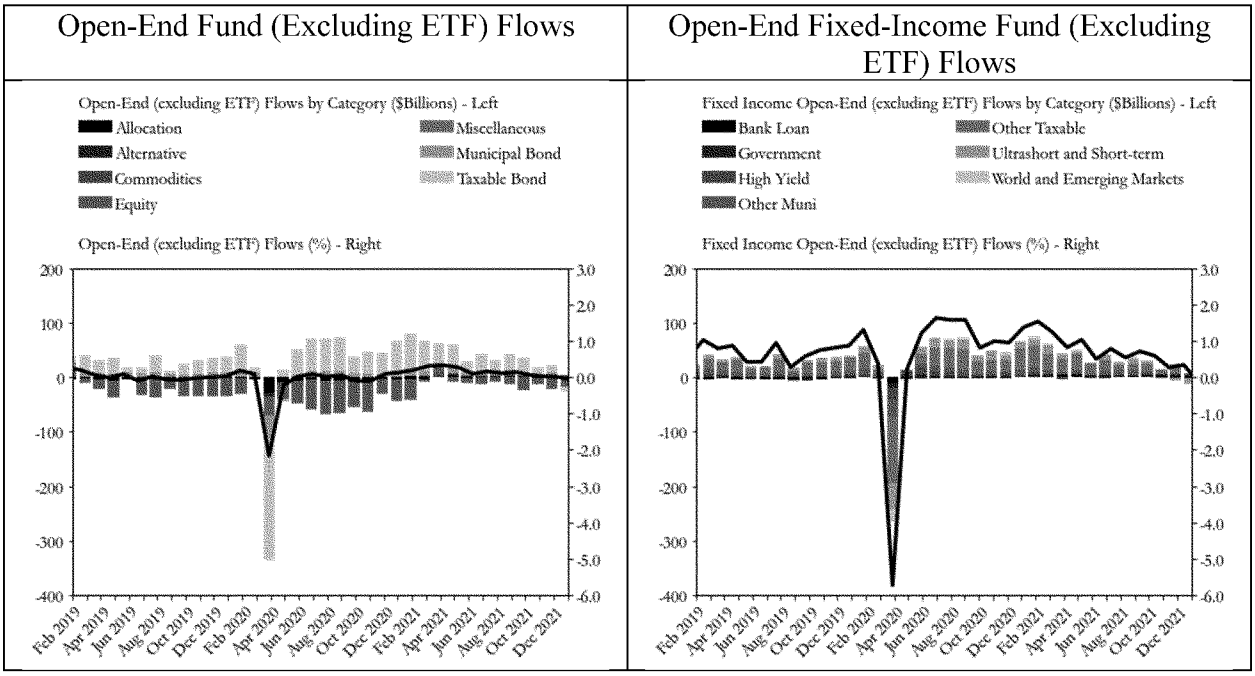
[47] Open-end funds (excluding ETFs) had outflows totaling $336.8 billion, or 1.7% of prior period assets. ETFs had inflows totaling $7.3 billion, or 2% of prior period assets. The majority of ETF inflows were for equity ETFs, which had $14.7 billion in inflows. Allocation, alternative, commodity, and miscellaneous/other ETFs had inflows of $13.2 billion. The inflows into some types of ETFs were partially offset by outflows of $20.6 billion from fixed-income ETFs.

[48] Open-end funds (excluding ETFs) had outflows of approximately $266 billion, and ETFs had outflows of approximately $20.6 billion.

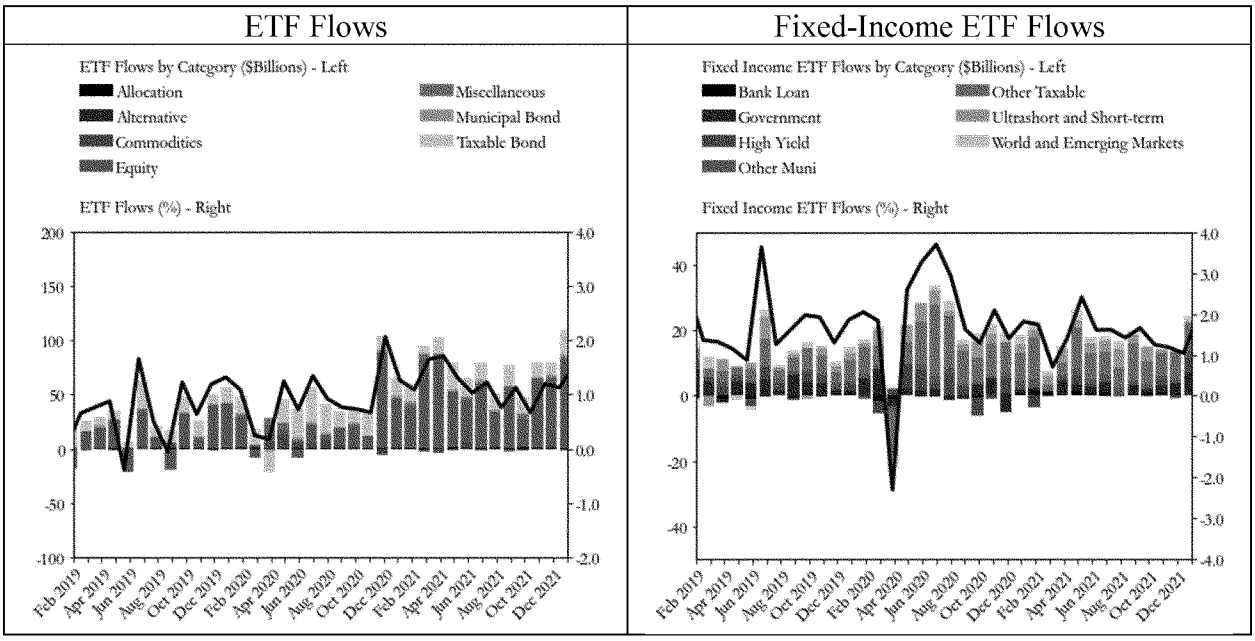
[49] For open-end funds (excluding ETFs) this included outflows of $223.3 billion (5.9%) for taxable bond funds (of which, bank loan funds had outflows of $11.4 billion (13.6%)). For ETFs this included outflows of $18.4 billion (2.2%) for taxable bond ETFs (of which, bank loan ETFs had outflows of approximately $1 billion (11.2%))

[50] For open-end funds (excluding ETFs) this included outflows of $42.6 billion (5%) for municipal bond funds. For ETFs this included outflows of $2.2 billion (4.3%) for municipal bond ETFs.

Figure 3: Open-End Fund and Fixed Income Fund Flows



Source: Morningstar



Source: Morningstar

During the period of market turmoil, bid-ask spreads spiked by as much as 100 basis points for high-yield bonds and 150–200 basis points for investment-grade bonds.[51] In general, the bond market and bank loan market experienced significant price declines in March 2020. The price for 10 year U.S. Treasuries increased by roughly 4.6%. The price of corporate bonds declined by 7%.[52] The price of leveraged loans decreased by roughly 13%.[53] The heightened volatility and demand for liquidity drove stress throughout the market, particularly in the bond fund and bank loan fund markets. Price declines were not limited to these markets, however. For example, the price for U.S. small cap equities decreased by roughly 24%.[54]

[51] *See* SEC Staff Interconnectedness Report, *supra* note 38, at 37.

[52] The decline in the price of corporate bonds is measured by the BBG U.S. Corporate Bond Index.

[53] The decline in the price of leveraged loans was measured by the S&P Leveraged Loan Price Index.

[54] The decline in the price of U.S. small cap equities was measured by the Russell 2000 Total Return Index.

Beginning in mid-March 2020, the Federal Reserve, with the approval of the Department of the Treasury, used its emergency powers to intervene by providing timely and sizable interventions in an effort to stabilize the markets. The official sector interventions included, among others, the Secondary Market Corporate Credit Facility, introduced on March 23, 2020. This facility supported market liquidity by purchasing in the secondary market corporate bonds issued by investment grade U.S. companies, as well as U.S.-listed ETFs whose investment objective is to provide broad exposure to the market for U.S. corporate bonds.[55]

After the Federal Reserve announced that it would be using its emergency powers for official sector interventions, market stress relating to the COVID–19 pandemic began to subside. Assets in open-end funds, including fixed income funds, began to increase. By December 2020, open-end fund assets had increased to $24 trillion, with fixed-income funds (excluding ETFs) reaching $6 trillion in assets, and fixed-income ETFs surpassing $1 trillion in assets.[56] Bank loan fund assets remained essentially unchanged, however, from March 2020 levels and remained at $68 billion.

Other Observations From March 2020

Beyond data evidencing the liquidity stress funds faced in March 2020, we also observed the stress through staff outreach to the industry. During this period, fund managers discussed their liquidity concerns with Commission staff and the potential need for emergency relief. Fund managers explored various emergency relief actions. For example, some fund managers requested emergency relief that would provide additional flexibility for interfund lending and other short-term funding to help meet redemptions, which the Commission provided.[57] Some managers suggested emergency relief to permit funds to impose redemption fees that exceed 2% to mitigate dilution, including fees that ETFs can charge authorized participants to cover liquidity and transaction costs.[58] Some fund managers that have successfully used swing pricing in Europe urged the Commission to explore emergency actions to facilitate funds' ability to operationalize the Commission's current swing pricing rule. Some fund managers also suggested there was a need for Federal Reserve interventions. These discussions indicated that fund managers sought additional means to quickly address liquidity and dilution concerns during this period of financial stress.

During these conversations, several fund managers with operations in both the U.S. and Europe discussed their experience with swing pricing in Europe and indicated that swing pricing would have been a useful tool for U.S. funds to have had in March 2020. Swing pricing was widely used in several European jurisdictions during the March 2020 stressed period to reduce dilution from rising transaction costs.[59] In these jurisdictions, some funds used partial swing pricing (where a NAV adjustment occurs only if net flows exceed a swing threshold), some funds used full swing pricing (where a NAV adjustment occurs any time a fund has net inflows or net outflows), and some funds did not use swing pricing. Many European funds increased their use of swing pricing and increased the size of their swing factors during the stressed period. For example, a voluntary survey conducted by the Bank of England and Financial Conduct Authority of a subset of fund managers in the United Kingdom (''UK'') indicated that the use of swing pricing more than doubled from the last quarter of 2019 to the first quarter of 2020.[60] Due to increasing transaction costs, several European funds lowered their swing thresholds in March 2020, with some moving to full swing pricing for net redemptions.[61] Funds also increased the size of their swing factors to account for the increase in liquidity and transaction costs. For example, a survey of Luxembourg UCITS found that while the average swing factor for the survey sample hovered around zero before the turmoil, it increased by more than 100 basis points on average during the market stress.[62] The survey of UK-authorized

[55] *See, e.g.,* Press Release, Federal Reserve Announces Extensive New Measures to Support the Economy (Mar. 23, 2020), *available at https://www.federalreserve.gov/newsevents/pressreleases/monetary20200323b.htm; https://www.federalreserve.gov/monetarypolicy/smccf.htm* (describing the Secondary Market Corporate Credit Facility in particular).

[56] From Apr. to Dec. 2020, fixed-income funds averaged $75 billion in inflows, or 1.4% per month. Ultrashort and short-term bond funds experienced average monthly inflows of $16 billion and 2% of assets over this period.

[57] *See* Order Under Sections 6(c), 12(d)(1)(J), 17(b), 17(d) and 38(b) of the Investment Company Act of 1940 and Rule 17d-1 Thereunder Granting Exemptions from Specified Provisions of the Investment Company Act and Certain Rules Thereunder, Investment Company Act Release No. 33821 (Mar. 23, 2020), *available at https://www.sec.gov/rules/other/2020/ic-33821.pdf.* Although the Commission provided this relief for a period of time, we understand funds generally did not use it.

[58] ETFs typically externalize the costs associated with purchases and redemptions of shares by redeeming in kind and by charging a fixed and/or variable fee to authorized participants to offset both transfer and other transaction costs that an ETF (or its service provider) may incur, as well as brokerage, tax-related, foreign exchange, execution, market impact, and other costs and expenses related to the execution of trades resulting from such transaction. The amount of these fixed and variable fees typically depends on whether the authorized participant effects transactions in kind or with cash and is related to the costs and expenses associated with transactions effected in kind versus in cash. For example, when an authorized participants redeems ETF shares by selling a creation unit to the ETF, the fees that the ETF imposes defray the costs of liquidity the redeeming authorized participant receives. This, in turn, mitigates the risk of diluting non-redeeming authorized participants when an ETF redeems its shares.

[59] Funds in countries such as Luxembourg, Ireland, the United Kingdom, and the Netherlands had implemented swing pricing and it was well-established market practice. In Mar. 2020, funds in some countries, such as France, Spain, and Germany, had more recently begun to employ swing pricing as an anti-dilution method. *See* Lessons from COVID–19: Liquidity Risk Management and Open-Ended Funds, BlackRock ViewPoint (Jan. 2021), *available at https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-addendum-lessons-from-covid-liquidity-risk-management-is-central-to-open-ended-funds-january-2021.pdf.*

[60] *See* Liquidity management in UK open-ended funds: Report based on a joint Bank of England and Financial Conduct Authority survey (Mar. 2021), *available at https://www.bankofengland.co.uk/report/2021/liquidity-management-in-uk-open-ended-funds* (''Bank of England Survey''). The increase in the use of partial and full swing pricing included the increase in the number of funds using swing pricing as well as the increase in the frequency of its use for funds that already used swing pricing. The survey also found that some funds did not use swing pricing or other tools during the period because, for example, net outflows of certain funds were below levels at which they would consider applying swing pricing or other tools.

[61] *See id.* (stating that, out of a total of 202 surveyed funds that were authorized to use swing pricing, 45 funds decided to reduce their swing threshold during this period, including 18 funds that switched temporarily to full swing pricing during the market stress); ICI, Experiences of European Markets, UCITS, and European ETFs During the COVID–19 Crisis (Dec. 2020), *available at https://www.ici.org/doc-server/pdf%3A20_rpt_covid4.pdf* (''Respondents reported that some UCITS lowered their partial swing thresholds during March to take into consideration the impact flows could have on investors from increased transaction costs in underlying markets. . . . Some UCITS using partial swing pricing lowered their threshold for redemptions to zero in March (which is equivalent to full swing pricing) in response to market volatility that had caused bid-ask spreads to widen on underlying securities.''); Claessens, Stijn, and Lewrick, Ulf, ''Open-ended bond funds: systemic risks and policy implications'' (Dec. 2021) *available at https://www.bis.org/publ/qtrpdf/r_qt2112c.pdf* (stating that, in a survey of 57 Luxembourg actively managed bond UCITS based on a supervisory data collection, these funds lowered swing thresholds on average from net outflows of 1% of total net assets before Mar. 2020 to less than 0.5% of total net assets) (''Claessens and Lewrick''). *See also* CSSF Working Paper: An Assessment of Investment Funds' Liquidity Management Tools (June 2022), *available at https://www.cssf.lu/en/2022/06/publication-of-cssf-working-paper-an-assessment-of-investment-funds-liquidity-management-tools/*(''*CSSF* Paper'').

[62] *See* Claessens and Lewrick, *supra* note 61; CSSF Paper, *supra* note 61 (stating that ''[t]he

funds similarly found that the size of swing factors increased during this period and that some funds that had capped the size of their swing factors needed to temporarily remove these caps.[63] In terms of the effects of using swing pricing during March 2020, one study found that swing pricing allowed surveyed funds to recoup roughly 0.06% of total net assets on average from redeeming investors during three weeks of elevated redemptions in March 2020.[64]

We also observed funds' liquidity risk management in March 2020 through funds' filings with the Commission and other staff outreach. Specifically, during and following the market events of March 2020, Commission staff assessed liquidity-related data reported on Forms N–PORT and N–RN, as well as the development of liquidity risk management programs through staff outreach to funds, advisers, and liquidity classification vendors.[65] Based on review of Form N–PORT filings for February and March 2020, approximately two-thirds of funds did not appear to reclassify any investment held in both months despite the market events described above.[66] We saw that reclassifications increased from 25% of funds that held the same investment in both January and February 2020 to 33% of funds in March 2020, and stayed elevated for April 2020. We understand that many fund and liquidity vendor classification models use data lookback periods of 30 days or more that made them slowly adjust to changing market conditions, leaving these firms unable to consider their classifications and reclassify when market conditions changed quickly. In addition, we understand that classification models generally tend to assess liquidity based on relatively small sale sizes that do not necessarily reflect the amount a fund may need to sell to meet heightened levels of redemptions in stress periods, and most models do not automatically adjust to a higher trade size when market conditions change. Moreover, our data indicate that in March 2020 cash levels in the aggregate increased and relatively few funds made use of borrowing to meet redemptions, suggesting that funds generally were selling portfolio assets to meet redemptions and potentially for other purposes, such as to raise cash in anticipation of future redemptions. During March 2020, more than a dozen funds (primarily fixed-income funds) filed reports on Form N–RN. Most of these Form N–RN filings related to breaches of the 15% limit on illiquid investments.

Overall, the market events in March 2020 show how liquidity can deteriorate rapidly and significantly. In the face of such rapid market changes, liquidity risk management program features of some funds adjusted slowly, making them less effective during the stress period for managing liquidity risk. Additionally, tools, such as swing pricing, that may have helped open-end funds limit dilution as both transaction costs and redemptions rose were unavailable because of operational challenges, although these tools were used in other jurisdictions during this period.

C. Rulemaking Overview

In March 2020, some open-end funds were not prepared for the sudden market stress that arose after many years of relative calm and, as the market stress and outflows grew, several funds began to explore emergency relief requests or suggest a need for government intervention in an effort to withstand or alleviate liquidity stress, address dilution, and improve overall market conditions. The period of market stress in March 2020 was relatively brief ending upon Federal Reserve interventions, and no funds sought to suspend redemptions during this period. We believe there are meaningful lessons from this period that our rules should reflect, while also recognizing the possibility that future stressed periods—whether specific to certain funds or the markets as a whole—may be more protracted or more severe than March 2020, particularly absent Federal Reserve action. Fundamentally, we believe funds should be better prepared for future stressed conditions, which can occur suddenly and unexpectedly, and should have well-functioning tools for managing through stress without significantly diluting the interests of their shareholders. We are proposing amendments to rules 22e–4 and 22c–1 that are designed to achieve these key objectives and to reflect our experience with the rules since they were adopted, as well as supporting amendments to Form N–PORT and other reporting and disclosure forms.

Specifically, recognizing that it can be difficult to predict when market stress will occur, the proposed amendments to rule 22e–4 would require funds to incorporate stress into their liquidity classifications by assuming the sale of a stressed trade size, which would be 10% of each portfolio investment, rather than the rule's current approach of assuming the sale of a ''reasonably anticipated trade size'' in current market conditions. Requiring a fund's classification model to assume the sale of larger-than-typical position sizes may better emulate the potential effects of stress on the fund's portfolio, similar to an ongoing stress test, and help better prepare a fund for future stress or other periods where the fund faces higher than typical redemptions. The proposal also would establish other minimum standards for classifying the liquidity of an investment, which are designed to improve the quality of classifications by preventing funds from over-estimating the liquidity of their investments and to provide clearer guideposts for liquidity classifications, reflecting the more effective practices we have observed.

In addition, we propose to remove the less liquid investment category and to treat these investments as illiquid. The less liquid category consists of investments that can be sold in seven calendar days but that take longer to settle. For example, many bank loans take longer than seven days to settle. The proposed amendment is designed to reduce the mismatch between the receipt of cash upon the sale of assets with longer settlement periods and the payment of shareholder redemptions. This would better position funds to meet redemptions, including in times of stress. Currently, treating these investments as ''less liquid''—as opposed to ''illiquid''—allows funds to invest in these assets beyond the 15% limit on illiquid investments, notwithstanding that ''less liquid'' investments settle beyond the statutory seven-day period to pay redemptions. We are also proposing to amend the definition of illiquid investment to

---

average swing factor of the 42 bond funds participating in the CSSF survey increased by more than 100 basis points on average during Mar. 2020 (the median and maximum swing factor were 60 and 350 basis points, respectively)'').

[63] *See* Bank of England Survey, *supra* note 60 (stating that of the 17 surveyed funds that had a cap on their swing factors, which ranged from 0.25% to 3%, 13 funds temporarily removed the caps in response to heightened outflows and a few managers overrode the caps). We also understand that in response to funds' requests to use swing factors above their disclosed caps, some jurisdictions provided guidance on when this is permitted. *See* Commission de Surveillance du Secteur Financier, Swing Pricing Mechanism—FAQ, *available at https://www.cssf.lu/en/Document/cssf-faq-swing-pricing-mechanism/* (providing guidance for increasing the swing factor above the maximum level identified in a fund's prospectus under certain circumstances, and noting that typical maximum swing factors observed in fund prospectuses are between 1% and 3%).

[64] *See* Claessens and Lewrick, *supra* note 61.

[65] The Mar. 2020 data collected on Form N–PORT often was not available to the Commission until June or July 2020 because a fund files data covering each month of its fiscal quarter on Form N–PORT no later than 60 days after the end of each fiscal quarter.

[66] *See infra* note 128 (discussing that fewer equity funds reported reclassifications of investments held in both Feb. and Mar. 2020 than fixed-income funds).

include investments whose fair value is measured using an unobservable input that is significant to the overall measurement. We understand many funds classify these investments as illiquid today.

We also propose to require daily liquidity classifications. We believe this change would promote better monitoring of a fund's liquidity and an ability to more rapidly understand and respond to changes that affect the liquidity of the fund's portfolio, including the fund's compliance with its highly liquid investment minimum and the rule's limit on illiquid investments.

As another means to prepare funds for stressed conditions, we are proposing to amend the highly liquid investment minimum provisions in the rule to require all funds to determine and maintain a minimum amount of highly liquid assets of at least 10% of net assets. This aspect of the proposal is designed to ensure that funds have sufficient liquid investments for managing heightened levels of redemptions. Finally, we are proposing amendments to how the highly liquid investment minimum calculation and the calculation of the 15% limit on illiquid investments take into account the value of assets that are posted as margin or collateral for certain derivatives transactions to reflect that the fund cannot access the value of posted assets to meet redemptions until the fund is able to exit the derivatives transactions.

In addition, to reduce shareholder dilution during stress and other periods, we are proposing to amend rule 22c–1 to require all open-end funds, other than ETFs and money market funds, to implement swing pricing. Today, no fund has implemented swing pricing, and funds rarely use redemption fees to address dilution other than in the case of short-term trading of fund shares, meaning shareholders may experience dilution both in normal and stressed conditions, particularly when purchases or redemptions are large or when funds invest in markets with high transaction costs relative to other markets.[67] We believe swing pricing is an important and effective tool for dynamically addressing such dilution by recognizing that costs associated with shareholder purchases and redemptions rise as net flows increase and liquidity and transaction costs grow.

In addition to proposing mandatory swing pricing, we are proposing to amend the swing pricing framework in rule 22c–1 to apply lessons learned from March 2020, including information about the European experience with swing pricing during that period. Specifically, we propose to amend both when and how a fund would adjust its NAV, which would vary depending on whether a fund has net purchases or net redemptions. Rather than require funds to determine their own swing thresholds, we propose to specify the amount of net inflows or net outflows that would trigger a pricing adjustment in the rule, informed by an analysis of historical flow amounts.

In addition, we propose a specific method of calculating the swing factor price adjustment, which would require a fund to make good faith estimates of the transaction costs of selling or purchasing a pro rata amount of its portfolio investments (or a ''vertical slice'') to satisfy that day's redemptions or to invest the proceeds from that day's purchases. Under the proposal, a fund would be required to apply a swing factor on any day it has net redemptions. When net redemptions exceed 1% of net assets, the swing factor would also account for market impacts of selling a vertical slice of the portfolio to capture the dilutive effect of trading in response to large outflows better. We believe trading in response to small levels of net inflows is less likely to have a dilutive effect than trading in response to net outflows and, as a result, we propose to require a fund to apply a swing factor for net purchases only if net purchases exceed 2% of net assets. In addition, we propose to remove the 2% swing factor upper limit from the current rule because we are proposing a more specific framework for determining swing factors, some European funds used swing factors above 2% in order to mitigate dilution in March 2020, and we received requests for emergency relief in the United States during this period to allow funds to charge redemptions fees exceeding 2% to mitigate dilution. The proposed swing pricing amendments are designed to reduce the dilution of an investor's interest in a fund that is caused by the redemption or purchase activity of other investors in the fund and to fairly allocate the costs associated with redemption and purchase activity. These amendments also may reduce potential first-mover advantages that might incentivize early redemptions to avoid anticipated trading costs and dilution associated with other investors' redemptions.

To operationalize the proposed swing pricing requirement and provide other benefits, we are also proposing to amend rule 22c–1 to require that the fund, its transfer agent, or a registered clearing agency receive purchase and redemption orders by an established cut-off time to receive a given day's price (a ''hard close''). Specifically, for an order to be eligible to receive a day's price, these designated parties would have to receive the order before the pricing time, which is typically 4 p.m. ET. The proposed hard close would facilitate the receipt of timely flow information to inform swing pricing decisions. In addition, we believe it would help prevent late trading and reduce operational risk.

To promote transparency related to fund liquidity and use of swing pricing, we are proposing amendments to Form N–PORT to require funds to report their aggregate liquidity classifications publicly, as well as the frequency and amount of swing pricing adjustments. With respect to liquidity disclosure, this amendment is designed to provide investors with meaningful information about fund liquidity, taking into account that our proposed amendments to the liquidity classification framework should result in more objective and comparable liquidity classifications across funds.[68] As for the proposed swing pricing reporting requirements, we believe the proposed frequency and size information would allow investors to better understand the operation and effects of swing pricing.

We also propose broader changes to Form N–PORT to require all registered investment companies that report on the form, which include open-end funds (other than money-market funds), registered closed-end funds, and ETFs registered as unit investment trusts, to file monthly reports with the Commission within 30 days of month-end. These monthly reports would subsequently be publicly available 60 days after month-end. These proposed amendments would require filers to provide the Commission with more timely information and would provide investors with access to monthly rather than quarterly information. We observed in March 2020 that timely and full disclosure can be particularly important

[67] Based on an analysis of fund prospectuses, approximately 551 open-end funds (or around 4.6% of funds) state that they apply redemption fees under certain circumstances for at least one share class of the fund. Approximately 3.3% of fund classes have a redemption fee, or 0.6% of net fund assets.

[68] In certain cases, investors consume reported information indirectly through other data users. These other data users can include, for example, regulators such as the Commission, fund analysts, and third-party data providers. Throughout this release, references to consumption of information by investors include indirect consumption by investors enabled by other data users.

during and immediately after stress events. Finally, we propose amendments to Forms N–PORT, N–CEN, and N–1A to, among other things, conform to our other proposed amendments and to improve entity identifiers.

Taken together, these proposed amendments are designed to provide investors with increased protection regarding how liquidity in their funds is managed, thereby reducing the risk that funds will be unable to meet redemptions and mitigating dilution of the interests of fund shareholders. These reforms also are intended to give investors information to make more informed investment decisions, and to give the Commission more timely information to conduct comprehensive oversight of an ever-evolving fund industry.

II. Discussion

A. Amendments Concerning Funds' Liquidity Risk Management Programs

1. Amendments to the Classification Framework

Rule 22e–4 currently requires a fund to classify each portfolio investment based on the number of days within which it reasonably expects the investment would be convertible to cash, sold or disposed of, without significantly changing its market value.[69] Under this framework, funds must, using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations, classify each portfolio investment into one of four liquidity classifications: highly liquid, moderately liquid, less liquid, and illiquid.[70] A fund may generally classify and review its investments by asset class unless the fund or adviser has information about any market, trading, and investment-specific considerations that it reasonably expects to significantly affect the liquidity characteristics of an investment compared to the fund's other portfolio holdings within that asset class.[71] In classifying its investments, a fund must analyze the number of days that it reasonably expects it would take to sell, or convert to cash, portions of a position in a particular investment or asset class that the fund would reasonably anticipate trading (the ''reasonably anticipated trade size'') without significantly changing its market value (''value impact'').[72] A fund must review its liquidity classifications at least monthly in connection with reporting the liquidity classification for each investment on Form N–PORT, and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments' classifications.[73]

The liquidity classifications are integral to rule 22e–4. Among other things, these classifications help a fund monitor its liquidity, including compliance with the fund's highly liquid investment minimum and the 15% limit on illiquid investments.[74] The fund's classifications also provide liquidity information to the Commission and, under our proposal, to the public.

The current rule allows funds considerable discretion in how funds determine the classification of investments.[75] Funds may choose which investments to classify individually or by asset class, with the composition of asset classes determined by the fund. Funds also may use different reasonably anticipated trade sizes and have different standards for evaluating value impact. Through staff outreach, we observed that funds had varied approaches in their classifications processes. The proposed amendments to the liquidity classifications are intended to better prepare funds for future stressed conditions. For example, the reasonably expected trade sizes and value impact standards some funds and liquidity classification vendors used tended to over-estimate a fund's liquidity in March 2020 because they considered relatively smaller trade sizes or used value impact methodologies with longer lookback periods.

Based on our observations from March 2020 and our review of funds' liquidity risk management practices and classifications, we are proposing amendments to the classification framework. The proposed amendments would provide additional standards for making liquidity determinations, amend certain aspects of the liquidity categories, and require more frequent liquidity classifications. Specifically, we propose to provide objective minimum standards that funds would use to classify investments, including by: (1) requiring funds to assume the sale of a set stressed trade size, rather than the rule's current approach of assuming the sale of a reasonably anticipated trade size in current market conditions; and (2) defining the value impact standard with more specificity on when a sale or disposition would significantly change the market value of an investment. We also propose to remove classification by asset class. These proposed amendments are designed to improve the quality of classifications by preventing funds from over-estimating the liquidity of their investments, including in times of stress, and to provide classification standards that are consistent with more effective practices the staff has observed. In addition, a more objective and comparable framework for how funds classify the liquidity of their investments would enhance the Commission's ability to analyze trends across funds' classifications and establish the groundwork for classification information that investors could use to analyze and compare funds.

We also propose to remove the less liquid investment category, which would reduce the number of liquidity categories from four to three, and expand the scope of the illiquid investment category. We believe these changes would reduce the risk of a fund not being able to meet shareholder redemptions. Finally, we propose to require daily classifications, which we believe would promote better monitoring by liquidity risk program administrators of a fund's liquidity and an ability to more rapidly understand

[69] In-kind ETFs are included when we refer to ''funds'' or ''open-end funds'' throughout this release when discussing rule 22e–4, except in the sections discussing classifying the liquidity of a fund's investments and the highly liquid investment minimum requirement, from which in-kind ETFs are excepted. *See* proposed rule 22e–4(a) (defining ''in-kind ETF'' as an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a *de minimis* amount of U.S. dollars and that publishes its portfolio holdings daily); *see also* rule 22e–4(b)(1)(ii) and 22e–4(b)(1)(iii). In-kind ETFs do not present the same kind of liquidity risks as other funds because the redeeming shareholder typically bears the direct costs associated with its liquidity needs. *See* Liquidity Rule Adopting Release, *supra* note 8, at paragraphs accompanying n.842.

[70] *See* rule 22e–4(b)(1)(ii).

[71] *See* rule 22e–4(b)(1)(ii)(A).

[72] *See* rule 22e–4(b)(1)(ii)(B) (requiring a fund to determine whether trading varying portions of a position in sizes that the fund would reasonably anticipate trading is reasonably expected to significantly affect its liquidity). The definition of each liquidity category sets out the number of days in which a fund reasonably expects to sell, or convert to cash, an investment without significantly changing its market value. *See* rule 22e–4(a)(6), rule 22e–4(a)(8), rule 22e–4(a)(10), and rule 22e–4(a)(12).

[73] *See* rule 22e–4(b)(1)(ii).

[74] *See* rule 22e–4(b)(1)(iii) and rule 22e–4(b)(1)(iv).

[75] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.163 and accompanying text (stating that the primary goals of the liquidity rule program requirements were to reduce the risk that funds would be unable to meet redemption and other legal obligations, minimize dilution, and elevate the overall quality of liquidity risk management across the fund industry while at the same time providing funds with reasonable flexibility to adopt policies and procedures that would be most appropriate to assess and manage their liquidity risk).

and respond to changes that affect the liquidity of the fund's portfolio.[76]

Table 1 sets forth the primary proposed changes to the rule's liquidity classification framework, which are described in more detail below.

TABLE 1—PROPOSED CHANGES TO THE LIQUIDITY CLASSIFICATIONS

Liquidity classifications and related terms	Current rule 22e–4	Proposed rule 22e–4
Definitions		
Highly Liquid Investment	Any cash held by a fund and any investment that the fund reasonably expects to be convertible into cash in current market conditions in three business days or less without the conversion to cash significantly changing the market value of the investment.	Any U.S. dollars held by a fund and any investment that the fund reasonably expects to be convertible to U.S. dollars in current market conditions in three business days or less without significantly changing the market value of the investment.
Moderately Liquid Investment.	Any investment that the fund reasonably expects to be convertible into cash in current market conditions in more than three calendar days but in seven calendar days or less, without the conversion to cash significantly changing the market value of the investment.	Any investment that is neither a highly liquid investment nor an illiquid investment.
Less Liquid Investment	Any investment that the fund reasonably expects to be able to sell or dispose of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment, but where the sale or disposition is reasonably expected to settle in more than seven calendar days.	Removed.
Illiquid Investment	Any investment that the fund reasonably expects cannot be sold or disposed of in current market conditions in seven calendar days or less without the sale or disposition significantly changing the market value of the investment.	Any investment that the fund reasonably expects not to be convertible to U.S. dollars in current market conditions in seven calendar days or less without significantly changing the market value of the investment and any investment whose fair value is measured using an unobservable input that is significant to the overall measurement.
Convertible to Cash/U.S Dollars.	The ability to be sold, with the sale settled	The ability to be sold or disposed of, with the sale or disposition settled in U.S. dollars.
Related Concepts		
Assumed Trade Size	Sizes that the fund would reasonably anticipate trading	10% of the fund's net assets by reducing each investment by 10%.
Value Impact Standard	Significantly changing the market value of the investment.	Significantly changing the market value of an investment means: (1) For shares listed on a national securities exchange or a foreign exchange, any sale or disposition of more than 20% of average daily trading volume of those shares, as measured over the preceding 20 business days. (2) For any other investment, any sale or disposition that the fund reasonably expects would result in a decrease in sale price of more than 1%.

a. Stressed Trade Size and Significant Changes in Market Value

i. Replacing Reasonably Anticipated Trade Size With Stressed Trade Size

Currently, when a fund makes liquidity classifications under rule 22e–4, it must determine whether trading varying portions of a position in a particular portfolio investment or asset class, in sizes that the fund would *reasonably anticipate trading,* is reasonably expected to significantly affect its liquidity.[77] This determination of a reasonably anticipated trade size helps a fund analyze market depth. For example, if a fund anticipates trading a large investment position relative to the market's total trading volume, the size of the trade might affect liquidity and price.[78]

Using a small reasonably anticipated trade size to analyze market depth leads to a more liquid classification, as a smaller position can be sold more quickly without significantly affecting the investment's liquidity than a larger position. In contrast, using a larger reasonably anticipated trade size would often lead to less liquid classifications. Under the current rule, a fund may determine its own reasonably anticipated trade size, and we have observed wide variation in practice.[79] From staff outreach, we observed that funds may consider a variety of different factors, such as their flow history, flow trends of other similar funds, and shareholder makeup and concentration,

[76] *See* rule 22e–4(a)(13) (defining ''person(s) designated to administer the program'', in part, as the investment adviser, officer, or officers responsible for administrating the program).

[77] *See* rule 22e–4(b)(1)(ii)(B).

[78] *See* Liquidity Rule Adopting Release, *supra* note 8, at paragraphs accompanying n.440 and n.450.

[79] *See* SEC staff Investment Company Liquidity Risk Management Programs Frequently Asked Questions (Apr. 10, 2019) (''Liquidity FAQs''), *available at https://www.sec.gov/investment/investment-company-liquidity-risk-management-programs-faq* for discussion of factors funds may consider in determining reasonably anticipated trading size. The Commission has observed that many funds have set reasonably anticipated trade size values at 3%. Others have set values of below 3% and up to 100%, signifying wide variation.

and a fund may weigh the importance of those factors differently to determine what it would reasonably anticipate trading. We believe that using a reasonably anticipated trade size based on these, or a subset of these factors, may not help funds prepare for future stressed conditions. Even if a fund increased its reasonably anticipated trade size during periods of stress, the resulting adjustments in the fund's liquidity risk management may be too late to help the fund prepare for the stressed environment and, thus, may have limited utility.

In response to the variability in funds' reasonably anticipated trade sizes and the potential ineffectiveness of small trade sizes in helping a fund prepare for stress, we propose to require funds to assume the sale of a set stressed trade size. Specifically, for a fund to determine the liquidity classification of each investment, we propose that it must measure the number of days in which the investment is reasonably expected to be convertible to U.S. dollars without significantly changing the market value of the investment, while assuming the sale of 10% of the fund's net assets by reducing each investment by 10%.[80] The proposed stressed trade size may result in funds classifying fewer investments as highly liquid, and may increase the number of investments that are subject to the 15% limit on illiquid investments. These changes, in turn, may lead some funds to rebalance their portfolio holdings to comply with the proposed changes, which could negatively affect the performance of these funds. However, a lack of preparation for higher than normal redemptions also can negatively affect fund performance when such redemptions occur.[81] We believe that requiring a fund's classification model to assume the sale of larger-than-typical position sizes would better emulate the potential effects of stress on the fund's portfolio, similar to an ongoing stress test, and help better prepare a fund for future stress or other periods where the fund faces higher than typical redemptions.

Based on an analysis of weekly flows of equity and fixed-income funds over a period of more than ten years, outflows greater than 6.6% occurred 1% of the time in a pooled sample across weeks and funds.[82] Based on this analysis, we estimate that a random fund in a random week has approximately a 0.5% chance of experiencing redemptions in excess of the 10% stressed trade size, and there were 3.4% of weeks where more than 1% of funds experienced net redemptions exceeding the proposed stressed trade size. We believe that weekly outflows at the 99th percentile is a useful approximation of the level of outflows funds may experience in future stressed conditions.[83] However, because it is difficult to predict future stress events, including the effect and length of such events—particularly without official sector interventions—we believe it is appropriate to require funds to use a stressed trade size amount of 10%, which is moderately higher than the 6.6% weekly outflow figure discussed above. We also considered, during this same historical period, equity and fixed-income funds had weekly inflows of greater than 8% for 1% of the time in a pooled sample across weeks and funds. In addition, large, concentrated inflows have the possibility of translating to similarly large outflows. For example, if the large inflows are the result of investment by an institutional investor or a fund's inclusion in a model portfolio, the fund may experience similarly large outflows if the investor mandate changes or if the fund is removed from the model portfolio.

Under the proposed approach, a fund would apply its stressed trade size to each investment to determine its liquidity classifications. We have observed that funds generally determine and apply a reasonably anticipated trade size to each investment or asset class currently (commonly referred to as *pro rata* or vertical slice methods). We have also observed, however, that some funds have applied the reasonably anticipated trade size in such a manner that the trading would be satisfied largely by selling the fund's most liquid investments, resulting in smaller assumed trade sizes for purposes of classifying the fund's less liquid investments.[84] As recognized above, small assumed sale sizes can result in more liquid classifications generally, as sales of small amounts are less likely to affect the market value of the investment significantly and typically can be converted to U.S. dollars more quickly. We are particularly concerned that use of small assumed sale sizes for non-highly liquid investments can overstate the liquidity of these investments and reduce the effectiveness of a fund's liquidity risk management program when a fund needs to sell a larger-than-assumed portion to meet redemptions under stressed conditions or for any other portfolio management reason. Requiring funds to apply the 10% stressed trade size to each investment would better prepare funds to manage their liquidity in stressed conditions, when a fund may be required to sell positions that are larger than the assumed sale sizes some funds are using currently. The amendments to replace the determination of a reasonably anticipated trade size with a stressed trade size are designed to enhance a fund's preparation for stressed conditions, including the potential for sizeable outflows.

We request comment on the proposed requirement for funds to apply a stressed trade size to each investment in their liquidity classification determinations:

1. Should we require funds to use a stressed trade size, as proposed? Would the change from reasonably anticipated trade size to stressed trade size materially change the proportion of investments classified in a given liquidity category? If yes, how? Would the proposed stressed trade size affect certain types of funds more than others? Would the proposed stressed trade size be likely to overstate or understate liquidity?

2. Is the proposed stressed trade size of 10% appropriate? If not, what minimum trade size would be appropriate and why? For example, should we increase or decrease the stressed trade size to, for example, 15% or 5% or some other threshold? Is there

[80] The liquidity classifications define the number of days as business days for highly liquid investments or calendar days for illiquid investments. *See* Table 1. *See also* rule 22e–4(a)(2) (defining ''business day'' to exclude customary business holidays).

[81] *See* Liquidity Rule Adopting Release, *supra* note 8, at paragraphs accompanying nn.109 and 110 (stating that staff had observed that some funds with more thorough liquidity risk management practices appeared to be able to better meet periods of higher than typical redemptions without significantly altering their risk profile or materially affecting their performance, while some funds with substantially less rigorous liquidity risk management practices experienced particularly poor performance compared with their benchmark when faced with higher than normal redemptions).

[82] Based on an analysis of historical Morningstar weekly fund flow data for equity and fixed income funds from 2009 through 2021. *See infra* sections III.B.4.a and III.C.1.a.i (providing additional equity and fixed income flow data and discussing this analysis in more detail). While some Morningstar data is available for 2008, we have not included that data in our historical flow analyses in this release because of gaps in the 2008 data (*e.g.,* the 2008 dataset covers a more limited set of funds). Other available flow information for 2008, such as from the ICI Fact Book, is not granular enough for purposes of our analyses.

[83] We believe weekly outflows is a better proxy for the stressed trade size than daily outflows because stressed conditions may take some time to fully present in flows and often result in outflows that continue over several days or more.

[84] *See* Liquidity Rule Adopting Release, *supra* note 8, at paragraph accompanying n.1084. We do not suggest that a fund should only, or primarily, use its most liquid investments to meet shareholder redemptions. *See id.,* at n.661 and accompanying paragraph.

other data that should factor into setting the stressed trade size?

3. Should the stressed trade size vary for different types of funds and, if so, how? For instance, should the stressed trade size be a function of the fund's flow history, such as the 99th percentile highest week of the fund's absolute or net flows over a given period (*e.g.,* 3 years, 5 years, 10 years, or the life of the fund)? Should the stressed trade size be the higher of a specified value applied to each investment or the 99th percentile highest week of absolute flows?

4. Should the method of applying the stressed trade size to each investment vary for different types of funds and, if so, how? Are there types of investments that should be excluded or use a different stressed trade size? Are there other, more appropriate methods of applying a stressed trade size across different type of investments and portfolios?

5. Instead of establishing a set stressed trade size, should we set a minimum stressed trade size and provide factors for determining if a fund should have a higher stressed trade size? If so, what factors should funds consider in setting their stressed trade size?

ii. Determining a Significant Change to Market Value

Currently, when a fund makes liquidity classifications under rule 22e–4, it must analyze whether a sale or disposition would significantly change the market value of the investment. In the adopting release for rule 22e–4, the Commission explained that this value impact analysis captures the risk of a fund only being able to meet redemption requests in a manner that significantly dilutes the non-redeeming shareholders.[85] The Commission established the value impact standard to capture the risk of dilution in cases of inadequate liquidity, while not requiring funds to account for every possible value movement.[86] We propose to establish a minimum value impact standard that defines more specifically what constitutes a significant change in market value.[87] We believe the proposed change would improve the quality of funds' liquidity classifications by preventing funds from over-estimating the liquidity of their investments and would improve comparability of funds' liquidity classifications. In addition, the proposed approach is consistent with more effective practices we have observed from some funds and liquidity classification vendors, as discussed below.

Under the current rule, a fund may determine value impact in a variety of ways, depending on the type of asset, or vendor, model, or system used. There also is variation in the depth and sophistication of funds' analyses. We believe the variation in how a fund may determine value impact leads to differences in the quality of funds' classifications, limits comparability of funds' classifications across the same or similar investments, and may cause funds to over-estimate the liquidity of their investments.

The proposed definition of a significant change in market value would require a fund to consider the size of the sale relative to the depth of the market for the instrument.[88] This would vary depending on the type of investment. For shares listed on a national securities exchange or a foreign exchange, we believe selling or disposing of more than 20% of the security's average daily trading volume would indicate a level of market participation that is significant.[89] We understand that if a fund sold more than 20% of the average daily trading volume of a listed equity security, such a large sale is likely to result in a significant change in the security's market value, which would dilute remaining investors in the fund. We have observed that a standard based on average daily trading volume is consistent with practices many funds and vendors apply for assessing value impact for listed equity investments today.[90] To determine average daily trading volume, we propose to require funds to measure the average daily trading volume over the preceding 20 business days. We believe using a period of 20 business days provides an appropriate measure of daily trading volume, which would reflect current market conditions as well as consider a period of recent market history. The 20 business day period is intended to strike a balance between longer periods that are less reflective of current conditions and shorter periods that can be skewed easily by an abnormally high or low volume day. For purposes of measuring average daily trading volume, the preceding 20 business days include those days where U.S. markets are open but where one or more international markets are closed, such as ''Golden Week,'' a week in Japan including multiple Japanese public holidays. A fund would count these and any other trading days where shares were not traded as zero volume days for the relevant investment.

For any investments other than shares listed on a national securities exchange or a foreign exchange, such as fixed-income securities and derivatives, we propose to define a significant change in market value as any sale or disposition that a fund reasonably expects would result in a decrease in sale price of more than 1%. Funds currently use a variety of methods to determine significant changes in market value in fixed-income securities, taking into account different groups of comparable securities, asset class characteristics and volatility, number and depth of market makers, bid-offer spread size, volume of the security or similar securities, and elasticity of prices in the security or similar securities. For purposes of the proposed rule, a decrease of more than 1% would indicate a level of value impact that is significant because the fund is selling or disposing of a relatively large position or because the market for the investment has constricted, and bid-ask spreads have widened. We also understand that several commonly employed liquidity models currently use this price decrease measure. We acknowledge that not all liquidity models specify a price decrease explicitly as the determination for a significant change in market value and some funds would have to make changes to convert to this more

[85] *See* Liquidity Rule Adopting Release, *supra* note 8, at paragraph accompanying n.334.

[86] *See id.,* at paragraph accompanying n.339.

[87] See proposed rule 22e–4(a) (definition of ''Significantly changing the market value of an investment'').

[88] The proposed rule would continue to provide that an investment's classification is based on a fund's reasonable expectations in current market conditions. *See* Liquidity Rule Adopting Release, *supra* note 8, at section III.C.1.d (discussing comments and suggestions on the consideration of market conditions). Thus, a fund would be able to rely on its reasonable expectations at the time it makes the value impact assessment. Although we are proposing to require funds to assume an element of stressed conditions in their liquidity classifications through the stressed trade size, a broader requirement to predict how an investment may trade in stressed market conditions would introduce additional variables into the classification process that could increase the risk of misclassifications and decrease the data quality of funds' liquidity-related reporting and disclosure.

[89] Under this proposal, the sale or disposition must be below 20% of the security's average daily trading volume. A fund may choose to impose a stricter limitation of any percentage under 20%, for example, 15% of average daily trading volume.

[90] Through staff outreach, we observed many funds using some percent of average daily trading volume (*e.g.,* 15%, 20%, or 25%) that the fund's investment can represent if it wants to be able to sell into daily volume without affecting market prices. In practice, this meant funds would estimate the number of days it would take to sell or dispose of the reasonably anticipated trade size without approaching the set percentage of average daily trading volume to avoid impacting the value significantly. We observed funds calculating the average daily trading volume taking into account different sources, and for different time periods, ranging from 10 days to 6 months.

objective threshold. The proposed value impact standard would improve funds' abilities to perform quality checks and back testing and would allow the Commission to better analyze classification data across funds.

In considering whether a sale is reasonably expected to result in a price decrease of more than 1%, the fund would be required to consider the size of the sale relative to the depth of the market for the instrument. As part of that analysis, we believe a fund generally should consider, among other things, the width of bid-offer spreads. This is because the width of bid-offer spreads is an important consideration in analyzing the costs of selling a security and thus whether a sale would result in a price decrease exceeding 1%. For example, a sale would be more likely to result in a price decline of more than 1% if the trade size is large in relation to the market for that instrument or if bid-ask spreads are wide, or if both are the case. Wide, or widening, bid-ask spreads may indicate a lower level of demand for the instrument, which makes it more likely that a sale of the instrument would result in a price decline of more than 1%.

We request comment on our proposed definition of significant change in market value:

6. Would funds have to make significant changes to their liquidity classification methodologies to reflect the proposed amendments to the value impact standard? If so, what effect would those changes have on a fund's liquidity risk management program?

7. Should we define value impact through average daily trading volume or price decline, as proposed? Should we use a different definition of value impact instead, and if so, should it depend on the type of investment? Should different types of funds have different value impact standards? If yes, what standards, and for what types of funds?

8. For shares listed on a national securities exchange or a foreign exchange, should we define a significant change in market value as selling or disposing of more than 20% of the average daily trading volume, as proposed? Are there other types of investments for which an average daily trading volume test would be appropriate? For example, is there data available for fixed-income securities that funds could use objectively to analyze market participation under a value impact standard?

9. Should the percent of average daily trading volume be higher or lower (*e.g.,* 15% or 25%)? Should the measurement period for the average daily trading volume be longer or shorter than the proposed 20 business days (*e.g.,* 10, 30, or 40 business days)? Should days where shares were not traded be counted as zero volume days as proposed or in some other manner? Are there circumstances in which the average daily trading volume test should vary by instrument, type of instrument, or trading venue?

10. For investments that are not listed on a national securities exchange or foreign exchange, should we define a significant change in market value as any sale or disposition that the fund reasonably expects would result in a price decline of more than 1%, as proposed? Should the identified percentage be higher or lower (*e.g.,* 0.5% or 2%)? Should this standard for determining a significant change in market value apply to all investments? Would funds need additional guidance or parameters to measure this standard consistently, including what inputs or comparable investments may be used in determining the price decline?

11. Should the 1% price decline definition of value impact be applied against the fund's last valuation of an investment, which would include both the effect of the fund's sale and market moves?

iii. Removing Asset Class Classification

Under current rule 22e–4, a fund may generally classify and review its portfolio investments (including the fund's derivatives transactions) according to their asset class. However, a fund must separately classify and review any investment within an asset class if the fund or its adviser has information about any market, trading, or investment-specific considerations that are reasonably expected to significantly affect the liquidity characteristics of that investment as compared to the fund's other portfolio holdings within that asset class.[91] The current provision was intended to strike a balance between reducing operational burdens associated with classification and providing reasonably precise liquidity classifications that appropriately reflect investments' liquidity characteristics.[92] The burden to determine individual investment classifications may have decreased since the adoption of the rule for many funds as these funds became more familiar with and developed their liquidity risk management programs and, in some cases, developed automated processes for classifying investments or employed sophisticated liquidity classification vendors that provide economies of scale. In addition, in practice there may be weaknesses in asset class level classifications that may result in a lack of reasonably precise classifications. Therefore, we propose to remove the asset class method of classification from the rule.

Through outreach, we understand that asset class level classifications are not widely used by many funds. But, where these asset class level classifications are used, this method runs the risk of over-estimating the liquidity of a fund's investments and not adjusting quickly in times of stress. After a fund has begun to use asset class level classifications, and particularly if classifications are reviewed only on a monthly basis, it might be difficult for a fund to identify instances where a given investment's liquidity characteristics do not align with the characteristics of other investments in the asset class because individual investment liquidity data is not being collected and analyzed. Through outreach, we observed that funds generally established a process and timing for liquidity assessments and did not change those processes or timing as market conditions changed, and particularly were unlikely to do so under stressed conditions. For example, during a stress event like March 2020, a fund using asset class level classifications may not be equipped to re-classify a subset of investments in an asset class adeptly in response to changing conditions that affect those investments directly. Also, because funds classify a significant portion of their holdings as highly liquid, we believe this potential gap in identifying investments that a fund should classify differently from other investments in the asset class is more likely to over-estimate, rather than under-estimate, the liquidity of a fund's investments. These tendencies run counter to the premise of the current rule's classification system, which presumed that a fund would use efficiencies such as asset class level classifications and monthly review of classifications only when market conditions or other factors did not indicate that a shift to a more granular or frequent classification is appropriate.[93] Therefore, we are

[91] *See* rule 22e–4(b)(1)(ii)(A).

[92] *See* Liquidity Rule Adopting Release, *supra* note 8, at section III.C.3.a. The current approach was also intended to leverage fund managers' current practices and to recognize that many investments within an asset class may be considered interchangeable from a liquidity perspective.

[93] *See* rule 22e–4(b)(1)(ii) (identifying the circumstances in which a fund must review its portfolio investments' classifications more

Continued

proposing to remove asset class level classifications to provide more precise liquidity classifications that appropriately reflect investments' liquidity characteristics.

Moreover, asset class level classifications are not compatible with the other changes we are proposing to the classification framework, including the proposed definitions of the value impact standard. It would also be difficult for a fund to meaningfully apply at the asset class level a standard based on average daily trading volume or a price decline in a given investment because the average trading volume, or market depth generally, can vary from investment to investment even within the same asset class. Classifying each investment separately therefore allows a more precise assessment of that investment's liquidity. In addition, because the proposed rule would include specific minimum standards for classifying investments, it may reduce burdens of classifying investments while improving the quality of classifications relative to the current rule, consistent with the Commission's objectives in originally allowing asset class level classifications. Finally, staff has observed through outreach that liquidity risk management programs have developed so that specific and individual portfolio investment liquidity classifications are widely used and the removal of asset class level classifications is consistent with that approach.

We request comment on the proposed removal of the provision permitting funds to classify the liquidity of their investments by asset class.

12. Should we preserve the ability of funds to use asset classes for liquidity determinations, as currently permitted? To what extent do funds currently rely on the provision allowing liquidity classifications by asset class? Would it be more or less burdensome for funds to classify investments individually under the proposal's specific minimum standards (such as the stressed trade size and the defining the value impact standard) than to separately classify any investment within an asset class whenever the fund or its adviser has market, trading, or investment-specific information indicating that the investment should be classified separately rather than as part of the relevant asset class?

13. Would the operational burden of individually classifying be balanced by the improved quality of data for each individual investment as compared to classifying by asset class? To what extent would investment-by-investment classifications differ compared to asset class level classification? Are there other benefits to removing asset class level classification, such as timely, useful, improved, or increased data?

14. Is reliance on this provision more common for certain types of funds or certain asset classes? Should asset class level classifications be limited to specific types of funds or asset classes?

15. If we permitted asset class level classifications, how should the stressed trade size and value impact standard in the proposal apply to asset class level classifications?

b. Amendments to Liquidity Classification Categories

We are proposing changes to the liquidity classification categories to improve funds' abilities to make timely payment on shareholder redemptions, without the sale of portfolio investments resulting in the dilution of outstanding fund shares. Section 22(e) of the Act establishes a right of prompt redemption in open-end funds by requiring such funds to make payments on shareholder redemption requests within seven days of receiving the request. In March 2020, in connection with the economic shock from the onset of the COVID–19 pandemic, open-end funds faced a significant amount of investor redemptions, and we believe additional changes to rule 22e–4 would assist funds in managing investor redemptions in future stressed conditions.

Rule 22e–4 currently allows funds to classify as less liquid investments those that the fund reasonably expects to be able to sell or dispose of in seven calendar days or less without significantly changing the market value of the investment, but that are reasonably expected to settle in more than seven calendar days.[94] Under the current rule, an investment is classified as illiquid if it cannot be sold or disposed of in seven calendar days or less without significantly changing the market value of the investment.[95] We propose to eliminate the less liquid classification category and amend the definition of illiquid investment to include those investments that a fund reasonably expects not to be convertible to U.S. dollars in current market conditions in seven calendar days or less without significantly changing the market value of the investment, as well as those investments whose fair value is measured using an unobservable input that is significant to the overall measurement.[96] Under the proposal to eliminate the less liquid classification category, the rule would therefore have only three liquidity classifications: highly liquid investments, moderately liquid investments, and illiquid investments. We also propose to amend the term ''convertible to cash'' to ''convertible to U.S. dollars,'' codifying prior Commission statements.[97] Finally, we propose to specify how to count the identified number of days an investment is convertible to U.S. dollars for purposes of the liquidity categories.

i. Removing the Less Liquid Investment Category and Classifying These Investments as Illiquid

We propose to eliminate the less liquid classification category and amend the definition of illiquid investment to include investments, in part, that a fund reasonably expects not to be convertible to U.S. dollars in seven calendar days or less without significantly changing the market value of the investment. Investments that funds currently classify as less liquid would become illiquid investments under the proposed amendments, absent changes to shorten the settlement time of many of those investments. Section 22(e) of the Act requires open-end funds to make payment on shareholder redemption requests within seven days of receiving the request. The proposed amendment to define an investment as illiquid if it does not settle to U.S. dollars in seven calendar days is designed to reduce the mismatch between the receipt of cash upon the sale of assets with longer settlement periods and the payment of shareholder redemptions. This would help prepare funds for future stressed conditions by reducing the risk of a fund not being able to meet shareholder redemptions. Unlike the current rule, the proposed rule would directly limit to 15% the amount of fund assets that are not reasonably expected to be convertible to U.S. dollars in seven days.

While funds may classify different types of investments as less liquid investments today, the most common type of investment in this category is bank loans.[98] Fund investments make

frequently than monthly); rule 22e–4(b)(1)(ii)(A) (identifying the circumstances in which a fund must separately classify and review an investment within an asset class instead of classifying according to the investment's asset class).

[94] *See* rule 22e–4(a)(10) (defining ''less liquid investment'').

[95] *See* rule 22e–4(a)(8) (defining ''illiquid investment'').

[96] *See* proposed rule 22e–4(a).

[97] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.848 (''Cash means cash held in U.S. dollars, and would not include, for example, cash equivalents or foreign currency.'').

[98] Based on Form N–PORT data, bank loans made up 77% and 60% of investments reported as less liquid in Feb. and Mar. 2020, respectively. In

up approximately 15% of the bank loan market.[99] Filings on Form N–PORT show that over 90% of bank loan investments reported by open-end funds are classified as less liquid.[100] In 2015, commenters addressing concerns about liquidity in the bank loan market stated that significant efforts were then underway to materially improve settlement times in the bank loan market, which are typically longer than other asset classes.[101] Bank loans are not standardized and have individualized legal documentation. This provides flexibility of terms for bank loans, but also increases the time for a fund to settle a bank loan trade and receive proceeds from the sale, thus increasing the risk of the fund not being able to meet shareholder redemptions.[102]

Around the time that the Commission adopted the liquidity rule, the median settlement time for a loan sale was about 12 days.[103] In the Liquidity Rule Adopting Release, the Commission stated that a fund may need to consider re-classifying an investment as illiquid in the event of an extended settlement period.[104] By July 2021, the average time to settle a bank loan par trade in the secondary market increased to a then seven-year high of T+23, and the median was at T+15.[105] While median settlement time for bank loans in which funds invest has generally increased, Form N–PORT data has not shown funds reclassifying these investments to take into account extended settlement times.

We are proposing changes to remove the less liquid investment classification to reduce the risk that funds that invest significantly in less liquid investments may not be able to meet shareholder redemptions. While bank loan funds were able to meet redemption requests during March 2020, a period of significant outflows, we are concerned that they may not be able to meet shareholder redemptions in future stressed conditions, especially as investments in this asset class increase. During the month of March 2020, bank loan funds experienced outflows of approximately 13% of assets, more than any other type of fund. In addition, since March 2020, total registered investment company investments in bank loans have increased 50% to approximately $200 billion.[106] We understand that in past times of large outflows, the median buy-side settlement time for bank loans generally decreased and funds had a degree of success in effecting shorter settlement periods for these investments to help meet redemptions.[107] We are concerned, however, that in future stress events these attempts to shorten settlement times may fail since loans are not standardized, have individualized legal documentation, and rely on manual processes for settlement. We also understand that funds with significant extended settlement investments have used borrowing through lines of credit to meet redemptions, but lines of credit may not be available to all funds and borrowing imposes costs that can dilute the value of the fund for remaining investors. Based on Form N–CEN filings, several bank loan funds have accessed their lines of credit in their most recent reporting period.[108] We understand that the costs of borrowing have risen and credit has become more difficult to obtain over time.

We believe that investments that funds currently classify as less liquid should be classified as illiquid investments and be subject to the 15% limit on illiquid investments, so that funds may be better prepared to satisfy redemptions in future stressed conditions without delay and without significant dilution. Using Form N–PORT data, we estimate that approximately 200 funds during March 2020 would have had illiquid investments over the 15% limit if this proposed change had been in effect, with bank loan funds being the largest type of affected fund.[109] As a result of the proposed amendments, more bank loan funds may contract for expedited settlement, which would involve costs. Alternatively, advisers with strategies that have 15% or more of assets in investments classified as less liquid and illiquid may change those strategies, close funds, or consider using a closed-end fund or other investment vehicle structure that is not subject to rule 22e–4. Further, potential additional demand for these investments could provide incentives to shorten the settlement cycle for bank loans more generally, which may reduce trading costs.[110] We believe that these amendments would reduce the risk of a fund not being able to satisfy redemptions without diluting the interests of remaining shareholders while waiting for the proceeds from the sale of an investment with extended settlement.

ii. Additional Amendments to the Definition of Illiquid Investment

We also propose to amend the definition of illiquid investment to include investments whose fair value is measured using an unobservable input that is significant to the overall measurement. U.S. GAAP establishes a fair value hierarchy that categorizes into three levels the inputs to valuation techniques used to measure fair value.[111] The fair value measurements of investments are categorized in accordance with this three-level

addition to bank loans, a smaller number of fixed-income securities, mortgage-backed securities, and equities are categorized as less liquid investments.

[99] *See* Leveraged Loan Primer (last visited Oct. 4, 2022), *available at https://pitchbook.com/leveraged-commentary-data/leveraged-loan-primer#market-size* (stating that the Morningstar LSTA U.S. Leveraged Loan Index, which is used as a proxy for market size in the U.S., totaled approximately $1.375 trillion as of Feb. 2022). As of Dec. 2021, there are 746 open-end funds that classified approximately $204 billion in bank loan interests as reported on Form N–PORT. Using this data, we estimate that funds held approximately 15% of the bank loan market.

[100] Based on Form N–PORT data, in 2021, more than 90% of the gross value of loans reported by open-end funds were classified as less liquid. This was also the case in Feb. and Mar. 2020.

[101] *See, e.g.,* Comment Letter of the Loan Syndications and Trading Association on 2015 Proposing Release, *supra* note 31, File No. S7–16–15, *available at https://www.sec.gov/comments/s7-16-15/s71615-57.pdf* (''LSTA Comment Letter'') (stating the goal of transforming syndicated loan settlement to a similar settlement period as most other asset classes).

[102] *See id.*

[103] *See* LSTA Comment Letter.

[104] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.380 and accompanying text.

[105] *See* LSTA, Secondary Trading & Settlement: Monthly July Executive Summary (Aug. 19, 2021), *available at https://www.lsta.org/news-resources/secondary-trading-settlement-monthly-july-executive-summary/?utm_source=rss&utm_medium=rss&utm_campaign=secondary-trading-settlement-monthly-july-executive-summary*. In addition, fewer trades settled within T+7, (just 20% of trades settled within the LSTA guideline during July, a nine-percentage point reduction from the previous year's monthly average) and settlements wider than T+20 increased 10-percentage points as of July 2021, to a 39% market share, nearly double that of the T+7 distribution.

[106] This is based on Form N–PORT information as of Jan. 31, 2022.

[107] *See* LSTA Comment Letter (stating that settlement times have decreased in periods of large outflows, for example, in Aug. 2011, when bank loan funds experienced $8 billion of outflows (approximately 13% of assets). Similarly, in Mar. 2020, when bank loan funds experienced $12 billion of outflows (approximately 13% of assets), we understand that settlement times also generally decreased.

[108] *See infra* note 459 and accompanying text (providing information about bank loan funds' use of lines of credit as of Dec. 2021).

[109] The number of funds is estimated by dividing the aggregate gross value in the relevant categories by the aggregate gross value reported.

[110] *See infra* section III.C.1.b.

[111] *See* FASB ASC 820–10–35–37, which sets out a fair value hierarchy for accounting purposes, as compared to rule 2a–5, which provides a framework for fund valuation practices and determining fair value (including applying an appropriate methodology consistent with the principles of FASB Accounting Standard Codification Topic 820: Fair Value Measurement (''ASC Topic 820'')) for purposes of the Act. *See* Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 (Dec. 3, 2020) [86 FR 748 (Jan. 6, 2021) (''Valuation Adopting Release'')].

hierarchy. The highest-level measurements are those developed using quoted, observable inputs in active markets for identical assets and liabilities (Level 1), such as prices for identical investments on a securities exchange; the lowest are those developed using unobservable inputs (Level 3).[112] We acknowledge that observability is a valuation concept and may not always correspond to liquidity. The proposed amendment would require those funds not already classifying investments valued using unobservable inputs that are significant to the overall measurement as illiquid to change their classification practices and may change the liquidity profile for those funds under the rule to be less liquid. To the extent there is a liquid market for affected investments, this proposed amendment would cause funds to over-estimate the illiquidity of their portfolios. As of December 2021, 2,006 open-end funds held investments that were valued using unobservable inputs that are significant to the overall measurement (Level 3 investments), comprising $76.3 billion, or 0.27% of all open-end fund assets.[113] Among these, $16.9 billion were classified as highly liquid investments and $2.1 billion as moderately liquid investments.[114] Accordingly, we estimate that approximately 0.07% of all open-end fund assets would be affected by this amendment.

Where an investment is valued using unobservable inputs that are significant to the overall measurement, this may indicate that an active, liquid, and visible market for the investment does not exist. Where there is no active, liquid, and visible market for an investment, there may be a corresponding risk that the fund cannot sell the investment in time to meet redemptions without dilution. The proposal defines investments whose fair value is measured using unobservable inputs that are significant to the overall measurement as illiquid for purposes of this rule, which is intended to reduce this risk. By classifying these investments as illiquid, the proposal would establish a minimum standard for classifying the liquidity of an investment, which is designed to provide more consistent guideposts for liquidity classifications.

iii. Other Amendments Related to Liquidity Classification Categories

Amendments to the Definition of Moderately Liquid Investment

We propose to simplify the definition of moderately liquid investment to mean any investment that is neither a highly liquid investment nor an illiquid investment.[115] The moderately liquid investment category would continue to provide information about the portion of a fund's portfolio that is not on the most liquid end of the spectrum, but that still is sufficiently liquid to meet redemption requests within the statutory seven day period.

Amendments to the Definition of Convertible to Cash and References to Cash

We propose to amend the term ''convertible to cash'' to ''convertible to U.S. dollars'' and to make conforming amendments to the definition of this term to refer to the ability for a fund to sell or dispose of an investment, and for it to settle in U.S. dollars.[116] These amendments codify prior Commission statements. In the adopting release for rule 22e–4, the Commission stated that cash means ''cash held in U.S. dollars, and would not include, for example, cash equivalents or foreign currency.'' [117] The Commission also provided an example in that release in which the period of time it took to repatriate or convert a foreign currency to dollars factored into the analysis of how quickly a foreign security could convert to cash.[118] Some funds are classifying foreign investments as highly liquid taking into account solely the time it would take to convert the proceeds of a sale to the foreign currency. Similarly, some funds classify foreign currency as highly liquid without further analysis about the time that would be needed to convert that currency to U.S. dollars. We believe it is important to view the liquidity of fund investments in terms of convertibility to U.S. dollars within a specified period so that a fund is able to satisfy redemption requests in U.S. dollars.[119] This amendment is intended to promote the ability of funds to meet redemptions without diluting the interests of the remaining shareholders and increase consistency in how funds classify the liquidity of investments, including in foreign investments and foreign currencies. In addition to the definition of convertible to cash, we also propose to amend other references in rule 22e–4 to refer to U.S. dollars instead of cash for consistency and clarity.[120]

Method for Counting the Number of Days

We propose to specify when a fund must start to measure the identified number of days in which it reasonably expects a stressed trade size of an investment would be convertible to U.S. dollars without significantly changing its market value. Currently, the rule does not directly specify when to begin counting the number of days an investment would be convertible to U.S. dollars, and funds have inconsistent practices as to when they begin this measurement. This inconsistency may lead certain funds to overestimate their liquidity classifications, and reduce

[112] *See* ASC Topic 820. U.S. GAAP requires funds to maximize the use of relevant observable inputs and minimize the use of unobservable inputs in valuing any asset or liability. In some cases, the inputs used to measure fair value might be categorized within different levels of the fair value hierarchy. In those cases, the fair value measurement is categorized in its entirety in the same level of the fair value hierarchy as the lowest level input that is significant to the overall measurement. *See* ASC 820–10–35–16AA and 820–10–35–37A. Examples of particular assets and liabilities that may be measured using Level 3 inputs include long-dated currency swaps, three-year options on exchange-traded shares, interest rate swaps, asset retirement obligations at initial recognition, and reporting units. *See* FASB ASC 820–10–55–22.

[113] *See infra* note 424 and accompanying paragraph. We observed that the investments classified as highly liquid that were Level 3 investments primarily were mortgage-backed securities.

[114] We recognize that, in light of the proposed removal of the less liquid category, only those investments valued using unobservable inputs that are significant to the overall measurement that are classified as highly liquid or moderately liquid would be affected by this proposed amendment.

[115] We also are proposing to remove a provision that addresses how to classify an investment that could be viewed as either a highly liquid investment or a moderately liquid investment because the ambiguity in classification that provision addresses is no longer present under the proposed amendments to those classifications. *See* note to paragraph (b)(1)(ii) introductory text in current rule 22e–4.

[116] *See* proposed rule 22e–4(a) (defining ''convertible to *U.S. dollars*'' as the ability to be sold or disposed of, with the sale or disposition settled *in U.S. dollars*) (emphasis added). We also propose to amend the definition of convertible to U.S. dollars to refer to disposition of an investment, and not only sales. This is a conforming amendment, as current rule 22e–4 classifications otherwise refer to the ability to sell or dispose of an investment.

[117] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.848.

[118] *See id.,* at paragraph accompanying n.379 (providing an example where certain foreign securities may be able to be sold in seven calendar days or less, but may be subject to capital controls that would limit the extent to which the foreign currency could be repatriated or converted to dollars within this time frame and explaining that these securities would be considered to be less liquid investments because they would be reasonably expected to settle in more than seven calendar days).

[119] *See id.,* at n.105 and accompanying text (noting concerns about the potential mismatch between the timing of receipt of cash for sales of fund assets and the payment of cash for shareholder redemptions).

[120] *See* proposed rule 22e–4(a) (defining ''highly liquid investment'' and ''in-kind exchange traded fund''); and proposed rule 22e–4(b)(1)(i)(C) (listing liquidity risk factors).

their ability to meet redemptions. This also detracts from comparability when analyzing trends across funds. For example, some funds may consider an investment highly liquid if it could be converted to U.S. dollars three business days after the date of the classification analysis, while others include the date of classification when counting the number of days. Those funds that begin counting after the date of the classification would have the advantage of counting an additional day as compared to those funds that include the date of classification, and their liquidity classifications may appear to be more liquid than a similar fund that begins counting on the date of classification. Therefore, we propose to specify that funds must count the day of classification when determining the period in which an investment is reasonably expected to be convertible to U.S. dollars.[121] For example, in order for a fund to classify an investment as highly liquid on Monday, it would need to reasonably expect that the investment could be sold and settled to U.S. dollars by Wednesday at the latest.

We request comment on the proposed amendments to the liquidity classification categories:

16. As proposed, should we eliminate the less liquid investment category and amend the illiquid investment definition to include an investment that a fund reasonably expects can be sold within seven calendar days without significantly changing the market value but is not convertible to U.S. dollars within that period (*i.e.,* investments that are currently classified as less liquid under the rule)? What effect would these proposed amendments have and how would those funds that significantly invest in such less liquid investments likely change?

17. Would the proposed amendment cause funds that currently hold less liquid investments to contract for expedited settlement for such investments? What are the advantages or limitations of contracting for expedited settlement? Would the proposed amendments provide an incentive to reduce settlement times in bank loan and other relevant markets more generally? If so, how long might it take to reduce settlement times in response to the rule and what would be the burdens associated with this change? Are there certain categories of bank loans or other investments for which market participants may be unable to reduce the settlement time to seven calendar days or less? Which investments and why? What other effects may occur, for example, would some funds change their strategies, liquidate, or choose to be structured as a different investment vehicle, such as a closed-end fund? If some funds would convert to closed-end funds, what type of closed-end fund would they likely choose (*e.g.,* interval fund, or a closed-end fund listed on an exchange)? Should we amend other rules, or provide relief from any specific rules or provisions of the Federal securities laws, to expedite changes to strategies or conversions to closed-end funds or other investment vehicles?

18. Some funds classify certain bank loans as highly liquid or moderately liquid today. What characteristics of these bank loans lead to a reasonable expectation that they will be convertible to cash in seven days or less without significantly changing the market value? Are funds considering contracts for expedited settlement? Would funds need additional guidance on how to assess the period in which a bank loan or other investment is *reasonably expected* to be convertible to U.S. dollars? For example, should we revise the proposed rule to require that funds consider, or provide guidance suggesting that funds may wish to consider: settlement time history for the individual or similar investments, average settlement times for the market, and guarantees for settlement or expedited settlement, as well as the contractual settlement period?

19. Have the costs of borrowing risen and has credit become more difficult to obtain over time for bank loan funds, particularly during stressed periods?

20. As proposed, should we remove the less liquid category and require funds to use a three category classification framework? Would the proposed changes simplify classifications and reduce burdens over time, after funds updated systems to reflect the change? Would the proposed changes appropriately reflect the liquidity of a fund, or would the current framework be more appropriate? Should funds be permitted to invest above 15% in less liquid investments if there are other methods or mechanisms to reduce the mismatch between the receipt of cash upon the sale of assets with longer settlement periods and the payment of shareholder redemptions or to address potential dilution associated with this mismatch? If so, what other methods or mechanisms should these funds be required or permitted to use (for example, swing pricing, gates to suspend redemptions, redemption fees, redemptions in kind, additional limits on less liquid investments, notice periods, or lengthening the settlement period for paying redemptions)?[122] If we permit (to the extent not already permitted) or require use of one or more of these tools, how should they be used (individually, in some combination with each other, or with other protections, such as disclosure, board approval, and Commission reporting)? Should we amend other rules, or provide relief from any specific rules or provisions of the Federal securities laws, to expedite or permit use of these methods and mechanisms?[123]

21. Should we provide that an investment is illiquid if it is not reasonably expected to be convertible to U.S. dollars in a shorter or longer period than seven calendar days? How would a shorter or longer period align with the requirement in section 22(e) of the Act for a fund to satisfy redemptions within seven days? If we provided a longer period of time to convert to U.S. dollars before an investment is classified as illiquid, how would funds prepare for the potential mismatch during stressed situations between the amount of available cash and the size of shareholder redemptions? Should we provide additional exemptions to allow funds to delay redemptions to shareholders under certain limited circumstances and conditions, such as independent director approval?

22. Are there circumstances in which an investment is fair valued using an unobservable input that is significant to the overall measurement, but the investment should not be treated as illiquid for purposes of the rule? Please explain and provide supporting data. Should we permit a fund to classify certain types of investments that are fair valued using unobservable inputs that are significant to the overall measurement as highly liquid or moderately liquid and, if so, which types? Should we instead treat investments that are fair valued using unobservable inputs that are significant to the overall measurement as presumptively illiquid, but permit funds to rebut this presumption? If so, what process should we require for rebutting the presumption? For example, should

[121] *See* proposed rule 22e–4(b)(1)(ii)(A).

[122] With a notice period, an investor's redemption request would not be processed until the end of a notice period (*e.g.,* after 2 to 5 days). The investor would receive the next calculated price after the notice period ends, with payment occurring at the end of a settlement period. With a lengthened settlement period, a redeeming investor would receive the price next calculated after submitting the redemption order but would not receive payment until the end of a lengthened settlement period (*e.g.,* 5 to 7 days after trade date).

[123] *See, e.g.,* section 22(e) of the Act (providing the conditions under which a registered investment company may suspend the right, or postpone the date, of redemption for more than seven days).

we require funds to maintain records describing why they did not classify such an investment as illiquid? Should we require funds to disclose on Form N–PORT any circumstances in which they did not classify such an investment as illiquid?

23. Are there other types or characteristics of investments that we should include in the definition of illiquid investment? If so, which ones?

24. Should we amend the definition of moderately liquid investment, as proposed? Alternatively, should we retain the details in the current definition that specify the number of days in which a fund must reasonably expect an investment to be convertible to U.S. dollars in order to classify it as moderately liquid?

25. Would the proposed changes to the liquidity classifications affect investment options available to investors? For example, would bank loan funds only be available in non-open-end investment vehicles? What effect would these proposed changes have on those asset classes that are less available for investment by open-end funds for liquidity reasons, the availability of credit to borrowers, and more generally, on capital formation?

26. Should we amend the definition of convertible to cash and other references to cash in rule 22e–4 to refer to U.S. dollars, as proposed? Would these amendments raise issues for specific types of funds? If so, which ones and how? Would these amendments affect funds' investment strategies, including their allocation to foreign investments and U.S. dollars, or their performance?

27. Are there circumstances in which a fund would pay redemptions in a different currency than U.S. dollars? If so, would it be appropriate for that fund to be able to assess the time in which an investment could convert to that other currency for purposes of the rule?

28. In addition to sale and disposition, are there other ways an investment may be converted to U.S. dollars that should be included in the definition of convertible to U.S. dollars? If so, what are they?

29. Would the amendment to refer to U.S. dollars instead of cash in the definitions of highly liquid investment and convertible to cash materially change how funds classify highly liquid investments currently? If so, how?

30. Should we require funds to include the day of classification when counting the number of days to convert to U.S. dollars as proposed, or should we require funds to begin to count the number of days to convert to U.S. dollars on the following day? What are the advantages and disadvantages of this alternative? Would this alternative result in less conservative liquidity classifications for some funds or investments (*i.e.,* by causing some investments that otherwise would have been classified as moderately liquid to be classified as highly liquid) or impair a fund's ability to meet redemptions?

31. Instead of using the days an investment would be convertible to U.S. dollars in the liquidity classifications as proposed, should we separately set the number of days to: (1) make the trade; and (2) settle the trade or otherwise dispose of an investment, in determining liquidity classifications? Why or why not? Is there a different way the rule should measure the period that an investment is convertible to U.S. dollars?

c. Frequency of Classifications

Rule 22e–4 currently requires that funds review their liquidity classifications at least monthly in connection with reporting on Form N–PORT, and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of their investments' classifications.[124] The current rule also requires a fund to monitor and take timely actions related to the liquidity of its investments, including changes to its liquidity profile. Specifically, the rule prohibits a fund from acquiring any illiquid investment if, immediately after the acquisition, the fund would have invested more than 15% of its net assets in illiquid investments that are assets.[125] In addition, the rule requires a fund to provide timely notice to its board, and to the Commission on Form N–RN, if the fund exceeds the 15% limit on illiquid investments, or if there is a shortfall of the fund's highly liquid investments below its highly liquid investment minimum for seven consecutive calendar days.[126]

We propose amendments to require a fund to classify all of its portfolio investments each business day instead of at least monthly.[127] Daily classification would reflect current market conditions more accurately and would provide funds with more data for analysis to prepare for future stressed conditions. We believe that daily classifications would assist liquidity risk program administrators in better monitoring of a fund's liquidity and enhance a fund's ability to more rapidly respond to changes that affect the liquidity of the fund's portfolio, reflecting more effective practices we have observed. In addition, daily classifications would help ensure that funds timely report shortfalls below the highly liquid investment minimum or breaches of the 15% limit on illiquid investments to the fund's board and to the Commission, which would better achieve the goals of the current provisions to provide board and Commission oversight of the fund's liquidity risk management program and its effectiveness.

Most funds did not report reclassifications of their portfolio investments despite extraordinary liquidity constraints in March 2020.[128] Based on the liquidity classification practices we observed in March 2020 and on filings covering this period, we are concerned that some funds effectively are equipped to classify their investments primarily on a monthly basis to meet reporting requirements and are not prepared to review classifications intra-month. Because intra-month analyses for these funds would be out of the ordinary and only occur when a fund determines that changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of their investments' classifications, it may be especially challenging during stressed conditions for these funds to reclassify their investments intra-month. Requiring daily classification, while involving costs, may ultimately lead to a more efficient classification process for funds than monitoring trading conditions to determine if and when intra-month classifications are required. For

[124] *See* rule 22e–4(b)(1)(ii).

[125] *See* rule 22e–4(b)(1)(iv).

[126] *See* rule 22e–4(b)(1)(iv)(A) and rule 22e–4(b)(1)(iii)(A)(*3*); Form N–RN Parts B through D.

[127] *See* proposed rule 22e–4(b)(1)(ii). Although rule 22e–4 currently requires funds to classify each of the fund's portfolio investments (including each of the fund's derivatives transactions), we have observed that some funds are not classifying all investments in their portfolios, such as positions in to-be-announced (TBA) contracts to trade mortgage-backed securities or the reinvestment of cash collateral received in securities lending arrangements.

[128] Despite the liquidity constraints in Mar. 2020, we observed through Form N–PORT filings that roughly 75% of funds did not reclassify any investment held in both Feb. and Mar. 2020. Specifically, roughly 80% of U.S. equity funds did not reclassify any holding that was held in both Feb. and Mar. 2020, while roughly 10% reclassified at least one investment into a more liquid category and roughly 13% reclassified at least one investment into a less liquid category. Roughly 55% of taxable bond funds reclassified on average 4% of their portfolios, with the median fund reclassifying 1% of its portfolio. Of the funds that reclassified, roughly 30% reclassified at least one investment into a more liquid category and roughly 44% reclassified at least one investment into a less liquid category. More funds did, however, reclassify in Mar. 2020 period than for either Feb. or Apr. 2020.

example, a daily classification requirement, in combination with the minimum standards we propose for trade size and value impact, may lead funds to modify their liquidity classification processes, which would make the process more standardized, timely, and efficient.

We request comment on the proposed amendments to require funds to classify the liquidity of their investments on a daily basis.

32. Should we require funds to classify all portfolio investments on a daily basis, as proposed? Would this proposed amendment result in a material change to how funds are currently classifying? To what extent do funds already classify the liquidity of their investments on a daily basis or collect the information they would need to classify daily? Would this proposed amendment better integrate liquidity risk management and portfolio management systems?

33. We also are proposing that funds use a stressed trade size and a defined value impact standard in determining liquidity classifications. Would those changes affect the burdens of classifying on a daily basis? Would those effects be different for different types of funds? For example, would it be easier to determine on a daily basis whether the sale of a stressed trade size of shares listed on an exchange would exceed 20% of the average daily trading volume for those shares than to determine whether the sale of a stressed trade size of other investments would result in a price decline of more than 1%?

34. Instead of classifying on a daily basis, should we require funds to classify the liquidity of their investments at some other frequency (*e.g.,* weekly, biweekly, or monthly)? If so, should we maintain the requirement for a fund to classify more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of its investments' classifications? Is there a different approach we should use effectively to require a fund to classify its investments in response to changing conditions? Are there certain types of funds that should be excluded from daily classifications? If so, which funds?

35. If we require funds to classify on a non-daily frequency, how would they monitor for compliance with the 15% limit on illiquid investments and the highly liquid investment minimum? How are those limits monitored for compliance now?

2. Highly Liquid Investment Minimums

a. Proposed Scope of the Requirement and Determination of the Minimum

Rule 22e–4 currently requires a fund to determine a highly liquid investment minimum if it does not primarily hold assets that are highly liquid investments. Funds that are subject to the highly liquid investment minimum requirements must determine a highly liquid investment minimum considering several factors, review the minimum at least annually, and adopt policies and procedures to respond to a shortfall of the fund's highly liquid investments below the minimum required.[129] We propose to require all funds to determine and maintain a highly liquid investment minimum of at least 10% of the fund's net assets, which is equivalent to the stressed trade size. In connection with this proposed requirement, we would remove the exclusion for funds that primarily invest in highly liquid investments (the ''primarily exclusion''). The proposed amendments are designed to ensure that funds have sufficient liquid investments for managing stressed conditions and heightened levels of redemptions.

We assessed liquidity-related data reported on Forms N–PORT, as well as the development of liquidity risk management programs, through staff outreach to funds and advisers. Based on Form N–PORT filings, most funds do not determine a highly liquid investment minimum and instead rely on the primarily exclusion.[130] For those funds that have highly liquid investment minimums, the rule currently requires that they consider various liquidity factors, such as their investment strategy and cash-flow projections, in both normal and reasonably foreseeable stressed conditions.[131] We understand that those funds additionally consider factors such as asset class, market volatility, and shareholder concentration in their determinations.

As discussed above, by requiring fund liquidity classifications to assume the sale or disposition of a set stressed trade size, the proposal is intended to better prepare all funds for future stressed conditions.[132] To help further prepare a fund for heightened levels of redemptions in stressed conditions, we are proposing to require the highly liquid investment minimum to be equal to or higher than the assumed stressed trade size. In setting the highly liquid investment minimum to be at least the stressed trade size, we considered data on fund flows for setting the stressed trade size as well as data reported on Form N–PORT on funds' current highly liquid investment minimums. As of March 2020, for funds that had determined a highly liquid investment minimum, the majority of those funds reported setting a highly liquid investment minimum of less than 10% of the fund's net assets. In contrast, approximately 8% of those funds reported setting a highly liquid investment minimum of more than 50% of the fund's net assets. Thus, while there is a wide divergence in highly liquid investment minimums, most of these funds have a minimum that is lower than the proposed 10% level. Given the level of weekly outflows some funds have experienced and the difficulty in predicting future stress events, we believe that a regulatory minimum of 10% for the highly liquid investment minimum would benefit investors by improving the ability of funds to meet shareholder redemptions in stressed scenarios.

In addition, the proposal's requirement for funds to both assume a stressed trade size to determine liquidity classifications and also maintain an equal or higher minimum of highly liquid investments is intended to work together to better prepare them for future stressed conditions and to reduce the risk of dilution. Not only would funds have highly liquid investments in an amount needed to meet the stressed trade size, they would also have more highly liquid assets to meet redemptions without having to sell less liquid investments at discounted prices. Funds would continue to be required to periodically review the highly liquid investment minimum and have policies and procedures to address any shortfall in highly liquid investments below the minimum.

While the proposed minimum of 10% of a fund's net assets may be a suitable highly liquid investment minimum for most funds, certain funds may find a higher amount appropriate depending on a fund's liquidity risk factors and investment objectives. Consistent with the current rule, a fund would be required to consider a specified set of liquidity risk factors to determine whether its highly liquid investment

[129] *See* rule 22e–4(b)(1)(iii).

[130] Approximately 83% of funds holding 85% of net assets do not report setting a highly liquid investment minimum on Form N–PORT.

[131] For these purposes, funds are required to consider certain factors during stressed conditions only to the extent they are reasonably foreseeable during the period until the next review of the highly liquid investment minimum. *See* rule 22e–4(b)(1)(iii)(A)(*1*).

[132] *See supra* section II.A.1.a.i for discussion of the stressed trade size and of fund flow data.

minimum should be above 10%.[133] We continue to believe that the liquidity risk factors funds must consider in determining a highly liquid investment minimum under the current rule and the associated guidance the Commission provided in the Liquidity Rule Adopting Release regarding these factors are appropriate for a fund to take into account for these purposes.[134]

A broad variety of investments, as well as cash, may qualify towards the highly liquid investment minimum.[135] Since approximately 83% of funds currently rely on the primarily exclusion, we would not expect this proposal to affect their strategies. We recognize, however, that imposing a highly liquid investment minimum of at least 10% would require some other funds to hold a larger amount of highly liquid assets than they currently do, and thus may affect these funds' performance or strategies.[136] For funds with strategies focused on investments that would not be considered highly liquid, they would have to determine how to constitute a portfolio of investments that would allow the fund to meet its strategy and investing parameters while maintaining a highly liquid investment minimum of at least 10%. All funds would be subject to the same highly liquid investment minimum of at least 10%, which would minimize any competitive advantage for similar funds associated with the proposed highly liquid investment minimum requirements. We believe it is important that all funds be prepared to meet redemptions in future stressed scenarios, and that funds would be better able to do so with the proposed highly liquid investment minimum requirements.

In establishing a uniform floor for the highly liquid investment minimum, we are also proposing to remove the exclusion for funds that invest *primarily* in highly liquid investments. The Commission adopted the primarily exclusion because it believed the benefits associated with requiring such funds to determine and review a highly liquid investment minimum, or to adopt shortfall procedures, would not justify the associated burdens.[137] Since that time, however, we have observed that a fund relying on the primarily exclusion may experience significant declines in its liquidity that result in the fund holding less than 50% of its portfolio in highly liquid investments for a period of time. For example, a fund that invests significantly in a given foreign market and that generally classifies those investments as highly liquid can experience substantial declines in the amount of its highly liquid investments if, for example, there is political or economic turmoil in or an extended holiday closure of that foreign market. Funds that currently use the primarily exclusion instead of determining and maintaining a highly liquid investment minimum do not have the benefit of shortfall procedures, including board oversight, to respond to events or market conditions that may cause the fund to fall under its previously determined level of primarily held highly liquid investments. By requiring a highly liquid investment minimum for all funds, investors would enjoy the benefit of policies and procedures that are designed to ensure not only oversight by the liquidity risk program administrator but also the fund's board.

Moreover, the burdens of complying with highly liquid investment minimum requirements for funds that currently use the primarily exclusion may be reduced because many fund complexes already have experience developing highly liquid investment minimum shortfall policies and procedures. It may be possible for funds in the same complex to leverage this experience to reduce the burdens of developing these policies and procedures for funds that previously qualified for the primarily exclusion. As liquidity risk management programs have matured, and continue to mature, many fund complexes continue to gain experience with highly liquid investment minimum shortfall policies and procedures, which may also reduce burdens. By requiring all funds to adopt a highly liquid investment minimum, we are seeking to help ensure that funds would be better prepared to handle future stressed conditions, which may occur suddenly and unexpectedly, as they would have sufficient liquid investments for managing heightened levels of redemptions.

We request comment on the proposed amendments to highly liquid investment minimum requirements.

36. Should we require all funds to determine and maintain a highly liquid investment minimum, as proposed? What effect would this proposal have on funds? For example, would some funds have to change their strategies or expect effects on performance?

37. Should some types of funds be excluded from the requirement to have a highly liquid investment minimum? If yes, which ones and why? For example, should we preserve the exclusion for funds that primarily hold highly liquid assets? Alternatively, should funds currently using the primarily exclusion have a higher highly liquid investment minimum requirement? Would funds using the primarily exclusion be as prepared to meet redemptions in stressed scenarios without a highly liquid investment minimum and its corresponding policies and procedures?

38. If the primarily exclusion is kept, should we define the amount of highly liquid assets a fund must maintain under this standard (*e.g.,* investing at least 51% of the fund's net assets in highly liquid assets, or a higher or lower amount)?

39. Should we establish a regulatory minimum for the amount of highly liquid investments of 10%, as proposed, or should it be set at 15% or 5% (or some other higher or lower amount)? Would establishing a regulatory minimum reduce the burdens associated with determining and periodically reviewing the fund's highly liquid investment minimum?

40. Rather than propose a regulatory minimum with factors that a fund must consider to determine whether its own highly liquid investment minimum should be higher, should we require all funds to use the same highly liquid investment minimum? Would this set a level playing field for all funds and diminish any competitive advantage for a fund with a lower highly liquid investment minimum? If so, what amount would be appropriate for a uniform highly liquid investment minimum for all funds (*e.g.,* 5%, 10%, 15%, or a higher or lower amount)?

41. Would providing more detail or guidance on the liquidity risk factors be helpful? If so, which factors?

42. Would funds that do not currently have a highly liquid investment minimum be able to leverage policies and procedures already developed for highly liquid investment minimums, for example by other funds in the same complex, to reduce the burdens of developing these policies and procedures? If not, what costs would funds incur to adopt and implement highly liquid investment minimum policies and procedures?

---

[133] *See* Liquidity Rule Adopting Release, *supra* note 8, at paragraph following n.669.

[134] *See id.,* at section III.B.2.

[135] *See id.,* at n.663 and accompanying text.

[136] As recognized above, being unprepared for higher than normal redemptions also can affect a fund's performance when such redemptions occur. *See supra* note 81. For instance, although less liquid assets generally offer a higher return, the trading costs associated with selling these assets during periods of increased redemptions may offset this risk premium, potentially resulting in a lower overall return for fund investors. *See infra* note 351 and accompanying text.

[137] Liquidity Rule Adopting Release, *supra* note 8, at paragraph accompanying n.724.

b. Calculation of the Highly Liquid Investment Minimum

We are proposing amendments to rule 22e–4 that are designed to help ensure that the highly liquid investments a fund holds to meet its highly liquid investment minimum are available to support the fund's ability to meet redemptions. A key aim of the highly liquid investment minimum requirement is to decrease the likelihood that funds would be unable to meet their redemption obligations.[138] Building on existing aspects of rule 22e–4, the proposed amendments would require that, when determining the amount of assets a fund has classified as highly liquid that count toward the highly liquid investment minimum, the fund account for limitations in its ability to use some of those assets to meet redemptions.[139] Specifically, in assessing compliance with the fund's highly liquid investment minimum, the fund would be required to: (1) subtract the value of any highly liquid assets that are posted as margin or collateral in connection with any derivatives transaction that is classified as moderately liquid or illiquid; and (2) subtract any fund liabilities.[140]

i. Margin or Collateral of Moderately Liquid and Illiquid Derivatives

The requirement for a fund to reduce the value of its highly liquid assets by the amount posted as margin or collateral in connection with a non-highly liquid derivatives transaction reflects that this amount of highly liquid assets is not available for the fund to use to meet redemptions.[141] This is because, where a fund enters into a moderately liquid or illiquid derivative and posts highly liquid assets as margin or collateral, the posted collateral is highly liquid, but the fund cannot access the value of posted assets unless the fund exits the derivatives transaction. Since the fund has classified the derivative as moderately liquid or illiquid, it does not reasonably expect to be able to exit the derivatives transaction within three business days. We recognize that the fund may be able to access the specific assets posted as margin or collateral by replacing them with other assets acceptable to the fund's counterparty. But regardless of the specific assets posted, the value of collateral posted in connection with a moderately liquid or illiquid derivative would not be convertible to U.S. dollars within three business days or less.

Under the current rule, a fund is required to identify the percentage of the fund's highly liquid investments that it has posted as margin or collateral in connection with derivatives transactions that the fund has classified as less than highly liquid.[142] The Commission believed that this approach struck an appropriate balance between providing transparency and reducing burdens on funds.[143] The Commission observed that a fund generally would not need to specifically identify particular assets that are posted as margin or collateral to cover particular derivatives transactions, but instead would calculate the percentage of highly liquid investments posted as margin or collateral for derivatives transactions classified in each of the other classification categories.[144] Under the rule, a fund that has posted both highly liquid investments and non-highly liquid investments as margin or collateral in connection with a non-highly liquid derivatives transaction should reduce its highly liquid investments, rather than assume that posted non-highly liquid investments would first cover the derivatives transaction, unless the fund specifically identifies non-highly liquid investments as margin or collateral in connection with a derivatives transaction.[145] Finally, the Commission observed that the current approach responds to commenters' concerns that linking the liquidity of specific assets posted as margin or collateral to the liquidity of a fund's derivatives transactions could understate the liquidity of those assets, since a fund may be able to readily substitute another liquid asset for the asset posted as margin or collateral.[146]

The proposed approach is intended to enhance investor protection while continuing to strike an appropriate balance with the potential increased burdens on funds. The proposed approach would not require funds to identify and reclassify specific assets posted as margin or collateral, but rather to reduce the value of the fund's highly liquid assets available to meet the fund's highly liquid investment minimum by the value of the assets posted as margin or collateral. We also propose to maintain, with conforming changes, the explanatory note discussed above guiding the allocation of amounts posted as margin or collateral.[147] By reducing the fund's highly liquid investments by the value of amounts posted as margin or collateral, the proposed approach would avoid burdens associated with tracking specific securities posted as margin or collateral and reclassifying investments as they are posted as margin or collateral and recalled. It also would not

[138] *See* Liquidity Rule Adopting Release, *supra* note 8, at text following n.117.

[139] As the Commission explained at the time it adopted rule 22e–4, this is not meant to suggest that a fund should only, or primarily, use highly liquid investments to meet shareholder redemptions. Instead, we believe that a fund holding sufficient highly liquid assets will support the fund in meeting redemption requests in a non-dilutive manner, and assist it in readjusting its portfolio in times of market stress, heightened volatility, and managing its obligations to derivatives counterparties. *See* Liquidity Rule Adopting Release, *supra* note 8, at n.680 and accompanying text.

[140] Proposed rule 22e–4(b)(1)(iii)(B)(*1*); 22e–4(b)(1)(iii)(B)(*2*). Rule 22e–4 currently refers to a ''pledge'' of margin or collateral, rather than ''posting.'' We are proposing to use the term ''post'' because we believe this term is more commonly used within the industry and by other regulators to refer to instances where a party provides margin or collateral to its counterparty to meet the performance of its obligation under one or more derivatives transactions as a result of a change in the value of such obligations since the trade was executed or the last time such collateral was provided (commonly referred to as variation margin) or is provided to secure potential future exposure following default of a counterparty (commonly referred to as initial margin). *See, e.g.,* Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 86 FR 6850 (Jan. 25, 2021).

[141] *See* Liquidity Rule Adopting Release, *supra* note 8, at nn.727–730 and accompanying text. This aspect of the proposed rule would only require an adjustment to the amount of a fund's highly liquid investments that are *assets,* since investments that are in a liability position are unable to be used to meet redemption requests. *See* proposed rule 22e–4(b)(1)(iii)(B)(*1*).

[142] Rule 22e–4(b)(1)(ii)(C). In addition, funds currently also are required to exclude highly liquid assets that are posted as margin or collateral in connection with non-highly liquid derivatives transactions when determining whether the fund primarily holds highly liquid assets. Rule 22e–4(b)(1)(iii)(B).

[143] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.476 and accompanying text.

[144] *Id.* at n.489 and accompanying text.

[145] Note 1 to proposed rule 22e–4(b)(1)(iii)(B)(*1*). *Cf.* Note 1 to rule 22e–4(b)(1)(ii)(C). *See also* Liquidity Rule Adopting Release, *supra* note 8, at nn.489–490 and accompanying text (explaining that in the absence of such an instruction, some funds might instead take the opposite approach, and assume that posted non-highly liquid investments first cover these less liquid derivatives transactions, creating inconsistencies between funds).

[146] We recognize that margin or collateral may be determined and paid by funds on the basis of a group of derivatives transactions, with the fund posting or receiving a net amount of margin or collateral. When a fund pays margin or collateral in connection with a group that includes derivatives transactions that are highly liquid and non-highly liquid, funds already must determine the amount of margin or collateral attributable to the non-highly liquid derivatives under the current rule. For example, a fund must perform this attribution in order to identify the percentage of the fund's highly liquid investments that it has posted as margin or collateral in connection with derivatives transactions that are not themselves highly liquid.

[147] *See supra* note 145. In connection with the proposed amendments to the rule's highly liquid investment minimum provisions, we propose to re-number certain existing paragraphs and to add paragraphs to the rule. As a result, we propose to update cross-references to the highly liquid investment minimum provisions within the rule. *See* proposed rule 22e–4(b)(1)(iii)(C) through (E) and proposed rule 22e–4(b)(3)(iii).

understate the liquidity of specific securities that are posted as margin or collateral because each security would continue to be classified based on its own characteristics, and instead the adjustments would only be made at the aggregate level.[148] Moreover, many of the operational concerns commenters raised when rule 22e–4 was proposed, which led the Commission to adopt the current approach, related to the treatment of assets segregated under the Commission's Investment Company Act Release 10666, which the Commission has since rescinded, effective August 19, 2022.[149] We therefore believe the proposed amendments would enhance investor protections by helping to ensure a fund's highly liquid assets are in fact available to meet redemptions, while continuing to balance the value of the provision against the operational burdens to implement it.

ii. Fund Liabilities

Under the proposal, a fund would also be required to reduce the amount of highly liquid assets that count toward the fund's highly liquid investment minimum by the amount of the fund's liabilities. This proposed change is intended to result in a more accurate calculation of the highly liquid investment minimum.[150] The proposed approach would include any liabilities, as defined in 17 CFR 210.6–04 (rule 6.04 of Regulation S–X). For example, this would include investment liabilities and amounts payable for investment advisory, management, and service fees. Reducing the amount of highly liquid assets by fund liabilities reflects that fund liabilities are generally paid in cash, meaning that highly liquid assets may need to be liquidated in order to satisfy those liabilities rather than to meet redemptions.

Based on staff outreach, it is our understanding that the proposal reflects many funds' existing practices. For example, when a fund has significant liabilities, they generally will be incurred in connection with derivatives transactions or other investments that give rise to a fund liability. Because funds are required to classify all investments, including liabilities, investments such as highly liquid derivatives in a liability position will reduce the value of the fund's highly liquid investments that are assets. To enhance investor protection by preventing assets that a fund may in the future use to pay liabilities from also being counted toward the fund's highly liquid investment minimum, and to promote consistency in how funds calculate their highly liquid investment minimum, we are proposing to require that all funds reduce their highly liquid assets used to satisfy their highly liquid investment minimum by the amount of the fund's liabilities.[151]

We request comment on these aspects of the proposal, including:

43. Should we, as proposed, require a fund to reduce the amount of its highly liquid investments computed for the purposes of determining compliance with its highly liquid investment minimum by the value of any highly liquid assets that are posted as margin or collateral in connection with any derivatives transaction that is classified as moderately liquid or illiquid? Why or why not? Should we also require that amounts posted as margin or collateral in connection with derivatives transactions that are classified as highly liquid be treated in this way? Alternatively, should we exempt amounts posted as margin or collateral in connection with certain types or categories of derivatives transactions from this requirement?

44. How frequently do funds calculate the percentage of their highly liquid assets posted as margin or collateral in connection with non-highly liquid derivatives transactions today? Would the proposed requirement to calculate this value on a daily basis present new challenges?

45. Should we, as proposed, require a fund to reduce the amount of its highly liquid assets computed for the purpose of determining compliance with its highly liquid investment minimum by the value of any liabilities? Do funds already make this reduction when determining compliance with highly liquid investment minimums? Should we instead require a fund to reduce the amount of its highly liquid assets by a different amount, such as the percentage of the fund's total assets that its liabilities represent? Are there certain classes or types of fund liabilities that should not be counted? For example, should we provide an exception for liabilities associated with fund borrowings that are used to meet redemptions in order to avoid a disincentive for funds to borrow for this purpose under appropriate circumstances?

46. We propose that, for these purposes, the amount of a fund's liabilities would be computed in the same manner as a fund computes its liabilities for purposes of rule 6–04 of Regulation S–X. If we use this standard, as proposed, would the amount by which funds should reduce their highly liquid assets be clear? Are there any issues that may arise from using the standard funds use to prepare their balance sheets? Would a different definition of ''liabilities'' be more appropriate?

3. Limit on Illiquid Investments

Rule 22e–4 currently limits a fund's ability to acquire illiquid investments. Specifically, the rule prohibits a fund from acquiring any illiquid investment if, immediately after the acquisition, the fund would have invested more than 15% of its net assets in illiquid investments that are assets.[152] We are proposing to amend the rule's limitation on illiquid investments to provide that the value of margin or collateral that a fund could only receive upon exiting an illiquid derivatives transaction would itself be treated as illiquid for these purposes.[153] As the Commission stated in 2016, the potential effects of a fund's use of derivatives are relevant to assessing, managing, and periodically reviewing a fund's liquidity risk.[154] The potential effects may be heightened when the derivatives transaction is itself illiquid, and thus may be difficult for a fund to exit quickly enough to use the associated margin or collateral to meet redemption requests, or at all. Funds' use of illiquid derivatives is subject to several limitations but, for open-end funds, the risks associated with illiquid derivatives may be heightened as a result of the funds' redeemability.[155]

[148] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.491 and accompanying text.

[149] *See* Liquidity Rule Adopting Release, *supra* note 8, at nn.468–472 and accompanying text (operational concerns); Derivatives Adopting Release, *supra* note 21, at section II.L (withdrawal of Investment Company Act Release 10666).

[150] The highly liquid investment minimum is the percentage of a fund's net assets that it invests in highly liquid assets that are eligible to count toward the minimum under the rule. *See* rule 22e–4(a)(7) (defining highly liquid investment minimum). Because this calculation uses net assets as the denominator (which reflects the amount of assets less any liabilities), we believe the numerator of eligible highly liquid assets similarly should be net of liabilities.

[151] Depending on the rules of any applicable exchange and local law, a variation margin payment with respect to a derivatives transaction may be deemed to settle the fund's liability for the daily mark-to-market loss on the transaction. In that case or any other case where a fund does not have a liability in connection with a given transaction, the fund would not be required to reduce its highly liquid investments in connection with that transaction under the proposal.

[152] *See* rule 22e–4(b)(1)(iv). A fund also must notify its board, and report confidentially to the Commission on Form N–RN, if its illiquid investments that are assets exceed 15% of net assets.

[153] *See* proposed rule 22e–4(b)(1)(iv).

[154] *See* Liquidity Rule Adopting Release, *supra* note 8, at text accompanying nn.218–223.

[155] The limitations on funds' issuance of senior securities, which include derivatives creating certain payment or delivery obligations, in section 18 of the Act and 17 CFR 270.18f–4 (rule 18f–4)

Under the proposal, for purposes of determining whether the fund is in compliance with the limitation on illiquid investments, the fund would treat as illiquid the amount of margin or collateral it has posted in connection with a derivatives transaction that is classified as an illiquid investment and that the fund would receive if it exited the derivatives transaction (''excess collateral'').[156] This proposed requirement recognizes that, because a fund does not reasonably expect to be able to convert an illiquid derivatives investment to U.S. dollars within seven days, the fund likewise would not be able to convert to U.S. dollars the value of excess collateral posted as margin or collateral in connection with the derivatives transaction within seven days. Therefore, the proposal would require a fund to include the value of the excess collateral or margin when it determines the amount of illiquid assets it holds for purposes of the 15% limit on illiquid investments.

As with the proposed amendments related to the amounts posted as margin or collateral for non-highly liquid derivatives, a fund would not be required to specifically identify particular assets that it posted as margin or collateral to cover specific derivatives transactions. Instead, a fund would calculate the value of its assets posted as margin or collateral in connection with illiquid derivatives transactions and treat that value of assets as illiquid.[157]

We request comment on this aspect of the proposal, including:

47. Should we, as proposed, require funds to treat as illiquid investments the value of excess collateral the fund has posted in connection with a derivatives transaction that is classified as an illiquid investment? Are there circumstances where a fund would have ready access to the value of such collateral even though the associated derivatives transaction is illiquid?

48. Are there challenges to identifying and monitoring the amount of excess collateral a fund has posted in connection with a derivatives transaction that is classified as an illiquid investment? If so, are there ways to address those challenges?

49. Are there other instances where we should treat an investment as illiquid for purposes of the rule's limit on illiquid investments that the current rule and the proposal do not contemplate?

50. Should we amend any other aspects of the illiquid investment limitations in the rule? For example, should we change the amount of the limit on illiquid investments from 15% to a lower amount, such as 10% or 5%, or a higher amount, such as 20% or 25%?

B. Swing Pricing

We are proposing amendments to rule 22c–1 that would require all registered open-end management investment companies to engage in swing pricing under certain conditions, except for money market funds and ETFs (the latter, ''excluded funds'').[158] Swing pricing is a process of adjusting a fund's current NAV when certain conditions are met, such that the transaction price effectively passes on costs stemming from shareholder inflows or outflows to the shareholders engaged in that activity. Trading activity and other changes in portfolio holdings associated with purchases and redemptions may impose costs, including trading costs and costs of depleting a fund's liquidity. These costs, which currently are borne by the non-transacting shareholders in the fund, can dilute the interests of these shareholders. In addition, this can create incentives for shareholders to redeem quickly to avoid losses, particularly in times of market stress. If shareholder redemptions are motivated by this first-mover advantage, they can lead to increasing outflows, and as the level of outflows from a fund increases, the incentive for remaining shareholders to redeem may also increase.[159] By imposing the costs associated with net purchases or net redemptions on the shareholders who are purchasing or redeeming from the fund at that time, swing pricing can more fairly allocate costs, reduce the potential for dilution of investors who are not currently transacting in the fund's shares, and reduce any potential first-mover advantages.

1. Proposed Swing Pricing Requirement

Under the proposal, every open-end fund other than an excluded fund would be required to establish and implement swing pricing policies and procedures that adjust the fund's current NAV per share by a swing factor either if the fund has net redemptions or if it has net purchases that exceed an identified threshold.[160] We are proposing to require these funds to use swing pricing as an anti-dilution tool, in contrast to the optional framework that currently exists in rule 22c–1. Based on our observations from the events in March 2020, including in other jurisdictions where swing pricing is a common tool, requiring funds to use

provide certain protections to investors, and the proposed amendments are designed to complement those protections. *See* Derivatives Adopting Release, *supra* note 21 (stating that a fund's derivatives risk management program would be part of an adviser's overall management of portfolio risk and would complement—but would not replace—a fund's other risk management activities, such as a fund's liquidity risk management program adopted under rule 22e–4).

[156] This does not mean that the investment acting as margin or collateral would need to be classified as an illiquid investment under the rule. A fund would classify the relevant investment according to the rule's classification framework. In order to aid understanding of the reported data, we propose to require a fund to report the value of investments treated as illiquid as a result of this provision. *See* section II.E.1.d, *infra* and Item B.8.b of proposed Form N–PORT.

[157] *See* Item B.8.b of proposed Form N–PORT.

[158] *See* proposed rule 22c–1(b). We refer to registered open-end management investment companies other than excluded funds as ''funds'' or ''open-end funds'' when discussing the swing pricing requirement. We continue to believe it is appropriate to limit swing pricing to these funds and to not include other fund types, such as unit investment trusts or closed-end funds. *See* Swing Pricing Adopting Release, *supra* note 8, at nn.62–72 and accompanying text. With respect to excluded funds, the Commission recently proposed to require certain money market funds to engage in swing pricing under rule 2a–7, but those money market funds would not be subject to the proposed swing pricing requirement under rule 22c–1(b). *See* Money Market Fund Reforms, Investment Company Act Release No. 34441 (Dec. 15, 2021) [87 FR 7248 (Feb. 8, 2022)] (''Money Market Fund Proposing Release''). ETFs, including an ETF share class of any fund that issues multiple classes of shares representing interests in the same portfolio, would not be subject to the swing pricing requirement, as discussed below. *See* definition of ''Exchange-traded fund'' in proposed rule 22c–1(d).

[159] Some research suggests that a first-mover advantage in open-end funds may lead to cascading anticipatory redemptions akin to traditional bank runs. This research generally models an exogenous response to negative fund returns and not trading costs. However, these results may extend to trading costs to the degree that cost based dilution may reduce subsequent fund returns, which would trigger runs in these models. *See, e.g.,* Chen, Qi, Itay Goldstein, and Wei Jiang. 2010. ''Payoff Complementarities and Financial Fragility: Evidence from Mutual Fund Outflows.'' Journal of Financial Economics 97(2): 239–262. *See also* Goldstein, Itay, Hao Jiang, and David Ng. 2017. ''Investor Flows and Fragility in Corporate Bond Funds.'' Journal of Financial Economics 126(3):592–613. *See also* Morris, Stephen, Ilhyock Shim, and Hyun Song Shin. 2017. ''Redemption Risk and Cash Hoarding by Asset Managers.'' Journal of Monetary Economics 89: 71–87. *See also* Zeng, Yao. 2017. ''A Dynamic Theory of Mutual Fund Runs and Liquidity Management.'' Working Paper. *See also* Ma, Yiming, Kairong Xiao, and Yao Zeng. 2021. ''Mutual Fund Liquidity Transformation and Reverse Flight to Liquidity.'' Working Paper. *See also* Ma, Yiming, Kairong Xiao, and Yao Zeng. 2021. ''Bank Debt versus Mutual Fund Equity in Liquidity Provision.'' Working Paper. *See also* Christof W. Stahel. 2022. ''Strategic Complementarity Among Investors with Overlapping Portfolios'', *available at https://ssrn.com/abstract=3952125* (positing that investors behave similarly regardless of whether they hold assets indirectly through a fund or directly through a separately managed account and the general explanation for investor decisions to sell assets is that all market participants compete for finite market liquidity).

[160] *See* proposed rule 22c–1(b)(1) and definition of ''Inflow swing threshold'' in proposed rule 22c–1(d).

swing pricing could result in benefits for investors, as discussed below.[161] However, at present no U.S. funds have implemented swing pricing. One reason funds have not implemented swing pricing is that they lack timely flow information to operationalize this anti-dilution tool. However, even if all funds had access to sufficient flow information in order to implement swing pricing, some may nonetheless choose not to implement it due to implementation costs or because investors in U.S. funds are unfamiliar with swing pricing. Therefore, funds may not be incentivized to be the first to adopt swing pricing. We believe that a regulatory requirement, rather than a permissive framework, would accrue benefits to investors that justify the implementation costs and would overcome these collective action problems that may have prevented swing pricing implementation. In addition, we continue to believe the information a fund that uses swing pricing must disclose in its prospectus will improve public understanding regarding a fund's use of swing pricing.[162]

Some academics and market participants have suggested that swing pricing has provided significant benefits to long-term investors in funds in other jurisdictions, reducing dilution attributable to the transaction costs associated with shareholder activity.[163] As an example, one foreign fund industry group has suggested that funds using swing pricing exhibit superior performance returns over time compared to funds with identical investment strategies and trading patterns that do not employ anti-dilution measures.[164] In terms of performance benefits, one study found that, for a 10% rise in monthly outflows, the associated decline in monthly returns relative to a fund's benchmark was double the amount for a fund that does not use swing pricing in comparison to a fund that uses swing pricing (a 6 basis point decline versus a 3 basis point decline, respectively).[165] And one investment manager reviewed the effects of swing pricing for twenty of its European funds in 2019 and found that the anti-dilution effect of swing pricing improved annual performance for these funds by around 10 to more than 60 basis points.[166]

In addition, in March 2020, many European funds that used swing pricing lowered their swing thresholds and increased the size of their swing factors, suggesting there was a need to make more frequent and significant adjustments to the funds' NAVs at that time to avoid substantial dilution that otherwise would have occurred.[167] One study found that surveyed funds using swing pricing during a three week period of elevated redemptions in March 2020 recouped roughly 6 basis points of total net assets on average from redeeming investors.[168] The swing pricing policies that the proposed rule would require, which are similar to those used by some foreign funds, are designed to mitigate dilution arising from shareholders' purchase and redemption activity, particularly during times of stress when those dilution costs may increase. In addition to reducing dilution, some studies also suggest that swing pricing dampens redemption pressure, although some have found this effect to be minimal or nonexistent during certain periods of market stress.[169]

Consistent with our current optional swing pricing framework, the proposed swing pricing requirement for open-end funds would apply to both net purchases and net redemptions. Although liquidity and transaction costs associated with meeting net redemptions can present heightened risks of dilution, particularly in stress periods, we continue to believe that net purchases also may cause shareholder dilution.[170] However, when a fund has net purchases, we propose to require swing pricing only if the amount of net purchases exceeds a specified threshold.

While the proposed swing pricing requirement generally would apply to all registered open-end funds other than excluded funds, we propose to retain the current provision that does not permit feeder funds in a master-feeder fund structure to use swing pricing.[171] The use of swing pricing would generally be inappropriate for feeder funds, because that level of a fund structure does not actually transact in underlying portfolio assets as a result of net purchase or net redemption activity. A master fund, however, generally would be subject to the swing pricing requirement. The master fund may purchase portfolio assets to invest purchasing shareholders' cash (as transferred through the feeder fund) or sell portfolio assets to pay redemption proceeds (reducing the feeder fund's interest in the master fund). Thus, to the extent that net purchases into or redemptions from the master fund by one or more feeder funds, or any other investors in the master fund, would trigger the application of swing pricing under the proposed rule, the swing factor would be applied at the level of the master fund.

Consistent with current rule 22c–1, we propose to exclude ETFs from the swing pricing requirement because ETFs often impose fees in connection with the purchase or redemption of creation units that are intended to defray operational processing and brokerage costs to prevent possible shareholder dilution.[172] We also are not including ETFs within the scope of the proposed requirement because we believe that swing pricing could impede the effective functioning of an ETF's arbitrage mechanism. Additionally, notwithstanding section 18(f)(1) of the Act, a fund with a share class that is an exchange-traded fund is subject to the swing pricing requirement only with respect to any share classes that are not

[161] *See supra* notes 59 to 63 and accompanying text (stating that some fund managers with both U.S. and European operations indicated to the staff that swing pricing would have been a useful tool for U.S. funds to have had to combat dilution in Mar. 2020).

[162] *See* Swing Pricing Adopting Release, *supra* note 11, at n.360 and accompanying text. In 2016, when the Commission adopted the optional swing pricing rule for open-end funds that are not excluded funds, it also adopted certain amendments to Form N–1A to enhance disclosure related to a fund's use of swing pricing, if applicable. Among other things, these amendments required that a fund that uses swing pricing explain the fund's use of swing pricing, including its meaning, the circumstances under which the fund will use it, the effects of swing pricing on the fund and investors, and the upper limit it has set on the swing factor. *See* Item 6(d) of Form N–1A. Although no funds currently use swing pricing, and therefore do not provide swing pricing disclosures to their investors, under the proposed rule all funds other than excluded funds would be required to provide these disclosures, other than the swing factor upper limit disclosure, to their investors.

[163] *See, e.g.,* Dunhong Jin, Marcin Kacperczyk, Bige Kahraman, and Felix Suntheim, Swing Pricing and Fragility in Open-end Mutual Funds, The Review of Financial Studies, 35(1) (2022), *available at https://academic.oup.com/rfs/article/35/1/1/6162183* (''Jin, *et al.*''); BlackRock, Swing Pricing—Raising the Bar (Sept. 2021), *available at https://www.blackrock.com/corporate/literature/whitepaper/spotlight-swing-pricing-raising-the-bar-september-2021.pdf* (''BlackRock Swing Pricing Paper'').

[164] *See* Association of the Luxembourg Fund Industry, Swing Pricing Brochure (July 2022), *available at https://www.alfi.lu/getattachment/3154f4f7-f150-4594-a9e3-fd7baaa31361/app_data-import-alfi-alfi-swing-pricing-brochure-2022.pdf.*

[165] *See* CSSF Paper, *supra* note 61.

[166] *See* BlackRock Swing Pricing Paper, *supra* note 163.

[167] *See* notes 59 to 63 and accompanying text.

[168] *See* Claessens and Lewrick, *supra* note 61.

[169] *See* CSSF Paper, *supra* note 61 (stating that funds applying swing pricing are less exposed to redemption pressure during episodes of elevated market volatility, but this dampening effect appears to vanish during episodes of severe market volatility, such as in Mar. 2020); *see also infra* notes 354 to 355 and accompanying text.

[170] *See* Swing Pricing Adopting Release, *supra* note 13, at paragraph accompanying n.166.

[171] *See* proposed rule 22c–1(b)(5) and current rule 22c–1(a)(3)(iv).

[172] *See* Swing Pricing Adopting Release, *supra* note 13, at paragraph accompanying n.68.

exchange-traded funds.[173] The proposed rule provides this exemption to allow funds with both mutual fund and ETF share classes to apply swing pricing to only their mutual fund share classes. Absent an exemption, differences between the ETF and mutual fund share classes created by swing pricing could result in a fund being deemed to issue a senior security, which would otherwise be prohibited under the Act.[174] Thus, a fund with an ETF share class would exclude the ETF share class's flow information when determining whether and how to apply swing pricing, and would not adjust the NAV of the ETF share class by the swing factor in computing the share price of that class.

We request comment on our proposal to require any fund that is not an excluded fund to implement swing pricing.

51. As proposed, should we require any fund that is not an excluded fund to implement swing pricing? Should we provide any additional exclusions from the swing pricing requirement? For example, should funds that invest solely or primarily in highly liquid investments be permitted, but not required, to use swing pricing? If we provide an exclusion for funds that primarily invest in highly liquid investments, how should we define primarily for these purposes (*e.g.,* more than 50%, 66%, or 75%)? Should we use the same definition of highly liquid investment as the liquidity rule for these purposes? If not, how should we define highly liquid investments for purposes of an exclusion from the swing pricing requirement? If a fund primarily invested in highly liquid investments were to no longer qualify for this exclusion, when should it be required to adopt swing pricing (*e.g.,* immediately or within a certain grace period)? Alternatively, should we limit the exclusion from swing pricing to funds that do not invest more than a certain percentage of assets in illiquid investments? What maximum level of illiquid investments would be appropriate to qualify for the exclusion (*e.g.,* 1%, 2%, 5%, or 10%)? When should a fund be required to adopt swing pricing if it no longer complies with this exclusion (*e.g.,* immediately or within a certain grace period)? Should we use the same definition of illiquid investments as the liquidity rule for these purposes?

52. Should we limit the swing pricing requirement to only certain types of mutual funds and retain an optional framework for other mutual funds? If so, how should we identify by rule the types of mutual funds that would most benefit from a swing pricing requirement? As an example, would it be appropriate to require swing pricing for fixed-income mutual funds only, and to retain an optional approach for other funds? If so, how would a fixed-income fund be defined for this purpose (*e.g.,* a mutual fund that invests at least a certain percentage in fixed-income investments, such as 50%, 75%, or 80%)? How would fixed-income investments, or any other type of portfolio investment, be defined for this purpose?

53. Should we adopt swing pricing as a default tool, with a requirement that an open-end fund, other than an excluded fund, implement swing pricing unless certain conditions are met? For example, should a fund be required to implement swing pricing unless its board of directors makes certain determinations (*e.g.,* that the fund and its shareholders are unlikely to experience significant dilution in connection with investor purchases and redemptions) and the fund maintains records of such determinations? Should a fund be required to report information about the reasons for such a determination publicly?

54. Should swing pricing remain an optional tool for all mutual funds, other than excluded funds? If so, how likely are funds to use the tool if we adopt the proposed hard close requirement or take other steps to facilitate a fund's ability to determine its daily flows before the NAV is finalized? Are certain types of funds more likely to use swing pricing if it remained an optional tool? If so, why are these funds more likely to use swing pricing than others? Are the funds that would use swing pricing if it remained optional the same funds that would benefit most from addressing dilution associated with shareholder transactions?

55. As proposed, should we retain the current provision in the rule that does not allow feeder funds in a master-feeder structure to engage in swing pricing?

56. Under the proposal, ETFs, the shares of which are listed and traded on a national securities exchange, and that are formed and operate under an exemptive order under the Investment Company Act or in reliance on rule 6c–11, would not be subject to swing pricing. Is the proposed definition of ETF appropriate? If we adopt the swing pricing requirement, would mutual funds seek to convert to an ETF structure? Are there any actions or exemptive relief that the Commission should take or grant to facilitate the conversion of mutual funds to ETFs? If ETFs were to become the predominant form of open-end fund under the Investment Company Act, would that affect the need to impose swing pricing? And likewise, if ETFs were to become the predominant form of open-end fund, would that benefit or harm investors, and if so, how and to what extent?

57. Should we provide that funds with an ETF share class must exclude the ETF share class from the application of swing pricing, as proposed? What, if any, operational challenges would exist for such funds under this approach? Should we instead require that ETF share classes be subject to the swing pricing requirement, which would result in authorized participant purchases and redemptions being effected at an adjusted NAV?

58. Should we require swing pricing for both net redemptions and net purchases, as proposed, or only for net redemptions? Do dilution and liquidity concerns exist for open-end funds in both scenarios?

59. What would be the operational challenges and costs for funds to adopt and implement swing pricing, as proposed? If funds operationalized swing pricing in March 2020, would it have been an effective tool to address dilution during that period? To what extent were funds selling portfolio assets and incurring transaction costs to meet redemptions, or in anticipation of future redemptions, during that period?

60. Will the existing swing pricing disclosures required in Form N–1A be sufficient to help investors understand swing pricing? How familiar are U.S. investors with swing pricing? Are there any amendments we should make to the swing pricing disclosure requirements in Form N–1A that would help investors better understand the concept of swing pricing? For example, should funds be required to disclose in their registration statements the frequency they have applied, or would have applied, a swing factor over a specified period of time (*e.g.,* 1, 3, or 5 years) based on historical flow information? Should we require a fund to provide additional disclosure about swing pricing to investors outside of the registration statement? For example, should we require funds to disclose the effects of swing pricing in shareholder reports (*e.g.,* in management's discussion of fund performance)?

[173] *See* proposed rule 22c–1(b)(6).

[174] Section 18(f)(1) of the Act generally makes it unlawful for any registered open-end company to issue any class of senior security. Section 18(g) defines senior security to include any stock of a class having a priority over any other class as to distribution of assets or payment of dividends.

61. Is the experience with swing pricing in certain foreign jurisdictions relevant to an analysis of whether swing pricing would be an effective tool for U.S. funds? Beyond the operational differences identified in this release, are there differences in regulatory frameworks, markets, fund investors, or other factors between the U.S. and these other jurisdictions that might cause U.S. funds' experiences with swing pricing to differ? [175]

62. Rule 2a–4 under the Act requires a fund, when determining its current NAV, to reflect changes in holdings of portfolio securities and changes in the number of outstanding shares resulting from distributions, redemptions, and repurchases no later than the first business day following the trade date. Are there any changes we should make to rule 2a–4 to address dilution? For example, should we amend that rule to require that funds reflect these changes on trade date?

2. Amendments to Swing Threshold Framework

The current rule permits a fund to determine its own swing threshold for net purchases and net redemptions, based on a consideration of certain factors the rule identifies.[176] We are proposing to specify when a fund must use swing pricing to adjust its current NAV, which would differ depending on whether the fund has any net redemptions or has net purchases above a specified threshold on a given day.

When the Commission adopted the swing pricing provisions in 2016, it determined to require a swing threshold and not to prescribe a swing threshold floor applicable to all funds because it believed that different levels of net purchases and net redemptions would create different risks of dilution for funds with different strategies, shareholder bases, and other liquidity-related characteristics.[177] At that time, the Commission believed consideration of the swing threshold factors—which took into account these different liquidity-related characteristics—would lead a fund to set a threshold at a level that would trigger the fund's investment adviser to trade portfolio assets in the near term to a degree or of a type that may generate material liquidity or transaction costs for the fund. We further believed that after considering these factors, a fund would be unable to set the swing threshold at zero. Thus the current rule does not contemplate full swing pricing, but assessment of the swing threshold factors could lead certain funds to set low swing thresholds approximating full swing pricing.

In the intervening period, however, we have observed that the size of funds' swing thresholds in certain other jurisdictions has depended more on uniform decisions by the manager of a fund complex than on an individual fund's liquidity-related circumstances.[178] In addition, we considered our experience with the liquidity rule discussed above, where currently allowed discretion has led to favorable liquidity assessments that tend to over-estimate funds' liquidity during stressed market conditions and that fail to change dynamically during stressed market conditions. A similar experience translated to swing pricing could cause high swing thresholds set during calm market conditions that do not adjust downward as may be appropriate in some cases during stressed market conditions. As a result of these experiences, we are concerned that retaining the principles-based framework for setting swing thresholds under the current rule would not result in the level of fund-specific tailoring the Commission contemplated and, instead, would simply result in undue variation among similarly situated funds and, in some cases, swing thresholds high enough that swing pricing does not adequately address dilution.

In the case of net redemptions, the proposed rule would require a fund to apply swing pricing always (*i.e.,* without a swing threshold).[179] Because every net redemption can potentially involve trading or borrowing costs that dilute the value of the fund, as well as depletion of a fund's liquidity for remaining shareholders that increases the likelihood of future dilution, the proposal, in setting a uniform approach to triggering swing pricing in all circumstances, would require a fund to apply a swing factor regardless of the size of its net redemptions, which is intended to fairly allocate costs and reduce dilution. Applying swing pricing regardless of the size of net redemptions may help reduce any potential first-mover advantage associating with redeeming before other investors. However, the types of costs the swing factor must take into account would depend on the size of net redemptions. Specifically, the proposed rule would require a fund to include market impacts in its swing factor only if net redemptions exceed 1% of the fund's net assets (the ''market impact threshold'').[180] Market impact costs are the costs incurred when the price of a security changes as a result of the effort to purchase or sell the security.[181]

We understand that there may be operational challenges and complexities to estimating market impact costs. Recognizing these difficulties, and that market impacts are likely to be minimal or even negligible when redemptions are not significant, the proposal sets a market impact threshold below which estimates of market impact would not be necessary. Based on our analysis of historical daily flow data over a period of more than 10 years for equity and fixed-income mutual funds, a given fund had daily outflows of more than 1% on slightly more than 1% of trading days.[182] We propose a 1% market impact threshold to balance the operational challenges of frequently estimating market impacts with the goal of reducing dilution, particularly in times of stress (*i.e.,* when a fund is more likely to experience redemptions of more than 1% of net assets and market impacts are likely to be larger). We recognize that smaller funds may be less likely than larger ones to have market impacts at a 1% threshold, because they generally would be selling smaller investment sizes than larger funds would at that threshold. However, there are circumstances in which smaller funds may also experience market impact costs at the 1% threshold; for example, if the fund holds substantial

[175] *See infra* note 225 (discussing that European jurisdictions in which funds use swing pricing generally already have a hard close, which results in European funds receiving order flow much earlier than U.S. funds).

[176] The factors a fund currently must consider in determining the size of its swing threshold are: (1) the size, frequency, and volatility of historical net purchases or net redemptions of fund shares during normal and stressed periods; (2) the fund's investment strategy and the liquidity of the fund's portfolio investments; (3) the fund's holdings of cash and cash equivalents, and borrowing arrangements and other funding sources; and (4) the costs associated with transactions in the markets in which the fund invests. *See* rule 22c–1(a)(3)(i)(B).

[177] For considerations relating to the swing threshold in the current rule, see generally Swing Pricing Adopting Release, *supra* note 11, at nn.150–155 and accompanying text.

[178] *See* Bank of England Survey, *supra* note 60 (''In most cases we observed that funds with different primary strategies and assets, but managed by the same fund manager, used both the same thresholds for applying swing pricing, and the same calculation of the standardised swing factor. This appears to indicate that managers may not be fully considering specific factors such as in the investor base or asset-specific factors for individual funds.'').

[179] *See* proposed rule 22c–1(b)(1)(i).

[180] *See* proposed rule 22c–1(b)(2)(i)(C) and definition of ''Market impact threshold'' in proposed rule 22c–1(d).

[181] Market impact costs reflect price concessions (amounts added to the purchase price or subtracted from the selling price) that are required to find the opposite side of the trade and complete the transaction.

[182] Based on Morningstar data for the period of Jan. 2009 through Dec. 2021.

illiquid investments or during periods of market stress. Therefore, the proposal requires all funds to assess whether market impact costs would occur when net redemptions exceed a 1% threshold and, if they do occur, to include such costs in the swing factor. A uniform market impact threshold for all funds would provide a consistent and objective threshold for all funds to consider market impacts.

When a fund has net purchases, we propose to only require swing pricing—including market impact—if the amount of net purchases exceeds 2% of the fund's net assets (the ''inflow swing threshold'').[183] We recognize that smaller levels of net purchases are less likely to result in dilution than net redemptions. This is because funds, while required to pay redemptions within seven days, are not required to invest cash inflows within a specified period. Therefore, if bid-ask spreads have widened on a day that the fund receives the cash inflows, the fund manager generally can wait to invest the cash to reduce transaction costs.[184] In addition, while investing the cash inflows could decrease the liquidity of the fund, particularly if the cash is used to purchase illiquid investments, the liquidity rule curbs this possibility by limiting the amount of illiquid investments a fund can acquire.

For these reasons, the proposal sets a swing threshold for net purchases but not one for net redemptions. We also recognize that low levels of net purchases are less likely to result in dilution, but that higher levels of net purchases are more likely to result in dilution absent appropriate tools for mitigating it. Based on our analysis of historical daily flow data over a period of more than 10 years for equity and fixed-income mutual funds, a given fund had daily inflows of approximately 2% on about 1% of trading days.[185] Therefore, similar to the proposed market impact threshold, we propose an inflow swing threshold of 2% to balance the operational challenges of frequently implementing swing factors for net purchases with the goal of reducing dilution, particularly when a fund has significant inflows.

Although the proposed rule would identify a market impact threshold that would apply to net redemptions and an inflow swing threshold for net purchases, the rule would permit the fund's swing pricing administrator to use smaller thresholds than the rule identifies in either of these instances as the administrator determines is appropriate to mitigate dilution.[186] Flexibility to use a smaller threshold is designed to recognize that there may be circumstances in which a smaller threshold than the rule requires would help reduce dilution, such as when the fund holds a larger amount of investments that are less liquid, in times of market stress, or in the case of a large fund (*i.e.,* because a large fund is selling or purchasing a larger amount of instruments than a small fund at a 1% market impact threshold for net redemptions or a 2% inflow swing threshold for net purchases). For example, a fund might elect to implement swing pricing if the fund experiences net purchases of any amount.

We understand that in having the option to set a lower market impact threshold for net redemptions and inflow swing threshold for net purchases, the swing pricing administrator would have discretion that it potentially could use to enhance fund performance in a misleading manner by adjusting the fund's NAV more frequently or more substantially than is needed to address dilution. To help address this risk, under the proposal the administrator would be required to include in its written reports to the board the information and data supporting its determination to use lower thresholds.[187] Additionally, consistent with the current rule, a fund's portfolio manager could not be designated as the swing pricing administrator.[188]

We request comment on our proposed amendments to the swing pricing threshold.

63. Should we adopt a framework that, in the case of net redemptions, requires a fund to adjust its NAV by a swing factor only when those net redemptions exceed an identified threshold (*i.e.,* as we propose for net purchases)? If so, should that threshold be the same size as the 1% market impact threshold, or a lower or higher amount (*e.g.,* 0.5%, 1.5%, or 2%)?

64. Should we require the application of the swing factor regardless of the size of net purchases or net redemptions, or only when they exceed a certain percentage of a fund's net assets? Should funds have discretion to set their own thresholds? If so, should that discretion be based on the swing threshold factors currently in the rule or should we adjust those factors?

65. Should we include a market impact threshold for net redemptions, as proposed? Is 1% an appropriate level for the market impact threshold? Should it be a lower or higher amount (*e.g.,* 0.5%, 1.5%, or 2%)? Is there different data or analysis that we should take into account to determine the market impact threshold?

66. Should we include an inflow swing threshold for net purchases, as proposed? Is 2% an appropriate level for the inflow swing threshold? Should it be a lower or higher amount (*e.g.,* 0.5%, 1%, 1.5%, or 3%)? Is there different data or analysis that we should take into account to determine the inflow swing threshold?

67. Would the proposed inflow swing threshold, or a requirement to use swing pricing in the case of net purchases more generally, cause a fund to limit the total amount an investor can invest in the fund? If so, what effects would this have on investors?

68. Should we permit the swing pricing administrator to use discretion to establish a smaller market impact threshold for net redemptions or a smaller inflow swing threshold for net purchases if the administrator determines a smaller threshold is appropriate to mitigate dilution, as proposed? Should we prescribe the circumstances in which a smaller threshold would be permitted, the timing of such a determination by the swing pricing administrator (*e.g.,* if a swing pricing administrator must formally establish a smaller threshold that will remain in place for a period of time), disclosure of such a determination to the fund's investors, and recordkeeping requirements in support of the determination? Should we require the fund's board, instead of

[183] *See* definition of ''Inflow swing threshold'' in proposed rule 22c–1(d).

[184] Regardless of bid-ask spreads, a fund manager also may choose to use cash inflows to invest in derivatives to obtain market exposure quickly while strategizing where to invest that cash on a longer-term basis. Funds may be incentivized to invest promptly in an effort to avoid reduced returns and tracking error.

[185] Based on Morningstar data for the period of Jan. 2009 through Dec. 2021.

[186] *See* definitions of ''Inflow swing threshold'' and ''Market impact threshold'' in proposed rule 22c–1(d). Under the proposed rule, the term ''swing pricing administrator'' has the same meaning as the term ''person(s) responsible for administering swing pricing'' under the current rule. *See* proposed rule 22c–1(d); current rule 22c–1(a)(3)(ii)(C). The swing pricing administrator is the fund's investment adviser, officer, or officers responsible for administering the fund's swing pricing policies and procedures. The proposed rule specifies that the swing pricing administrator may consist of a group of persons. As with the current rule, the fund's board of directors must designate this person or group of persons.

[187] *See* proposed rule 22c–1(b)(3)(iii)(C). Consistent with the current rule, a fund would be required to maintain a written copy of the report provided to the board for six years, the first two years in an easily accessible place. *See* rule 22c–1(a)(3)(iii); proposed rule 22c–1(b)(4).

[188] *See* rule 22c–1(a)(3)(ii)(C) and proposed rule 22c–1(b)(3)(ii). *See also* Swing Pricing Adopting Release, *supra* note 11, at n.269 and accompanying text.

the swing pricing administrator, to approve use of a smaller threshold? Should we permit the swing pricing administrator to exclude certain types of costs from the swing factor if it uses a lower-than-required threshold? For example, should a swing pricing administrator be permitted to exclude market impact estimates from the swing factor if it uses an inflow swing threshold that is lower than 2%, and instead only include market impact estimates when inflows also exceed 2%?

69. Should the swing pricing administrator or the board have flexibility to establish larger thresholds than proposed (*i.e.,* to apply a swing factor only when net redemptions exceed a specified percentage, to include market impacts in the swing factor when net redemptions are an identified amount that is greater than 1%, or to apply a swing factor only when net purchases exceed an identified amount that is greater than 2%)? If so, what are the circumstances in which a fund board or the swing pricing administrator should have flexibility to use larger thresholds that the proposed rule identifies?

70. Should we allow certain types of funds to use different thresholds than those the proposed rule identifies? For example, should we permit or require smaller funds to use larger thresholds? If so, how should we identify smaller funds for these purposes? Should the rule identify larger thresholds for smaller funds, or should smaller funds have flexibility to determine their own thresholds? As another example, should we permit or require funds that hold significant amounts of highly liquid investments to use larger thresholds? If so, how should we identify funds that hold significant amounts of highly liquid investments for these purposes? Should the rule identify larger thresholds for these funds, or should they have flexibility to determine their own thresholds?

3. Determining Flows

Consistent with the current rule, the swing pricing administrator must review investor flow information to determine if the fund has net purchases or net redemptions and the amount of net purchases or net redemptions.[189] For these purposes, investor flow information means information about the fund investors' daily purchase and redemption activity. Investor flow information may consist of individual, aggregated, or netted eligible orders, and excludes any purchases or redemptions that are made in kind and not in cash.[190] Currently it would be difficult to determine investor flow information on a given day because some intermediaries do not provide order flow until after the fund has finalized its NAV. In recognition of these challenges, the current rule permits a swing pricing administrator to make swing pricing determinations based on receipt of sufficient investor flow information to allow the fund to estimate reasonably whether it has crossed a swing threshold with high confidence.[191] While the hard close provision in the proposed rule is intended to result in funds generally having flow information in a timely manner, and therefore greatly reduce the need for estimation, we recognize some estimation may still be required. The proposed rule would, therefore, continue to permit the swing pricing administrator to make swing pricing determinations based on reasonable, high confidence estimates of investor flows.[192]

Under our proposal, the swing pricing administrator would be required to review investor flow information on a daily basis to determine: (1) if the fund experiences net purchases or net redemptions; and (2) the amount of net purchases or net redemptions. We propose to permit the swing pricing administrator to make these determinations based on ''reasonable, high confidence estimates.'' While there would be less of a need to estimate flows under the proposed hard close requirement, we understand that a swing pricing administrator still would need to use estimates in some cases. For instance, if an investor submits an exchange order to redeem its shares from Fund A and simultaneously invest the proceeds in Fund B, the swing pricing administrator for Fund B may need to estimate the incoming cash by multiplying the number of shares redeemed from Fund A by an estimate of Fund A's NAV, which may be the prior day's transaction price. In this situation, we recognize it will not be possible for the swing pricing administrator to determine the exact size of the related flow information until a later time. Therefore, we propose to permit the use of reasonable, high confidence estimates to make swing pricing determinations. Furthermore, some funds groups with both U.S. and European operations may already have experience with this type of estimation, because European funds that have adopted swing pricing generally use the prior day's price to estimate today's flows.

We request comment on our proposal requirements related to shareholder flow information.

71. Should we permit a swing pricing administrator to make reasonable, high confidence estimates of investor flows, as proposed? Are there operational complexities to this approach? Is the rule's reference to reasonable, high confidence estimates of investor flows sufficiently clear? If not, how should we revise the rule to provide greater clarity about permitted estimates?

72. As proposed, should we remove references to receipt of sufficient investor flow information in the rule in light of the proposed hard close requirement?

73. Is the proposed definition of ''investor flow information'' clear and understandable? Should the rule continue to exclude any purchases or redemptions that are made in kind and not in cash, as proposed?

74. Should we provide additional guidance about circumstances in which a swing pricing administrator may need to use estimates in connection with arriving at a reasonable, high confidence estimate of the fund's investor flow information and how the administrator should arrive at those estimates? Are there other types of investor orders, beyond orders that identify the number of shares to be purchased or sold and exchanges, that would still require estimation under a hard close approach? Should funds be able to use the prior day's transaction price for purposes of estimating flows where the amount of such flows are dependent on having a transaction price? Should funds be permitted to make adjustments to the prior day's price for these purposes (*e.g.,* to reflect market movements relative to fund benchmarks that occurred after the prior day's NAV was struck)? If so, under what circumstances should we permit such adjustments?

75. If we adopt the proposed hard close requirement, would there be scenarios in which a swing pricing administrator would be unable to arrive at a reasonable, high confidence estimate of investor flows? If so, when would this occur? How should a fund comply with the swing pricing requirement if the administrator is unable to arrive at a reasonable, high

[189] *See* rule 22c–1(a)(3)(i)(A) and proposed rule 22c–1(b)(1)(i).

[190] *See* definition of ''Investor flow information'' in proposed rule 22c–1(d). *See also infra* section II.C.2 (discussing the proposed definition of ''eligible order'' for purposes of the hard close requirement).

[191] *See* rule 22c–1(a)(3)(i)(A).

[192] Under the current rule, the swing pricing administrator is permitted to make swing threshold determinations based on receipt of sufficient flow information ''to allow the fund to reasonably estimate whether it has crossed the swing threshold(s) with high confidence.'' *See* rule 22c–1(a)(3)(i)(A).

confidence estimate of investor flows on a given day?

76. Would the use of reasonable, high confidence estimates of investor flows subject swing pricing determinations to abuse? Should the use of estimates be limited to specific circumstances? Are there other ways for the swing pricing administrator to make swing pricing determinations without the use of reasonable, high confidence estimates of investor flows?

77. Do fund groups with both U.S. and European operations already have experience with investor flow estimation? If so, would experience with European operations help these fund groups use estimates in their U.S. funds? What changes to the proposed rule, if any, would help fund groups without prior experience with investor flow estimation?

4. Swing Factors

In determining the swing factor, the proposed rule would require a fund's swing pricing administrator to make good faith estimates, supported by data, of the costs the fund would incur if it purchased or sold a *pro rata* amount of each investment in its portfolio to satisfy the amount of net purchases or net redemptions (*i.e.,* a vertical slice).[193] The current swing pricing framework requires that the swing factor take into account only the near-term costs expected to be incurred by the fund as a result of net purchases or net redemptions that occur on the day the swing factor is used, as well as borrowing-related costs associated with satisfying redemptions.[194] Under our proposal, a fund would be required to assume it would purchase or sell a pro rata amount of each investment in its portfolio, rather than consider the specific investments it would purchase to invest the proceeds from subscriptions or sell to meet redemptions.[195] Because a fund would need to calculate its costs based on the purchase or sale of a vertical slice of its portfolio, rather than selecting specific investments or borrowing to meet redemptions, we have proposed to remove borrowing costs from the swing factor calculation. We recognize that there are many ways a fund could pay redemptions or invest proceeds from investor purchases, and a fund may not necessarily sell or purchase a vertical slice of its portfolio holdings to do so. However, we believe analyzing costs based on an assumed purchase or sale of a vertical slice of the fund's portfolio would more fairly reflect the costs imposed by redeeming or purchasing investors than an approach that focuses solely on the costs associated with the instruments that the fund expects to buy or sell (or expected borrowing costs, in the case of redemptions). For example, under the current rule, if a fund sells only highly liquid investments to meet redemptions, the swing factor would typically reflect relatively low transaction costs of selling those investments and any near-term rebalancing, and generally would not account for the effect of leaving remaining investors with a less liquid portfolio or potential longer-term rebalancing costs. In contrast, the proposed requirement that a fund calculate costs to purchase or sell a vertical slice of the portfolio is designed to recognize the potential longer-term costs of reducing the fund's liquidity under these circumstances.

In addition, using a vertical slice is more objective than the current approach, because the swing factor administrator does not need to anticipate what actions the fund will take to pay redemptions or invest proceeds from investor purchases, which may vary from day to day. This should make the swing factor easier to administer. Further, under the proposed swing pricing framework and consistent with the current rule, a swing factor could generally be determined on a periodic basis, as long as developments that should affect the swing pricing administrator's good faith estimates of spreads, market impact, and other transaction costs, such as significant market developments, prompt a quicker reevaluation.[196] A quicker reevaluation would be required to comply with the proposed amendments where developments would otherwise prevent the prior swing factor from reflecting the cost the fund would incur if it purchased or sold a pro rata amount of each portfolio investment under current market conditions. Accordingly, we believe a fund would have the incentive to reevaluate promptly its swing factor in these circumstances because having an accurate and fair transaction price is crucially important to investors. We believe that funds would address the frequency of swing factor determinations when designing their policies and procedures relating to swing pricing.

Calculating the swing factor would differ depending on whether the fund is experiencing net purchases or net redemptions. In the case of net redemptions, the good faith estimates must include, for selling a *pro rata* amount of each investment in the fund's portfolio to satisfy the amount of net redemptions: (1) spread costs; (2) brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio investment sales; and (3) if the amount of the fund's net redemptions exceeds the market impact threshold, the market impact.[197] In the case of net purchases, swing pricing would only be applied if the amount of the fund's net purchases exceeds 2%.[198] In such cases the good faith estimates must include, for purchasing a *pro rata* amount of each investment in the fund's portfolio to invest the proceeds from the net purchases: (1) spread costs; (2) brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio investment purchases; and (3) the market impact.[199] We believe these components of the swing factor for both net redemptions and net purchases, taken together, approximate the aggregate costs associated with dilution. We also believe that providing a standard for calculating swing factors, including the vertical slice approach and the identification of the categories of costs funds must include, would help avoid the variability in how funds calculate swing factors, as observed in some other jurisdictions where funds use swing pricing.[200]

We understand that in calculating the swing factor, fund managers may have incentives to over-estimate costs in order to improve fund performance. However, doing so would be misleading. To help address this risk, under the proposal funds would be required to report their swing factor adjustments publicly on Form N–PORT. We believe this public transparency

[193] *See* proposed rule 22c–1(b)(2).

[194] These near-term costs include spread costs, transaction fees and charges arising from asset purchases or asset sales resulting from those purchases or redemptions. *See* rule 22c–1(a)(3)(i)(C).

[195] *See* proposed rule 22c–1(b)(2).

[196] *See* Swing Pricing Adopting Release, *supra* note 11, at paragraph accompanying n.268.

[197] *See* proposed rule 22c–1(b)(2)(i).

[198] *See* proposed rule 22c–1(b)(2)(ii).

[199] *Id.*

[200] *See* Bank of England Survey, *supra* note 60. This report states that in calculating swing factors, some surveyed UK funds only considered bid-ask spreads, some other funds also considered explicit transaction costs such as commissions, and a few funds considered market impact as well. Moreover, in reviewing the size of swing factors applied in Mar. 2020, the report found that corporate bond funds with net outflows applied swing factors ranging between −5% and +0.5% from Mar. 10 to 23. The report states that the scale of variation suggests that fund-specific experiences are not the sole explanation for differences in swing factors and that different approaches fund managers took in applying swing pricing also contributed to these variations.

should reduce a fund's incentive to over-estimate costs. Additionally, a fund's portfolio manager, who arguably might have the strongest incentives to over-estimate costs, could not be designated as the swing pricing administrator.[201]

The method for calculating a fund's spread costs would differ depending on how the fund values its portfolio holdings. We understand that funds may value portfolio holdings at the bid price or the mid-market price when striking their NAVs.[202] If a fund values its portfolio holdings at the bid price, it would not need to include spread costs in its swing factor when the fund has net redemptions. In contrast, if the fund has net purchases exceeding 2%, the fund would need to include spread costs, which would reflect the full bid-ask spread. For a fund that uses mid-market pricing, it would need to include spread costs in its swing factor any time it applies swing pricing. When a fund using mid-market pricing has net redemptions, or net purchases exceeding 2%, the spread cost component of its swing factor would reflect half of the bid-ask spread.

The proposal would require a fund to include market impact in its swing factor only if the amount of net redemptions exceeds the market impact threshold, and in all cases where the amount of net purchases exceeds the inflow swing threshold. The market impact component of the swing factor would reflect good faith estimates of the market impact of selling (in the case of net redemptions) or purchasing (in the case of net purchases) a vertical slice of a fund's portfolio to satisfy the amount of net redemptions or net purchases. The fund would estimate market impacts for each investment in its portfolio by first estimating the market impact factor. This factor is the percentage change in the value of the investment if it were purchased or sold, per dollar of the amount of the investment that would be purchased or sold. Then, the fund would multiply the market impact factor by the dollar amount of the investment that would be purchased or sold if the fund purchased or sold a pro rata amount of each investment in its portfolio to meet the net redemptions or net purchases.[203]

We understand that it may be difficult to produce timely, good faith estimates of the market impact of purchasing or selling a pro rata portion of each instrument the fund holds. Recognizing these difficulties, and because some securities held by mutual funds may have similar characteristics and would likely incur similar costs if purchased or sold, the proposed rule would permit the swing pricing administrator to estimate costs and market impact factors for each type of investment with the same or substantially similar characteristics and apply those estimates to all investments of that type rather than analyze each investment separately.[204]

The existing swing pricing framework currently in rule 22c–1 does not permit a fund to include market impact costs relating to transacting in the fund's investments in the swing factor calculation. At the time of the rule's adoption, the Commission stated that it may be difficult for many funds to estimate readily market impact costs, and that subjective estimates of market impact costs could grant excessive discretion in a fund's determination of a swing factor.[205] We understand that it may continue to be difficult to determine market impact costs with precision, while a fund would be able to determine other relevant factors more precisely.[206] However, we believe the experiences of European funds that employed swing pricing through March 2020 have highlighted the importance of considering market impact costs, given the stressed nature of markets at that time, the level of those funds' redemptions, and the size of those funds' swing factors. We understand that only some European funds consider market impact costs when determining their swing factors.[207] A recent survey conducted by the Association of the Luxembourg Fund Industry (''ALFI''), however, observed an increase in asset managers including market impact in their swing factors, with 35% of surveyed asset managers including this component in the factor calculation.[208]

To address the concern that market impact estimation may be difficult, and that subjective estimates of market impact costs could grant excessive discretion in the determination of a swing factor, we are providing additional parameters for estimating market impact to make the calculation more objective as discussed above. These prescriptive requirements should help to limit subjectivity, and recordkeeping requirements would require funds to document their market impact factors, facilitating our staff's review and oversight of mutual fund swing pricing.[209]

The current swing pricing framework requires the establishment of an upper limit on the swing factor used.[210] The Commission included a 2% upper limit in the current rule to make sure that swing pricing would not operate as a ''de facto gate.'' [211] We are not including an upper limit on the swing factor under our proposed framework. We propose to remove the requirement for the board to review and approve the fund's swing threshold and the upper limit on the swing factor(s) used, as well as any charges on these items, to conform to our proposed swing pricing framework.[212] The more specific parameters in this proposal for determining a fund's swing factor are intended to sufficiently mitigate the

[201] *See* proposed rule 22c–1(b)(3)(ii).

[202] *See* FASB ASC 820–10–35–36C (providing that if an asset measured at fair value has a bid price and an ask price, the price within the bid-ask spread that is most representative of fair value in the circumstance shall be used to measure fair value, and that the use of bid prices for asset positions is permitted but not required for these purposes); FASB ASC 820–10–35–36D (stating that use of mid-market pricing as a practical expedient for fair value measurements within a bid-ask spread is not precluded). Since a seller generally asks for a higher price for a security than a buyer bids for that security, the mid-market price is incrementally higher than the bid price for a security, but lower than its ask price.

[203] *See* proposed rule 22c–1(b)(2)(iii).

[204] *See* proposed rule 22(c)–1(b)(iv).

[205] *See* Swing Pricing Adopting Release, *supra* note 11, at paragraph accompanying n.240.

[206] Methodologies used to estimate market impact are often created by liquidity measurement vendors. These vendors typically create a model to gauge what size of trade will have a market impact on a security (using various factors such as bid-offer spreads, issue sizes, recent daily average volumes, and recent trade sizes), back-test the model to check its accuracy, and then adjust the weights of the various factors used in the model accordingly.

[207] *See* Bank of England Survey, *supra* note 60 (stating that most surveyed fund managers did not factor market impact explicitly into their swing factors, and few had models in place to estimate spreads when needed).

[208] See ALFI Swing Pricing Survey 2022 (July 2022), available at *https://www.alfi.lu/getattachment/8417bf51-4871-41da-a892-f4670ed63265/app_data-import-alfi-alfi-swing-pricing-survey-2022.pdf*.

[209] *See* rule 31a–2(a)(2) (requiring funds to preserve for a period of not less than six years all schedules evidencing and supporting each computation of an adjustment to the fund's NAV based on swing pricing policies and procedures). A fund's records under the proposed amendments should generally include the fund's unswung NAV, the level of net purchases or net redemptions that the fund encountered (and estimated) that triggered the application of swing pricing, the swing factor that was used to adjust the fund's NAV, and relevant data supporting the calculation of the swing factor, including the components of the swing factor such as market impact.

[210] *See* rule 22c–1(a)(3)(i)(C). Additionally, a fund's board of directors, including a majority of directors who are not interested persons of the fund must approve the fund's swing threshold(s) and the upper limit on the swing factor(s) used, and any changes to the swing threshold(s) or the upper limit on the swing factor(s) used. *See* rule 22c–1(a)(3)(ii).

[211] *See* Swing Pricing Adopting Release, *supra* note 13, at text accompanying nn.253–254.

[212] *See* proposed rule 22c–1(b)(3). We also propose to modify the board's review of a fund's swing pricing policies and procedures to include ''their effectiveness at mitigating dilution'' rather than ''the impact on mitigating dilution.'' *See* proposed rule 22c–1(b)(3)(iii)(A).

concerns that led to an upper limit in the existing swing pricing regime. In addition, although the current rule does not prescribe which investments a fund would purchase or sell, the current upper limit may provide an incentive for funds to sell their most liquid assets first, which may increase the risk of dilution when the fund later rebalances its portfolio. Furthermore, we understand that in certain other jurisdictions, several funds experienced costs and dilution that led to swing factors above 2% in March 2020.[213] Those cases suggest that the swing factors helped mitigate dilution and did not constitute a *de facto* gate, given that they reflected market conditions at that time. We recognize that liquidity costs could vary widely across funds and under different market conditions, and we do not wish to limit the extent to which swing pricing could mitigate dilution. Finally, the policies and procedures for determining the swing factor would be required to be approved by the fund's board, which has an obligation to act in the best interests of the fund.

Additionally, Form N–1A currently requires funds that use swing pricing to disclose a fund's swing factor upper limit.[214] Because we propose to remove the swing factor upper limit in the rule, we also propose to remove the requirement to provide an upper limit on the swing factor from Item 6(d) of Form N–1A.[215]

We request comment on our proposed calculation of a fund's swing factor.

78. Does our proposed requirement that a fund calculate the swing factor by assuming it would sell or purchase a pro rata amount of each investment in its portfolio properly account for liquidity costs? Are there other considerations related to liquidity costs that the swing pricing framework should take into account, such as shifts in the fund's liquidity management or other repositioning of the fund's portfolio?

79. Should funds calculate the swing factor by estimating the costs of purchasing or selling only the investments the fund plans to buy or sell to satisfy shareholder purchases or redemptions (consistent with the current rule), rather than calculating the swing factor based on the costs the fund would incur if it sold a pro rata amount of each investment in its portfolio (as proposed)? Which approach would more fairly reflect the costs imposed by redeeming or purchasing investors?

80. Should we permit a fund not to use the vertical slice assumption when doing so would require the fund to assume that it is purchasing or selling an amount of a given instrument that would not be permissible under other rules (*e.g.,* if it would result in an assumption that a fund would purchase an amount of illiquid investments that exceeds 15%)? If so, how should we modify the assumption for these purposes? Should we require a vertical slice assumption in all cases for administrative ease and consistency in calculations?

81. As proposed, should the swing factor calculation take into account spread costs; brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio investment sales; and the market impact under certain circumstances? Should we remove any of these types of costs from the calculation? Are there other types of costs we should include?

82. Should the swing factor calculation take into account borrowing costs like under the current rule? Should the proposed rule only include borrowing costs for certain assets, such as illiquid assets? Should illiquid investments be defined for this purpose using the same definition as in rule 22e–4?

83. Should the way in which a fund calculates spread costs depend on whether it uses midpoint or bid pricing when valuing its holdings? Should we allow a fund that uses bid pricing not to apply a swing factor when it has net redemptions unless the amount of net redemptions exceeds a threshold (*e.g.,* the market impact threshold)? Should we require all funds to use bid pricing, either instead of or in combination with a swing pricing requirement? Would use of bid pricing effectively address dilution, particularly when net redemptions are small? Instead of requiring swing pricing as proposed, should we require a fund to use bid pricing to compute its share price or otherwise adjust its price to reflect spread costs on days the fund estimates that it has net redemptions? If so, should the fund also use ask pricing on days the fund estimates that it has net purchases? Should we require a fund to use bid pricing to compute its share price on all days, regardless of whether the fund has net redemptions or purchases?

84. Should we require the swing factor to include market impact under certain circumstances, as proposed? Do some or all funds already estimate market impact factors, or perform similar analyses, to inform trading decisions or liquidity rule classifications? If so, would these funds' prior experience smooth the transition to making a good faith estimate of the market impact factor under the proposal? Would the proposed amendments to the liquidity rule further enhance funds' ability to estimate market impacts? What difficulties might funds experience in developing a framework to analyze market impact factors and in producing good faith estimates of market impact factors for purposes of the proposed swing pricing requirement? What are the specific operational challenges in estimating market impact? Are there ways we could reduce those difficulties, while still requiring redeeming investors to bear costs that reasonably represent the costs they would otherwise impose on the fund and its remaining shareholders?

85. Should we permit funds to calculate swing factors on a periodic basis, as long as developments such as significant market developments prompt a quicker re-evaluation, as proposed? Does this approach have any effect on the goals of reducing dilution, improving fairness, and addressing potential first-mover advantages? Are there other circumstances in which a fund should be required to re-evaluate its swing factors or certain swing factor components, such as changes in the fund's investment strategy or liquidity? Should we instead require funds to calculate swing factors (or certain components of swing factors) on a daily basis or at some other defined minimum frequency (*e.g.,* weekly or monthly) unless developments prompt a quicker re-evaluation?

86. Should the rule permit, rather than require, funds to follow the identified inflow swing threshold, market impact threshold, and swing factor calculations set forth in the rule? If so, what considerations or factors should the rule require a fund to consider when determining thresholds and swing factors if the fund determines not to follow the threshold or calculations set forth in the rule? For example, instead of removing the factors a fund must consider when setting swing threshold(s) under the current rule, should we maintain those or similar factors for purposes of determining a fund's market impact

[213] *See, e.g.,* Commission de Surveillance du Secteur Financier, Swing Pricing Mechanism—FAQ, *available at https://www.cssf.lu/en/Document/cssf-faq-swing-pricing-mechanism/* (providing guidance for increasing the swing factor above the maximum level identified in a fund's prospectus under certain circumstances, and noting that typical maximum swing factors observed in fund prospectuses are between 1% and 3%).

[214] Item 6(d) of Form N–1A.

[215] *See* Item 6(d) of proposed Form N–1A.

threshold or the inflow swing threshold? [216]

87. Should funds be subject to a numerical limit on the size of swing factors? If so, should we retain the current rule's 2% swing factor upper limit and the disclosure of the limit in Form N–1A? Alternatively, should the limit be higher or lower (*e.g.,* 1% or 3%)?

88. Should we allow a fund to use a set swing factor, such as 2% or 3%, in times of market stress when estimating a swing factor with high confidence may not be possible? How would we define market stress for this purpose? Should a fund's swing pricing administrator, adviser, or a majority of the fund's independent directors, be permitted to determine market conditions were sufficiently stressed such that the fund would apply the set swing factor? Are there other circumstances in which we should permit or require a fund to use a default swing factor? For example, should the rule establish a default swing factor that would apply when a fund has illiquid investments that exceed 15% or when a fund drops below its highly liquid investment minimum under rule 22e–4?

89. Should the rule permit a fund to apply a market impact factor of zero for certain investments or under certain circumstances? For example, should a fund be able to use a market impact of zero for certain categories of investments, such as Treasuries or other investments that the fund classifies as highly liquid investments under rule 22e–4? Are there particular circumstances in which it would not be reasonable for the rule to permit a fund to use a market impact factor of zero, such as in stressed market conditions?

90. Instead of specifying swing factor calculations and thresholds in the rule, should we require a fund to adopt policies and procedures that specify how the fund would determine swing pricing thresholds and swing factors based on principles set forth in the rule? If so, should the policies and procedures include the methodologies from the market impact factor calculation we proposed? Should the policies and procedures be required to include the swing factor calculation? Should the policies and procedures be required to define the market impact threshold with reference to a metric other than net purchases or net redemptions? If we require policies and procedures, should we specify the market impacts and dilution costs that a fund's swing pricing program must address, rather than specifying specific principles and calculation methodologies?

91. Are there circumstances in which it would not be possible to estimate the market impact factor with a high degree of accuracy? If so, what modifications should we make to the proposal?

92. Would our proposed swing pricing requirement cause or incentivize investors to move their assets out of the funds that must implement swing pricing into other investment vehicles that do not use swing pricing, such as ETFs, collective investment trusts (''CITs''), or separately managed accounts? What are the potential effects associated with these decisions? For example, when would such movements occur (*e.g.,* before the end of the compliance period for a swing pricing requirement, if adopted, or over a longer time horizon)? Would retirement plan sponsors or others remove mutual funds as investment options if swing pricing is required? In the case of separately managed accounts, should the Commission take any action with respect to how the Investment Company Act may apply to investment advisory programs seeking to provide the same or similar professional management services on a discretionary basis to a large number of advisory clients having relatively small amounts to invest? [217]

93. Would a swing pricing requirement change the behavior of funds? For example, would it cause any changes to fund strategies or practices?

94. How might swing pricing affect investor behavior in a period of liquidity stress? Would swing pricing increase fund resilience by reducing the first-mover advantage that some investors may seek during periods of market stress? Would swing pricing encourage investors to redeem smaller amounts over a longer period of time because investors will not know whether the fund's flows during any given pricing period will trigger swing pricing and, if so, the size of the swing factor for that period?

95. Based on historical data, how would our swing pricing framework affect funds' transaction prices under normal market conditions?

96. Rather than requiring funds to adopt a swing pricing requirement, should we provide more than one approach to mitigate dilution and require each fund to implement an anti-dilution tool, but permit each fund to determine its own preferred approach? If so, which anti-dilution tool options should the rule provide? Should we, for example, allow a fund to adopt swing pricing, a liquidity fee (*i.e.,* purchase and/or redemption fees), or dual pricing? [218] Are there other options that would be appropriate under this approach? Would funds' use of different approaches benefit investors by increasing investor choice or, conversely, would these differences confuse investors or make it more difficult for them to compare funds with each other?

97. The current rule requires a fund's board of directors to approve the fund's swing pricing policies and procedures and to designate the persons responsible for swing pricing. Should we require board involvement in the day-to-day administration of a fund's swing pricing program in addition to its compliance oversight role? How might funds maintain segregation between portfolio management and swing pricing administration? Should a fund's chief compliance officer have a designated role in overseeing how the fund applies the proposed swing pricing requirement?

98. The current rule requires a fund's board to review, no less frequently than annually, a report prepared by the swing pricing administrator on the fund's use of swing pricing, including the effectiveness of the fund's policies and procedures and any material changes to them since the last report. Should we require board review of a swing pricing report more or less frequently than annually? Should we require less frequent board review over time (*e.g.,* every quarter for the first year after implementation and then less frequently in following years as the fund gains experience implementing the swing pricing program under various market conditions)? Should we require the fund to disclose any material inaccuracies in the swing pricing calculation to the board (*e.g.,* as they arise, no less frequently than quarterly, or at some other frequency)? Would this disclosure requirement be additive, or would fund boards already receive information about material inaccuracies in the swing pricing calculation in the course of existing board oversight? [219]

99. In addition to the proposed requirement that funds would publicly

[216] *See* rule 22c–1(a)(3)(i)(B).

[217] *See, e.g.,* 17 CFR 270.3a–4.

[218] *See infra* section II.D for a discussion of potential liquidity fee or dual pricing frameworks.

[219] *See, e.g.,* 17 CFR 270.38a–1 (requiring the fund's chief compliance officer to provide a written report to the board addressing each material compliance matter occurring since the date of the chief compliance officer's last report to the board); Compliance Programs of Investment Companies and Investment Advisers, Investment Company Act Release No. 26299 (Dec. 17, 2003) [68 FR 74713 (Dec. 24, 2003)] (''Rule 38a–1 Adopting Release''), at n.84 (''Serious compliance issues must, of course, always be brought to the board's attention promptly, and cannot be delayed until an annual report.'').

report their swing factor adjustments on Form N–PORT, should funds also be required to post that same information on their websites? If so, how promptly should website reporting be required (*e.g.,* weekly, monthly, quarterly, annually)? Are there other ways to provide this information to investors?

C. Hard Close

Currently if an investor submits an order to an intermediary to purchase or redeem fund shares, that order will be executed at the current day's price as long as the intermediary receives the order before the time the fund has established for determining the value of its holdings and calculating its NAV (typically 4 p.m. ET).[220] The fund, however, might not receive information about that order until much later, sometimes as late as the next morning. We are proposing amendments to rule 22c–1 under the Act to require a hard close for those funds that are required to implement swing pricing.[221] The proposed hard close requirement would provide that a direction to purchase or redeem a fund's shares is eligible to receive the price established at the current day's price solely if the fund, its designated transfer agent, or a registered securities clearing agency (collectively, ''designated parties'') receives an eligible order before the pricing time as of which the fund calculates its NAV.[222] Orders received after the fund's established pricing time would receive the next day's price.[223] In 2003, the Commission proposed a similar hard close requirement but did not adopt the proposed amendments.[224] The proposed hard close amendments would serve multiple goals, such as facilitating mutual funds' ability to operationalize swing pricing by ensuring that funds receive timely flow information, modernizing and improving order processing, as well as helping to prevent late trading.

1. Purpose and Background

We are proposing to require all registered open-end funds (other than money market funds and ETFs) to implement swing pricing in order to combat dilution. Our hard close proposal is designed to support the proposed swing pricing amendments by facilitating the more timely receipt of fund order flow information. To implement the proposed swing pricing requirement, mutual funds need sufficient net order flow information to determine whether to apply a swing factor, and the size of that swing factor, before they finalize that day's price. Based on staff outreach with foreign regulators and asset managers that operate in Europe, we understand that a hard close is common in other jurisdictions in which funds currently implement swing pricing, and use of a hard close in those jurisdictions facilitates the receipt of timely flow information to inform swing pricing decisions.[225] The proposed hard close requirement would facilitate the more timely receipt of order flow information by requiring that the fund, its transfer agent, or a clearing agency receive all orders that are eligible to receive that day's price before the fund computes its NAV.

Beyond facilitating swing pricing, our proposed hard close amendments to rule 22c–1 also would help prevent late trading of fund shares. Because a financial intermediary currently can submit an order that it received before 4 p.m. ET to a designated party after 4 p.m. ET for execution at that day's NAV, there is a risk that an intermediary could unlawfully alter orders using after-hours information to benefit the intermediary or its clients. The Commission and others uncovered several instances of late trading in the early 2000s.[226] While the Commission adopted rules to address concerns about late trading, we believe that the hard close proposal, when coupled with our current rules, would more effectively prevent late trading.[227] For example, some fund intermediaries are not subject to examination by the Commission and staff, and we are unable to examine whether those intermediaries permit or engage in unlawful late trading. By proposing to require that all purchase and redemption orders be received by the fund, its transfer agent, or a registered clearing agency by 4 p.m. ET, the proposal would prevent intermediaries from altering orders after 4 p.m. ET or unlawfully misrepresenting that an order was received before 4 p.m. ET and entitled to that day's price. We believe that the proposed amendments would aid in the elimination of late trading through intermediaries by requiring certain SEC-regulated parties to receive orders before the NAV is computed to receive that day's price. The proposed hard close requirement would also modernize and improve order processing and reduce operational risks, as discussed below.

2. Pricing Requirements

Under the proposed rule, an eligible order to purchase or redeem would receive the price for the next pricing time after a designated party receives the order.[228] We propose to define the terms ''pricing time'' and ''eligible order'' for purposes of the rule.[229] Eligible orders would receive a price based on the current NAV as of the next pricing time, which would include an adjustment to the NAV to include the swing factor, as applicable. Consistent with the current rule, the fund's board of directors would be required to establish a ''pricing time,'' which would be defined as the time or times of day as of which the fund calculates the current NAV of its redeemable shares pursuant to the rule (typically 4 p.m. ET). The price of a fund's shares would typically be finalized several hours after the pricing time, giving funds time to calculate the current NAV, apply any

[220] Although not all funds calculate their NAVs as of 4 p.m. ET, throughout this release we use 4 p.m. ET as the time as of which a fund calculates its NAV unless otherwise noted.

[221] As discussed above in section II.B, swing pricing would be required for all registered open-end management investment companies other than money market funds and ETFs. The proposal would not affect the operation of current rule 22c–1 for money market funds or ETFs, as well as unit investment trusts (which are also subject to rule 22c–1).

[222] *See* proposed rule 22c–1(a)(3).

[223] Funds generally compute their NAVs once per day, although some funds compute their NAVs multiple times per day. For simplicity, this discussion assumes that a fund computes its NAV once per day.

[224] *See* Amendments to Rules Governing Pricing of Mutual Fund Shares, Investment Company Act Release No. 26288 (Dec. 11, 2003) [68 FR 70388 (Dec. 17, 2003)] (''2003 Hard Close Proposing Release'').

[225] We understand that the hard close employed in these other jurisdictions is not necessarily the same as the hard close approach we are proposing. For example, we understand it is common in some other jurisdictions for the required time of receipt of orders by the fund to be several hours before the time as of which the fund values its holdings.

[226] *See, e.g.,* 2003 Hard Close Proposing Release, *supra* note 224 (discussing investigations by Commission staff of suspected late trading, which suggested that, at the time, late trading of fund shares was not an isolated event). *See, also, e.g.,* In the Matter of Steven B. Markovitz, Investment Company Act Release No. 26201 (Oct. 2, 2003); In the Matter of Theodore Charles Sihpol, III, Investment Company Act Release No. 27113 (Oct. 12, 2005); In the Matter of Legg Mason Wood Walker, Inc., Investment Company Act Release No. 27071 (Sept. 21, 2005); In the Matter of Canadian Imperial Holdings, Inc. and CIBC World Markets Corp., Investment Company Act Release No. 26994 (July 20, 2005); In the Matter of Brean Murray & Co., Inc., Investment Company Act Release No. 26761 (Feb. 17, 2005).

[227] *See, e.g.,* Rule 38a–1 Adopting Release, *supra* note 219 (adopting rule 38a–1 under the Act, which requires written policies and procedures reasonably designed to prevent violation of the securities laws, oversight of compliance by the fund's service providers, and designation of a chief compliance officer).

[228] *See* proposed rule 22c–1(a)(3).

[229] *See* definitions of ''Eligible order'' and ''Pricing time'' in proposed rule 22c–1(d).

swing factor, and finalize and publish the fund share price.

For purposes of the proposed hard close requirement, an eligible order to purchase or redeem fund shares would have to supply certain information about the size of an investor's intended trade. This approach is intended to facilitate swing pricing by providing mutual funds with information they can use to calculate investor flows. In addition, this approach requires that trading intentions are clear before 4 p.m., which would further help prevent late trading. Specifically, we propose to define the term ''eligible order'' to mean a direction to purchase or redeem a specific number or value of fund shares. For example, an eligible order would include the direction to purchase or sell either (1) a specific number of shares of a fund (*e.g.,* 100 shares, or all the shares held in the account), or (2) an indeterminate number of shares of a specific value (*e.g.,* $10,000 of shares of the fund).

The proposed definition of eligible order also would include exchange orders. An exchange refers to the process in which an investor initiates an order to purchase shares of a fund using the proceeds from a contemporaneous order to redeem shares of another fund. When an exchange is initiated, two transactions are created—a redemption of securities and a purchase. We understand that exchanges are often between funds in the same fund complex, however, exchanges can occur between funds in different complexes. In either case, exchanges often are processed as a single transaction so that both the redemption and purchase components of the exchange receive same-day pricing. For exchanges involving a fixed number of shares on the redemption leg, the amount and number of shares of the second fund to be purchased will not be known until the NAV of the first fund is determined, which will be after the NAV is struck after 4 p.m. ET. For example, if an investor submits an order to redeem 100 shares of Fund A and invest the redemption proceeds in Fund B, the amount of the redemption proceeds from Fund A is not known until Fund A determines its price for that day and, likewise, the purchase amount for Fund B is not known until that time.[230] Under our proposed rules, this exchange transaction would qualify as an eligible order so that these contemporaneous transactions may continue to occur.

To receive that day's price, a designated party must receive the eligible order before the pricing time.[231] The fund's designated transfer agent is a registered transfer agent that is designated in the fund's registration statement filed with the Commission.[232] Currently, NSCC is the only registered clearing agency for fund shares, which operates its Fund/SERV service for processing fund transactions. The proposed rule would specify that eligible orders are irrevocable as of the next pricing time after a designated party receives the order. The proposed requirement of irrevocability of an eligible order is designed to prevent the cancellation or modification of orders by investors or intermediaries after the pricing time applicable to the order.[233] Preventing the cancellation or modifications of orders after the pricing time would help avoid continuing adjustments to the investor flow information that a fund uses to make swing pricing decisions. In addition, the alteration or cancellation of fund orders after the pricing time may be used as a means to facilitate late trading as fund investors may become aware of new market information after the order has been submitted and after the pricing time. We request comment on the proposed approach to implementing the hard close requirement, including:

100. Should we make any changes to the definitions included in the proposed rule? Is the definition of ''eligible order'' clear and understandable? Is the definition of ''designated transfer agent'' clear and understandable? Is the definition of ''pricing time'' clear and understandable''? Are there other terms we should define?

101. Should the proposed hard close requirement permit exchanges, as proposed? If not, what goals of the proposed hard close requirement would be supported by no longer permitting exchanges?

102. Should the definition of ''eligible order'' require orders to be irrevocable as of the pricing time, as proposed? Should funds be permitted to correct bona fide errors under a hard close, as proposed? If not, how should errors be resolved? Are there other reasons why an eligible order should not be considered irrevocable as of the pricing time?

103. Should the definition of ''eligible order'' include directions to purchase or redeem a specific percentage of fund shares in an account or a specific percentage of an account's value?

104. To what extent do designated parties already time stamp orders based on the time of receipt? Should we include new requirements for each designated party to time stamp order information for purposes of the hard close requirement?

105. Should we include funds, designated transfer agents, and registered clearing agencies as designated parties, as proposed? Would allowing registered clearing agencies to receive eligible orders for purposes of the hard close delay the ability of the fund's swing pricing administrator to assess investor flow information to make swing pricing decisions? If so, how long would this delay be?

106. Beyond the proposed designated parties, are there other parties involved in processing order information that should be eligible to receive eligible orders before the pricing time so that orders may receive that day's NAV? For example, should a fund's principal underwriter qualify as a designated party and, if so, why? To what extent do direct investors or intermediaries today place orders with a fund's principal underwriter or directly with the fund's transfer agent?

107. Should we limit the proposed hard close requirement to funds that must implement swing pricing under the amendments to rule 22c–1, as proposed?

108. The proposed amendments to rule 22c–1 would establish different requirements for money market funds, transactions by authorized participants with ETFs, and unit investment trusts than for all other open-end funds, which would be required to implement a hard close. Would investors, funds, or intermediaries be confused by the different pricing requirements that would be created by the proposed amendments to rule 22c–1? If so, what confusion would be created? What party to a transaction would bear that confusion? Would additional burdens be created by having different pricing requirements under proposed rule 22c–1 for these different types of registered investment companies?

[230] *See supra* section II.B.3 (discussing how a fund whose shares are purchased in an exchange transaction can estimate the size of the inflow for purposes of the proposed swing pricing requirement).

[231] Although orders would have to be received by Fund/SERV or the designated transfer agent by 4 p.m. ET to ensure same-day pricing, the clearing agency and designated transfer agent each may complete its processing after the pricing time.

[232] *See* proposed rule 22c–1(d). The term ''transfer agent'' has the same meaning as in section 3(a)(25) of the Exchange Act [15 U.S.C. 78c(a)(25)] and does not include underlying or sub-transfer agents. A fund may designate more than one transfer agent in its registration statement.

[233] The irrevocability of an order does not prevent a fund from rejecting an order and does not affect the ability of a fund to maintain policies and procedures for correcting bona fide errors.

3. Effects on Order Processing, Intermediaries and Investors, and Certain Transaction Types

The proposed hard close would require changes to current order processing practices. Although modernizing these practices is intended to reduce operational risk and enhance resilience, in addition to the benefits related to swing pricing and helping deter late trading, we recognize these changes would also involve costs.[234]

a. Order Processing Improvements

The system updates that would support the implementation of a hard close may provide additional benefits by requiring modernization of how orders are processed. Today, some intermediaries net their customers' purchase and redemption orders in a given fund against each other, meaning that an intermediary combines and offsets the value of purchase and redemption activity across multiple customer accounts. Instead of netting purchases and redemptions together, some other intermediaries maintain separation between purchase orders and redemption orders. After aggregating customers' orders, intermediaries then submit orders in one or more batches, with most orders submitted to the designated party after 4 p.m. ET. As a result of the proposed hard close requirement, some intermediaries may opt to discontinue infrequent or even once-a-day batch processes for submitting orders and instead adopt more frequent batch processing approaches that result in more frequent order submission throughout the business day. Some intermediaries may even elect to utilize message-based communications for order flow, in which orders are submitted on a near-real-time basis.[235] We understand based on industry outreach that some intermediaries currently do not submit orders throughout the day to facilitate customers' ability to cancel or correct orders intra-day, before the orders are submitted to a designated party. If intermediaries continue to provide this capability to customers under a hard close, they would likely either: (1) need to develop a process with designated parties for cancelling and correcting orders submitted to a designated party before the pricing time (as eligible orders are irrevocable under the proposal as of the pricing time, but not before); or (2) submit orders to a designated party relatively close in time to the pricing time, instead of throughout the day.

If an intermediary submits orders more often or earlier in the day, it would be less vulnerable to an intra-day disruption within its own operational environment. Orders that have been submitted prior to a disruption are able to be accepted and acknowledged by a fund, even if the intermediary experiences delays in its own processing. This improves the intermediary's operational resilience, since some operational activities on which the intermediary is dependent will be able to continue. Similarly, earlier order submission should also result in earlier confirmations from the fund.[236] As such, the chances increase for an intermediary to submit an order and receive a confirmation even if the fund's transfer agent has a disruption later in the day. This reduces an intermediary's vulnerability to disruptions in others' operational processing, further improving the intermediary's operational resilience. Collectively, as all intermediaries, funds, and fund transfer agents process orders more frequently, operational resilience across all market participants improves.[237]

The proposed hard close would also eliminate cancellations and corrections that are submitted after the pricing time. As a result, an investor or intermediary would bear the cost, if any, of the errors leading to a cancel or correct order. We believe it would be unfair for a fund's shareholders to bear the cost of an error in this case, as the investor or intermediary was the cause of that error. For errors that were the intermediary's responsibility, the intermediary should be solely accountable for correcting the error and, if necessary, compensating the investor. We understand that currently some intermediaries and funds have complex processes for posting cancellations and corrections, including processes for funds to bill intermediaries for errors.

In addition, the proposed hard close requirement would improve the confirmation process for funds. The confirmation process helps ensure the accuracy of the trade that will be settled. Until the fund provides a confirmation, an intermediary does not know whether the order will be accepted or rejected. Under current practice, we understand that because of the delay in intermediaries submitting orders, funds likewise issue order confirmations on a delayed basis. When an intermediary must submit all orders by a certain time under the hard close proposal, funds would be able to issue confirmations to intermediaries earlier. We believe that timelier confirmations by funds would support the reduction of operational risks and improve market resiliency by providing certainty to intermediaries and investors about whether orders are accepted or rejected at an earlier point in the process, meaning they have more time to work toward settlement of the trade or determine how to manage a rejected order.[238] Further, intermediaries similarly may be able to issue trade confirmations required by rule 10b–10 of the Exchange Act to their customers on a timelier basis, although an intermediary will need to wait until the price is published before it can calculate the net money or number of shares to issue the trade confirmation to its customer. Requiring a hard close may also facilitate settlement modernization. Many funds settle purchases and redemptions on a T+1 basis, and the proposed hard close could help improve the settlement process by providing complete information about eligible orders on the trade date.

In addition, providing funds with more timely and accurate information about the fund's daily flows under the proposed hard close would allow funds to make portfolio and risk management decisions based on more complete and accurate flow information than is available under current practices. Currently, some funds may rely on projected flows when making investment decisions, though these projections may be unreliable because of orders that the fund does not receive until the next day, including cancellations and corrections. Other funds may instead rely on flow information posted at the custodian because of its accuracy, but this

[234] *See infra* section III.C.3 discussing the estimated costs of the hard close proposal on funds, designated parties, intermediaries, and investors.

[235] Intermediaries that take advantage of netting likely would be unable to eliminate batch processing altogether since netting necessitates definition of a period over which trades are netted and a process that collects eligible customer orders and nets them together into a single order for submission to a fund. Message-based communication is less likely to be implemented when netting is utilized.

[236] The term ''confirmation,'' for the purposes of this release, unless otherwise indicated, refers to the process by which a fund accepts a purchase or redemption order. The confirmation process discussed in this section is different from the confirmations required by 17 CFR 240.10b–10 (Exchange Act rule 10b–10). Confirmations under rule 10b–10 require broker-dealers to provide specific disclosures in writing to customers at or before the completion of a transaction. *See* rule 10b–10 under the Exchange Act.

[237] *See infra* section II.C.3.b for additional complexity and possible points of failure in current order processing practices.

[238] An order may be rejected for a variety of reasons including, among others, the intermediary is not set up to transact with a particular fund, an order to sell is for more than the number of shares held, or an order to purchase is less than the fund's investment minimum.

information is delayed. For example, for a fund that settles on T+1, the custodian often will post the flow at the end of the day on T+1, which may not be visible to the portfolio manager until the morning of T+2. With a hard close, however, flow information should be available from the transfer agent on the night of the trade date. In addition, by eliminating the possibility that the fund could receive additional orders after the pricing time, including cancellations and corrections, the data available that night would be more reliable. Similarly, a fund managing its risk would be able to do so more effectively by having access to accurate flow data more quickly. Ultimately, the proposed hard close requirement is designed to further the Commission's mission to protect investors and reduce risk by improving the timeliness of order flow information communicated to the fund.

b. Effects on Intermediaries

The proposed amendments would require changes in the ways funds and intermediaries process fund purchase and redemption orders. As discussed above, intermediaries generally submit aggregated and, in some cases netted, orders in one or more batches, often after 4 p.m. ET. Some intermediaries submit orders directly to the fund's transfer agent or to Fund/SERV, while some intermediaries rely on other intermediaries, such as clearing brokers or retirement platforms, to submit orders to the transfer agent or Fund/SERV. In addition, some intermediaries' systems do not initiate batch processing until a fund's final NAV is received or until final NAVs are received for all funds offered on their platforms.

In response to the proposed hard close requirement, funds and intermediaries would need to make significant changes to their business practices, including updating their computer systems, altering their batch processes, or integrating new technologies that facilitate faster order submission. Intermediaries would need to reengineer their systems to ensure disseminated order information reaches the transfer agent or Fund/SERV before 4 p.m., unless they determine to process fund orders at the next day's price as a matter of practice.[239] For intermediaries with reliance on ''downstream'' intermediaries, coordination in the timing of order communication will be essential to ensure orders reach the fund, transfer agent, or registered clearing agency prior to the deadline. In addition, Fund/SERV may need to run more batch cycles in the period leading up to 4 p.m. than it does today, as currently batch cycles run into the evening and overnight to receive and process orders from intermediaries.

We understand that retirement plan recordkeepers may face particular challenges with adhering to the proposed hard close requirement.[240] Retirement plan recordkeepers may employ a method of order processing that relies on receiving the current day's NAV before submitting orders. Funds do not typically receive the order flow information for transactions from retirement plan recordkeepers until well after the day's NAV has been calculated. These order flows are delayed, we understand, due to the calculations that the retirement plan recordkeepers complete under plan rules as well as to legacy systems that require the final NAV before finalizing the order. For retirement plan recordkeepers, we understand that current recordkeeping systems require that day's NAV before the participant's plan instructions may be applied to the participant's order. Once the order has been processed through the investment instructions specific to the participant's plan, it can be placed for execution. In addition, retirement plan recordkeepers may perform compliance and other checks on orders before finalizing the orders for submission post-NAV strike.

We understand that the time it currently takes between when some retirement plan recordkeepers begin to process their orders and when the order is finally submitted to the fund can take upward of six hours due to the limitations of their current processing systems and hardware. We believe that retirement plan recordkeepers would need to substantially update or alter their processes and systems to accommodate the proposed hard close requirement to submit orders more quickly. In the event compliance and other checks are required, plans may need to utilize the prior day's NAV to estimate the share or dollar size of an order for those orders to receive same day pricing.

c. Intermediary Cut-Off Times

To help ensure that order flow information is provided to a designated party before the established pricing time, the proposed rule would likely cause some intermediaries to set their own internal cut-off time for receiving orders to purchase or redeem fund shares that is earlier than the pricing time established by the fund. Intermediaries may use earlier cut-off times to provide time to transmit order flow information to a designated party so those orders receive that day's price. Investors, therefore, depending on the entity through which an investor is transacting (*e.g.,* a broker-dealer, retirement plan recordkeeper, or the fund's transfer agent), may have different deadlines for the same fund for submission of orders to receive that day's price. For example, an investor submitting an order to a fund's transfer agent might have until 3:59 p.m. ET to submit its order, while an investor submitting an order to an introducing broker would likely have to submit its order earlier to provide enough time for the introducing broker to send the order to the clearing broker and for the clearing broker to send it to the transfer agent or to Fund/SERV.

Investors transacting through intermediaries may lose some flexibility in when they may submit orders through an intermediary to receive that day's price as intermediaries may institute earlier cut-off times. Because technology has advanced since the Commission last considered a hard close in 2003, we generally do not believe, however, that intermediaries would need to establish cut-off times significantly earlier than the pricing time set by the fund. We recognize, however, that layered cut-off times may occur when an intermediary uses one or more tiers of other intermediaries to submit orders, and that cut-off times generally would be earlier for investors submitting orders to lower-tier intermediaries. We also recognize that intermediaries that net order activity or rely on batch processing may require additional time to support such netting or batch activities, while those intermediaries that submit orders individually through message-based communications may have a higher volume of orders submitted, but a shorter time between order submission by an investor and order receipt by a fund, transfer agent, or registered clearing agency. While the proposed hard close requirement generally would cause intermediaries to establish earlier cut-off times, the proposed rule would not prevent an intermediary from

[239] While the proposed hard close requirement would require intermediaries to transmit eligible orders before 4 p.m. ET, intermediaries would still be able to process orders after 4 p.m. for purposes of execution and settlement, as they currently do today. For example, after receiving the NAV the intermediary would then be able to determine the net money to be paid to the investor or to be collected.

[240] *See* Comment Letter of The Principal Financial Group on 2003 Hard Close Proposing Release, File No. S7–27–03 and Comment Letter of ASPA on 2003 Hard Close Proposing Release, File No. S7–27–03. The comment file for the 2003 Hard Close Proposing Release, where these comment letters can be accessed, is *available at https://www.sec.gov/rules/proposed/s72703.shtml.*

transmitting orders it received after its internal deadline but before 4 p.m. ET on an individual basis to the fund's transfer agent or to Fund/SERV in order to receive that day's price.

d. Effects on Certain Transaction Types

We recognize that the proposed hard close requirement could extend completion times for certain types of transactions, where the specific number or value of fund shares to be purchased or redeemed is unknown until that day's price is available. For example, under certain retirement plan rules, certain transactions, such as plan loans or withdrawals, currently remain incomplete until all fund positions in the investor's accounts are valued using that day's prices. Specifically, some plan provisions specify a hierarchy for drawing from different investments to accommodate participant loan or withdrawal requests. As an example, the plan may require the sale of shares in Fund A to pay the loan or withdrawal before the sale of shares in Fund B. In this case, until that day's final price for Fund A shares is available, the retirement plan recordkeeper may not know if the value of the participant's investment in Fund A is sufficient to pay the loan or withdrawal amount on its own, or if satisfying the loan or withdrawal request in full will also require redemptions from Fund B.

Under the hard close proposal, although plans would not be required to change their rules governing these kinds of transactions, transaction requests that are subject to hierarchy rules may take one or more additional days to complete than they would currently. This is because the retirement plan recordkeeper would no longer be able to wait until final prices are available before calculating and submitting one or more redemption orders to satisfy the requested plan transaction. In the above example, this would mean that the recordkeeper would likely submit an order to redeem shares of Fund A on the first day and may submit an order to redeem shares of Fund B on a subsequent day if the loan or withdrawal is not fully funded. We understand that these transactions typically are a small percentage of overall retirement plan flows and that plan participants generally do not receive immediate execution of loan or withdrawal requests today.[241] Thus, we believe the aggregate effect of the proposed hard close requirement on such transactions would not be significant.

As another example, the proposed hard close requirement could extend the period of time for executing an investor's request to rebalance its holdings to a target asset allocation or model portfolio. We understand that currently these requests may be facilitated by first valuing the investor's existing positions, based on final prices for that day, and then submitting orders that would result in the desired allocation. The proposed rule would not permit these orders to receive same-day pricing if they are submitted after the pricing time, and therefore may require the intermediary to achieve the desired rebalancing through a series of orders over more than one day or to rebalance using prices from the prior day. In addition, the proposed hard close might affect current order processing for funds of funds. We understand that a lower-tier fund in a fund of funds structure may not receive purchase or redemption orders from upper-tier funds until well after 4 p.m. Under the proposed rule, the lower-tier fund (or another designated party) would have to receive an upper-tier fund's orders to purchase or redeem the lower-tier fund's shares before the lower-tier fund's pricing time to receive that day's price for the orders.

e. Effects on Investors

The extent to which the hard close proposal would affect investors largely depends on the value investors place on their ability to obtain same-day pricing for orders initiated in the period immediately before 4 p.m. ET or on the complex transaction types discussed above.[242] Most fund shareholders are long-term investors, and thus we believe that most fund orders are not time sensitive. In addition, because of advances in technology, it seems likely that intermediaries would set cut-off times that are only incrementally earlier than current cut-off times. As a result, it seems likely that many investors would experience a significant change in when they must submit their orders to intermediaries. For those investors who place a premium on being able to place orders up until 3:59 p.m. ET, they generally could place orders with the fund's transfer agent to retain this option.[243] While we understand that investors may experience a change in how late they may transact through intermediaries that set earlier cut-off times as a result of our proposed rule, overall the proposal is intended to better protect shareholders' interests by operationalizing swing pricing to combat shareholder dilution and enhancing fund resiliency. We request comment on the effects of the proposed hard close on order processing, intermediaries and investors, and on different transaction types:

109. Should we require funds to implement the proposed hard close requirement? Are there alternatives to the proposed hard close requirement that we should implement? Would the proposed hard close requirement help funds operationalize swing pricing? Would the proposed hard close requirement help prevent late trading? Are the Commission's efforts to modernize fund order processing supported by the proposed hard close requirement?

110. What steps would intermediaries be required to take to operationalize the proposed hard close requirement? Are there operational impediments to funds implementing the proposed hard close requirement? Are there operational impediments for intermediaries, transfer agents, and/or registered clearing agencies in implementing the proposed hard close requirement? Are there other operational changes that would be helpful to operationalize swing pricing?

111. Would retirement plan providers need to make changes to plan rules in order to accommodate compliance with a hard close? Are plan rules able to be altered for plans that are currently owned, or would alterations only be feasible on a going forward basis? If a change in plan rules would be necessary, how would plan rules need to be altered? How would plan participants be affected by changes to plan rules?

112. Would the proposed rule affect intermediaries' ability to net order flow? Would intermediaries move to message-based communications, where orders are transmitted to the transfer agent or registered clearing agency as they are received, in response to the proposed hard close requirement?

113. Would elimination of cancellations and corrections that designated parties currently may receive

[241] For example, according to one source, in 2021, 4.1% of defined contribution plan participants took withdrawals, and at the end of Dec. 2021, 12.5% of participants of plan participants had loans outstanding. *See* ICI Research Report, Defined Contribution Plan Participants' Activities, 2021 (Apr. 2022), *available at https://www.ici.org/system/files/2022-04/21_rpt_recsurveyq4.pdf.*

[242] Rule 22c–1 already affects investors differently based on the time zone in which the investor lives. Investors located in time zones other than the eastern time zone are subject to different cut-off times today. For example, 4 p.m. ET is 10 a.m. Hawaii time, meaning that an investor in Hawaii has to submit its order before 10 a.m. to receive that day's NAV if the fund's pricing time is 4 p.m. ET.

[243] *See infra* section III.C.3 discussing that some investors may be affected by the proposed hard close requirement if they desire to transact later in the day in response to market events and are limited in their ability to change intermediaries or place orders with the fund's transfer agent.

after the pricing time streamline processing and reduce costs for funds and/or designated parties and, if so, by how much? Would costs for investors be affected by the elimination of these cancellations and corrections?

114. Should there be any exceptions from the proposed hard close requirement for exigencies or types of parties? For example, should there be exceptions for certain scenarios (*e.g.,* emergencies), fund types (*e.g.,* funds of funds), or intermediaries (*e.g.,* retirement plan recordkeepers)? If so, what should be the parameters of such exceptions? For example, should we permit investor orders to receive same-day pricing treatment as the result of an emergency, if the intermediary is unable to send orders or a designated transfer agent or clearing agency is unable to receive orders? Should an emergency exception be conditioned on the board or the chief executive officer of the intermediary, transfer agent, or clearing agency certifying to the nature and duration of the emergency and, in the case of an intermediary, that the intermediary received the orders before the applicable pricing time? Should we permit conduit funds, which invest all their assets in another fund and must calculate their NAV on the basis of the other fund's NAV, and which include master-feeder funds and insurance company separate accounts, to receive same-day pricing? Should we provide an exception to permit certain intermediaries, such as retirement plan recordkeepers, to receive same-day pricing for the orders they submit, even if not received by a designated party before the pricing time, as long as the relevant intermediary received the orders before the pricing time? Should there be other conditions associated with such an exception, such as a requirement to provide advance notice of certain flow information to the fund or another designated party?

115. Should we provide an exception from the proposed hard close requirement for certain transaction types (*e.g.,* retirement plan loans or withdrawals or certain rebalancing transactions)? Should we amend the definition of eligible order to include these or other transaction types? If so, what information should we require the intermediary to supply to a designated party before the pricing time to qualify for same-day pricing? Should retirement plan recordkeepers or other intermediaries be permitted to estimate order flow information for specific transaction types, like loans or withdrawals? Would the estimates be prepared using the prior day's price, or through some other method?

116. If exceptions to the hard close were permitted, how would that affect the proposed swing pricing requirement?

117. Would the proposed hard close requirement help retirement plan recordkeepers to reduce their batch processing cycles and, if so, how?

118. Should the rule permit a fund or other designated party to impose a cut-off for orders received before that day's NAV computation? For example, if the time for an order to receive that day's NAV is 4 p.m. ET, should the fund be permitted to impose an earlier time of day, say 2 p.m. ET, as an earlier cut-off time to receive orders? Would the ability to disconnect the cut-off time for receiving orders from the pricing time help facilitate swing pricing by providing additional time to calculate the swing factor?

119. If different funds adopted different cut-off times for receipt of orders pursuant to rule 22c–1, would intermediaries and transaction processing systems be able to accommodate such differences on a fund specific basis? How would different cut-off times affect investors? Would it be confusing or challenging for investors if there were variation among funds' cut-off times?

120. If most funds continue to calculate their NAVs as of 4 p.m. ET and, as proposed, funds are required to implement swing pricing and are subject to a hard close, would funds have sufficient time between 4 p.m. ET and when they publish their prices to assess their flow information and apply the proposed swing pricing requirement, including determination of a swing factor, as applicable? If not, how might funds adjust their practices to provide more time to make swing pricing determinations? For example, would funds publish their prices later than they typically do, which is currently several hours after the pricing time? [244] Are there any changes we could make to facilitate later publication of prices, if needed? As another example, would funds begin to calculate their NAVs as of an earlier time than 4 p.m. ET? What affect, if any, would such a change have on transaction processing and the valuation of the fund's investments?

121. How would the proposed hard close requirement affect investors? For example, what percentage of investors place orders shortly before 4 p.m., and how important is it for those investors to receive that day's price as opposed to the next day's price? When intermediaries establish their own cut-off times by which customers must place orders to receive that day's price, would these cut-off times be close to 4 p.m. ET as a result of competition among intermediaries and customer demand? Are intermediaries able to accelerate the time between receiving an order and relaying that order to a designated party compared to current practice? Would it be confusing or challenging for investors if there were variation among intermediaries' cut-off times? Are there circumstances in which intermediaries would transmit orders received after their internal cut-off times and before 4 p.m. ET to a fund's transfer agent or to Fund/SERV individually to receive same-day pricing? Would this increase the risk of errors or otherwise be burdensome on funds or intermediaries?

122. Should the rule initially require that funds receive order flow information by a time that is after the pricing time in order to ''phase in'' the proposed hard close requirement? For example, instead of requiring a designated party to receive all of a fund's order flow information by 4 p.m. ET each day, should we initially require receipt of order flow information by the designated party one to two hours after the pricing time with the goal of eventually moving the time of receipt to before the pricing time? Would a delayed phase in of the proposed hard close requirement be compatible with the proposed swing pricing requirement? If so, how would a fund determine whether to swing its NAV if it does not have all of its order flow information until after the pricing time?

123. We understand that intermediaries currently may adjust trade amounts to account for commissions or other fees. Would the proposed hard close requirement affect how these adjustments are made? If so, should we make any changes to the proposed approach to better accommodate such adjustments?

124. Would earlier confirmations from a fund to an intermediary reduce an intermediary's vulnerability to disruptions? Would intermediaries process orders more frequently under a hard close? If so, would more frequent order processing increase the resiliency of funds and transfer agents? If not, why not?

125. Would intermediaries need to set earlier cut-off times than is the current practice for investors in order to get orders to a designated party before the pricing time? If so, how early? How

[244] *See infra* section III.C.2.a (discussing the potential effects on intermediaries and other market participants if funds were to publish their prices later than they currently do).

much time do intermediaries need to process order flow information?

126. Should the rule require that funds set a uniform cut-off time for orders to be received by intermediaries? If the rule requires a uniform cut-off time, should we also require that a fund disclose the cut-off time, such as in the fund's prospectus? Would funds, collectively, establish consistent cut-off times for these purposes, or would intermediaries need to manage different fund-specific cut-off times?

127. Some intermediaries may establish earlier cut-off times in order to accommodate a hard close. Would investors that want to make an order up until 3:59 p.m. place orders with a fund's transfer agent instead of with an intermediary to preserve this flexibility? Are there limitations on certain investors' abilities to place orders with the transfer agent instead of through an intermediary?

128. Would some intermediaries choose to no longer distribute open-end funds that would be subject to the hard close requirement in order to avoid compliance costs? In addition, would retirement plan providers be more likely to replace mutual funds as plan investment options with ETFs or CITs? If so, how would this affect investors?

4. Other Proposed Amendments to Rule 22c–1

The proposed amendments would retain the requirements of the current rule concerning the frequency and time of determining the NAV, but would reorganize and reword those provisions.[245] The proposed amendment would use the phrase ''based on the current net asset value of such security established for the next pricing time,'' as opposed to ''based on the current net asset value of such security which is next computed'' in the current rule. While its substance is already required, this amendment would codify in the rule text that orders received after the pricing time, but before calculation of the NAV is complete, do not receive same-day pricing.[246] We also propose to reorganize certain other provisions of rule 22c–1, including the existing exceptions to the rule's forward pricing requirement.[247] In addition, we propose to revise certain terminology in the rule.[248]

We are also proposing to remove the provision from rule 22c–1 that would allow funds not to calculate their current NAV on days in which changes in the value of the fund's securities will not materially affect the current NAV. We believe this provision is no longer necessary because a fund generally would need to determine its current NAV in the first instance before it could conclude with certainty that changes in the value of the fund's securities would not materially affect the fund's current NAV.

We request comment on the other proposed amendments to rule 22c–1, including:

129. Are our proposed amendments to provide that orders received after the pricing time, but before calculation of the NAV is complete, do not receive same-day pricing sufficiently clear?

130. Should we retain the current provision in rule 22c–1 that allows a fund not to calculate its NAV on days when the changes in the value of the fund's portfolio securities do not materially affect the current NAV? If so, how would this affect the ability of a fund to implement swing pricing? Do any funds rely on this provision today? If so, what are the scenarios in which a fund relies on this provision? How are changes in the value of the fund's securities determined if the fund is not valuing the underlying securities and computing the NAV on a daily basis?

5. Amendments to Form N–1A

Open-end funds use Form N–1A to register under the Investment Company Act and to register offerings of their securities under the Securities Act. Item 11 of Form N–1A requires a fund to describe how it prices its shares. Item 11(a) specifically requires that funds state when they calculate the NAV and that the price at which a purchase or redemption is effected is based on the next NAV calculation after the order is placed. We are proposing to amend this disclosure to also require, if applicable, that funds disclose that if an investor places an order with a financial intermediary, the financial intermediary may require the investor to submit its order earlier than the fund's pricing time to receive the next calculated NAV. As discussed above, intermediaries may set different times by which investors must have their purchase or redemption orders in place to receive that day's price. We believe that this proposed disclosure is important so that investors may understand the potential variability in the time by which intermediaries may require an order to be placed to receive a particular day's price.

We request comment on the proposed amendments to Form N–1A, including:

131. Would the proposed requirement for funds to disclose in their prospectuses that orders placed with intermediaries may need to be submitted earlier to receive that day's price be helpful to investors?

132. In addition to the proposed disclosure requirements, are there additional disclosures relating to the proposed hard close requirement that we should require? Should funds be required to disclose the cut-off times of their intermediaries in their distribution network? If so, where should this disclosure be located (*e.g.,* in the fund's registration statement or on its website)? What potential challenges, if any, would a fund encounter in providing an up-to-date list of intermediary cut-off times?

D. Alternatives to Swing Pricing and a Hard Close Requirement

1. Alternatives to Swing Pricing

In lieu of the proposed swing pricing requirement, we have also considered whether there are alternative methods by which we could require funds to pass on costs stemming from shareholder purchase or redemption activity to the shareholders engaged in that activity. These alternatives could be used independently or in combination with each other. Some of these alternatives would be dependent on investor flow information, similar to the proposed swing pricing requirement. In those cases, an alternative could be paired with either a hard close requirement or one of the alternatives to the hard close that we discuss below.

a. Liquidity Fees

One alternative we considered is a framework that would apply a charge in the form of a liquidity fee rather than an adjustment to the fund's price.[249] A

[245] *See* rule 22c–1(a), (b)(1), and (d); proposed rule 22c–1(a).

[246] *See* 2003 Hard Close Proposing Release, *supra* note 224, at n.26.

[247] *See* rule 22c–1(a)(1), (a)(2), and (c); proposed rule 22c–1.

[248] For example, we propose to replace references to ''orders'' in the current rule with references to ''directions'' to purchase or redeem, which is intended to distinguish between the concept of eligible orders that we propose to add for purposes of the proposed hard close requirement and directions to purchase or redeem shares of other registered open-end investment companies that are not subject to the proposed hard close requirement. As another example, we propose to incorporate the term ''pricing time'' into provisions of the rule that are not specific to the hard close requirement for cohesion of the rule.

[249] Although certain U.S. funds may use liquidity fees for redemptions, they are rarely used to address dilution, other than in the case of short-term trading of fund shares. *See* rule 22c–2 under the Act. The use of redemption fees and anti-dilution levies in Europe varies to some extent by jurisdiction. For example, Irish-domiciled funds are more likely to have adopted anti-dilution levies than Luxembourg-domiciled funds. Overall, however, we understand that swing pricing was more widely used by European fund complexes in Mar. 2020 than redemption fees or anti-dilution levies. *See* ICI,

Continued

liquidity fee would apply as a separate charge to a transacting investor and would not change the fund's price. A liquidity fee could be used to impose liquidity costs on purchasing or redeeming investors and address dilution, much like a swing pricing-related price adjustment. We recognize that a liquidity fee framework could have certain advantages over a swing pricing requirement. For example, liquidity fees provide greater transparency for redeeming or purchasing investors of the liquidity costs they are incurring. Liquidity fees also provide a mechanism for imposing liquidity costs directly on purchasing or redeeming investors, without adjusting the transaction price for investors who are trading in the other direction.[250] In addition, some funds and their intermediaries are currently equipped to apply certain purchase and/or redemption fees.[251]

However, the proposed swing pricing requirement may have several advantages over liquidity fees for relevant open-end funds. With swing pricing, a fund can pass liquidity costs on to redeeming or purchasing investors in a fair and equal manner, without any reliance on intermediaries to achieve fair and equal application of costs. Liquidity fees may require more coordination with a fund's intermediaries than swing pricing because fees need to be imposed on a transaction-by-transaction basis by each intermediary involved—which may be difficult with respect to omnibus accounts that intermediaries may create to aggregate all customer activity and holdings in a fund.[252] Funds and their transfer agents may contract with intermediaries to have them impose liquidity fees under these circumstances, which may include a review of contractual arrangements with fund intermediaries and service providers to determine whether any contractual modifications are necessary or advisable to ensure that liquidity fees are appropriately applied to beneficial owners of fund shares. While we could require intermediaries to submit purchase and redemption orders separately to transact in a fund's shares, which could allow funds and their transfer agents to apply fees directly, this type of requirement would also involve some operational costs. Requiring intermediaries to submit purchase and redemption orders separately would require operational changes for some intermediaries because they would no longer be able to net otherwise offsetting customer purchases and redemptions.[253] In addition, the volume of transactions that transfer agents and Fund/SERV process would increase if netting were not permitted. Further, unlike swing pricing, the amount collected from a liquidity fee is not available to the fund for a period of time until the intermediary remits to the fund the amount charged.[254] If the fund is under stress, the unavailability of the amount collected from fees might cause the fund to incur other costs it might not have otherwise incurred, such as costs associated with selling investments to pay redemptions when the fee amount, if remitted, would have helped the fund pay those redemptions.

There are many potential variations of a liquidity fee framework. The trigger for applying fees could be based on net flows, similar to swing pricing, or other indicators that a fund's trading costs are increasing (*e.g.,* widening spreads or reduced liquidity of the fund's portfolio investments). Alternatively, a fee could apply to all trades of a given type (for example, all redemption orders). When a fee applies, the determination of the size of the liquidity fee could be either dynamic to reflect changing costs or simplified to remain relatively static. As for how the fee is processed, it could be applied to the purchase or sale or could be processed separately from the trade.

As an example, similar to the proposed swing pricing requirement, a dynamic liquidity fee could be calculated to reflect certain costs (*e.g.,* spread, other transaction costs, and market impact) a fund is likely to incur to meet redemptions or invest the proceeds from subscriptions based on the direction and magnitude of that day's flows. Dynamic liquidity fees that may change in size from one day to the next may involve greater operational complexity and cost than swing pricing, as intermediaries would have to identify and apply different fee amounts for each fund in which their clients transact each day. This approach also generally would necessitate timely flow information if the fee were processed as part of a transaction, similar to the proposed swing pricing requirement. If the fee were processed separately from the transaction and applied to an investor's account on a delayed basis, a fund would likely have more time to receive flow information than under the proposed swing pricing requirement, which could avoid the need for a hard close or related alternatives. Delayed application of the fee, however, may raise complications related to collecting fee amounts from investors, particularly when an investor has otherwise redeemed the full amount of its holdings. Follow-on fees also significantly increase the number of transactions to process, and may complicate reporting for custodians and advisers in situations where a transaction may occur in one reporting period but the fee related to the transaction is not applied until the next reporting period. In addition, an intermediary may face difficulties projecting upcoming cash balances in its client accounts if there are upcoming fees to be charged, but the amounts of those fees are unknown. The fund itself may also have challenges with projecting its own cash balance if it cannot predict when accrued fees will be received from each intermediary.

Instead of a dynamic liquidity fee, we could require a simplified liquidity fee. A simplified liquidity fee, for example, could be a set percentage of the transaction amount, such as 1%. Or it could be a default fee, such as 1%, that a fund could adjust up (possibly up to a cap) or down as it determines is in the best interest of the fund. A simplified liquidity fee could apply to both purchases and redemptions, given that both purchases and redemptions can contribute to dilution. Under this type

Experiences of European Markets, UCITS, and European ETFs During the COVID–19 Crisis (Dec. 2020), *available at https://www.ici.org/doc-server/pdf%3A20_rpt_covid4.pdf.*

[250] For instance, on a day the fund has net redemptions, swing pricing adjusts a fund's NAV downward, and investors who purchase the fund's shares that day buy at a discount. On a day when a fund has net purchases, swing pricing adjusts a fund's NAV upward, and investors who sell the fund's shares that day sell at a premium. Swing pricing must account for these discounts or premiums that other investors are receiving to fully address dilution.

[251] For example, some funds impose redemption fees under rule 22c–2 under the Investment Company Act. *See supra* note 67 for a discussion of how many funds we estimate apply redemption fees.

[252] See *infra* section III.E.2 (noting certain omnibus accounting practices that may make a liquidity fee operationally difficult). Swing pricing, on the other hand, would require some funds and intermediaries to create new systems and operational procedures, but once those are in place, swing pricing would be incorporated in the process by which a fund strikes its NAV and sets the transaction price (including any swing of the NAV). Intermediaries would then effect customer transactions at the transaction price, as they do today, without further operational changes or coordination with the fund.

[253] *See supra* section II.C.3.a (discussing that some intermediaries currently net orders, while others separately submit purchase and redemption orders).

[254] While money collected from the fee would not be available to the fund until the intermediary remits payment, we understand that a fund would reflect the fee amount it is owed as an accrual until the fund receives the fee payment. The accrual would help prevent declines in the fund's NAV that would otherwise result from any delay in remittal. Proper booking of the accrual would, however, require the intermediary to inform the fund of the fee amount on an accurate and timely basis.

of approach, fees could be equivalent for both transactions, or fees could be higher on one side and lower on the other (for example, a purchase fee of 0.25% and a redemption fee of 1%). Alternatively, we could require a one-sided simplified fee that applies to redemptions only or to purchases only, with the premise that a fee charged on redemptions could also help to offset dilution that may result from purchases (or vice versa). Because all shareholders purchase and redeem the fund's shares during the life of an investment, a one-sided fee would apply to all shareholders at some point and could help mitigate dilution that fund investors collectively contribute to through their purchase and redemption activity. A simplified liquidity fee would not necessarily require flow information. For instance, if a simplified fee applied only to redemptions, a set fee could apply to all redemptions or only to redemptions when the fund's trading costs are significantly increasing, such as in times of stress.[255] If the dependency on flow information is removed, a simplified liquidity fee likely could be processed as part of a transaction, avoiding the need to process a fee as a separate follow-on transaction.

The size of a simplified liquidity fee likely would be more predictable for investors and intermediaries than a dynamic fee or swing pricing. This would enhance transparency and would likely be easier to implement. While the size of the fee generally would be known in advance, it may or may not be easy to predict when a fee would apply. For example, if a fee applied to all redemptions, then investors and intermediaries would have certainty on when fees would apply. However, if fees applied only in certain circumstances, such as when trading costs are materially increasing or the fund has experienced net redemptions over multiple consecutive days, then application of a fee may be more difficult to predict, particularly if a fund's threshold for applying a fee is non-public or based on factors that are difficult for other market participants to observe or predict. An approach where it is difficult to predict when a fee would apply could help avoid preemptive redemptions in anticipation of fees applying in the near future, but it would also be less transparent. In addition, if liquidity fees are applied rarely, then application of a fee might be viewed as a sign that a fund is under stress, which could incentivize further redemptions, particularly if the fee amount is viewed as minimal.

Between dynamic and simplified fees, a dynamic fee would better reflect the costs associated with fund purchases or redemptions on a given day. A simplified fee, however, would be less costly to implement because, among other things, it would not necessarily require a hard close or any alternatives to the hard close to provide actual or estimated flow information. While a simplified fee would be less sensitive to the fluctuating costs associated with fund purchases or redemptions, this fee would aid in the offset of costs stemming from purchase and redemption activity and could assist with the mitigation of investor dilution.

On balance, we are proposing a swing pricing requirement because it may have operational advantages or be better tailored to mitigate dilution relative to liquidity fee options, but we request comment on using a liquidity fee framework to impose liquidity costs and whether a liquidity fee alternative may have fewer operational or other burdens than the proposed swing pricing requirement while still achieving the same overall goals of reducing shareholder dilution.

133. How do the operational implications of swing pricing, as proposed, differ from the operational implications of a dynamic liquidity fee framework (*e.g.,* one where liquidity fees vary in size and increase during periods of stress)? What are the operational implications of a requirement for mutual funds to impose a liquidity fee that can change in size and that may need to be applied with some frequency (up to daily)? Are fund intermediaries equipped to apply dynamic fees on a regular basis? Would funds have insight into whether and how intermediaries apply these fees to redeeming investors?

134. If we adopt a liquidity fee framework instead of a swing pricing framework, should a fund be required to apply a liquidity fee under the same circumstances in which a fund would be required to adjust its net asset value under the proposed swing pricing requirement? Should a fund be required to use the same approach to calculating a liquidity fee as the proposed approach to calculating a swing factor? Should the same board oversight framework apply under this approach as the proposed swing pricing requirement (*e.g.,* with the board approving the fund's liquidity fee policies and procedures and designating a liquidity fee administrator, and such administrator would report periodically to the board)?

135. Should funds be required to apply liquidity fees to all redemption or purchase orders, or should liquidity fees apply only upon a trigger event? If so, under what circumstances should a fee apply? For example, should liquidity fees apply when trading costs are materially increasing? [256] Should liquidity fees apply when a fund has had net outflows over multiple consecutive days? If so, should net outflows be of a certain size (*e.g.,* 2%, 5%, or 10%) and over what period of time should net outflows trigger a fee (*e.g.,* 2, 3, or 4 consecutive days)? Would this approach help mitigate dilution, or would it contribute to first-mover advantages and potentially result in unfair application of fees?

136. Should a liquidity fee apply to both purchasing and redeeming investors? Alternatively, should a liquidity fee apply to redeeming investors only or to purchasing investors only?

137. Should funds be required to maintain records related to the application of liquidity fees? For example, should funds be required to maintain records of the dates on which the fund applied liquidity fees and in what amount? If application of liquidity fees is subject to fund or board discretion, should a fund be required to maintain records documenting why the fund did or did not apply liquidity fees under certain circumstances?

138. Should liquidity fees apply to purchase or redemption orders of a specific size only? If so, what size? How operationally feasible would such an approach be? Would it create incentives for investors to modify their order amounts in an effort to avoid a fee, such as by holding smaller amounts of a fund's shares at multiple intermediaries or splitting up a purchase or sale order over multiple days? How should such an approach treat separate accounts managed by the same adviser, such as separate accounts managed through a wrap program?

139. Should a liquidity fee framework have an exclusion for purchase or redemption orders of a *de minimis* amount? How should we identify an order for a *de minimis* amount? Should it be a set dollar figure (*e.g.,* $2,500 or less), a set percentage of the fund's net assets, or a set amount that would be collected from application of a fee (*e.g.,* $50 or less)? Should the amount of a *de*

[255] We discuss an alternative in which a liquidity fee would apply when a fund's trading costs are significantly increasing in more detail in section II.D.3.b.

[256] *See infra* section II.D.3.b. for additional discussion and requests for comment about such an approach.

minimis exclusion be adjusted for inflation over time?

140. How should the amount of the liquidity fee be determined? Should the liquidity fee be dynamic but based only on that day's spreads? Should it include other transaction costs, including market impact? Instead of a dynamic fee amount that could change daily, should the fee amount be based on a fund's historical trading costs and evaluated periodically, such as annually, quarterly, or monthly? Should the fee be a flat percentage established by rule (such as 0.5%, 1%, or 2%), or should the fee increase as net redemptions or net purchases, illiquidity, or other variables increase? Should the fee amount be based on reasonably expected transaction costs but, if a fund cannot reasonably estimate those costs, it can use a default fee amount set by rule? If so, what should that default fee amount be (*e.g.,* 0.5%, 1%, 2%, or 3%)? Should the rule include a default fee amount that funds can always choose to use, with the option to use a higher or lower amount if such amount is determined to be in the best interest of the fund? Should there be a minimum or maximum fee amount, such as a 0.25% minimum or a 2% maximum?

141. If we adopt a liquidity fee framework instead of a swing pricing framework, are there any ways to simplify the application of fees to investors that invest through an intermediary, such as investors in an omnibus account, to facilitate funds or fund transfer agents applying fees directly to investor purchases or redemptions occurring through an omnibus account? For example, should fund intermediaries be required to separately submit purchase and redemption orders, rather than net them, in order to transact in a fund's shares? What would the operational consequences of such a requirement be for fund intermediaries and for investors? To what extent do intermediaries already submit purchase and redemption orders separately, and does this practice vary by type of intermediary (for example, are broker-dealers more likely to submit separate purchase and redemption orders than retirement plan recordkeepers)? Would there be consequences for fund transfer agents, Fund/SERV, or others associated with increased order volume or other changes that would result from a requirement to submit purchase and redemption orders separately? What changes, if any, would funds or fund transfer agents need to make to be equipped to apply liquidity fees directly? If submission of purchase and redemption orders separately is necessary to implement a liquidity fee framework, is it necessary for the Commission to mandate receipt of orders in this way to ensure compliance by all market participants? If purchase and redemption orders may be submitted on a net basis, as some intermediaries do currently, how would a fund accrue for liquidity fees in a timely manner? Should the Commission require fund transfer agents to apply liquidity fees directly and, if so, why or why not?

142. If we adopt a dynamic liquidity fee framework, would it be as reliant on timely flow information as the proposed swing pricing requirement? For example, could funds and intermediaries apply a dynamic fee to a transacting investor after an order begins to be processed at that day's NAV but before the trade settles? Could dynamic fees be applied after settlement, or would that create challenges in collecting a fee from investors who redeemed the full amount of their holdings? If a fee applies on a delayed basis, how should investors be notified of the application of a fee? Would it be preferable to apply a simplified fee that may less accurately reflect the costs of investor transactions and may mitigate dilution with less precision, but that could be applied at the same time an order is processed? Are there any other factors to consider when deciding between dynamic and simplified liquidity fees?

143. If we adopt a liquidity fee framework, should we require that the same liquidity fee amount apply to all share classes (for example, if a liquidity fee is 1% on a given day, the 1% fee must apply to all share classes)? Alternatively, should we permit the fee amount to differ among classes (for example, a 1% fee for one class and a 0.5% fee for another class) and, if so, why?

144. Should a liquidity fee apply differently based on the type of fund or the type of intermediary through which an investor trades? If so, what would be the basis for the differences in how a liquidity fee applies?

145. What investor flow information, if any, would be required to implement a liquidity fee alternative? To the extent that a liquidity fee alternative requires timely investor flow information, should the alternative be paired with the proposed hard close requirement? Are there different considerations or effects related to the proposed hard close requirement if we were to require funds to use a liquidity fee? Would it be effective to implement the liquidity fee alternative with an alternative to the hard close requirement discussed below, such as indicative flows, estimated flows, or delayed cut-off times for intermediaries?

146. Should a liquidity fee requirement be implemented through amendments to rule 22c–2 or through a new rule? To what extent would information that financial intermediaries agree to provide under a shareholder information agreement be important for funds to receive under a liquidity fee framework? [257] Is there other information funds would need to receive from financial intermediaries to determine that liquidity fees are appropriately applied? Should we amend the definition of shareholder information agreement to require that information, or are there other mechanisms for funds to receive that information (*e.g.,* distribution agreements)? Are there other rules we should amend if we adopt a liquidity fee requirement, such as rule 11a–3 under the Act, which permits application of certain fees in connection with an exchange offer notwithstanding section 11(a) of the Investment Company Act? If we amend rule 11a–3, should the rule treat a liquidity fee in the same way as a redemption fee, as defined in that rule? [258]

147. How should funds be required to disclose liquidity fees to investors? Should liquidity fees be reflected in the prospectus fee table, as mutual fund (other than money market fund) redemption fees currently are? [259] Or, similar to money market fund liquidity fees, should liquidity fees be excluded from the prospectus fee table? [260] Should funds be required to disclose the circumstances in which they would impose liquidity fees in the prospectus? If a liquidity fee only applies on some days, should the fund be required to disclose on its website that it is applying a liquidity fee that day and the size of the fee? Should funds be required to report information about

[257] *See* rule 22c–2(c)(5) (defining a shareholder information agreement as a written agreement under which a financial intermediary agrees, among other things, to provide certain information to a fund promptly upon request, including taxpayer identification number of all shareholders who have purchased, redeemed, transferred, or exchanged fund shares held through an account with the financial intermediary, and the amount and dates of such activity).

[258] Under rule 11a–3, an offering company may cause a security holder to be charged a redemption fee in connection with an exchange offer, subject to certain conditions. *See* rule 11a–3(b)(2); rule 11a–3(a)(7) (defining a redemption fee as a fee that a fund imposes pursuant to rule 22c–2).

[259] *See* Item 3 of Form N–1A.

[260] *See* Instruction 2(b) to Item 3 of Form N–1A (excluding money market fund liquidity fees imposed in accordance with rule 2a–7 from the definition of ''redemption fee'').

liquidity fees that are imposed? For example, should a fund be required to report on Form N–PORT the dates the fund imposed liquidity fees (or the number of days on which fees were applied) and the amount of the fee applied on each occurrence? If a fund or its board has discretion on when to apply liquidity fees, should a fund be required to disclose why a liquidity fee was or was not imposed under certain circumstances? Should funds be required to report other information about liquidity fees or report information in other locations, such as in shareholder reports, on fund websites, or in Forms N–CEN or N–RN? Would any existing items on Form N–PORT, Form N–CEN, Form N–1A, Form N–RN, or other forms need to be modified if we were to adopt a liquidity fee framework instead of swing pricing?

148. How quickly do intermediaries currently remit to funds the amounts collected from purchase or redemption fees applied to customer accounts? If remittal currently is delayed, what are the causes of delay? If we adopted a liquidity fee, would funds reflect any delayed liquidity fee payment as an accrual? Under a liquidity fee approach, should intermediaries be required to remit payments to funds within a certain amount of time after a purchase or redemption? If so, what is an appropriate amount of time for remittal (*e.g.,* on the day of settlement or within one or two days after settlement)? For example, should we adopt a rule that would provide that a fund must prohibit an intermediary from purchasing the fund's shares in nominee name on behalf of others if the intermediary does not remit payment on a timely basis? Are there other appropriate consequences for an intermediary that has a pattern or practice of late payments, such as a requirement that orders from such an intermediary may not receive today's price and will be executed on a subsequent day at that day's price in order to otherwise limit the dilutive effects of purchase and sale orders received through that intermediary since fees are not paid in a timely manner? Should we require a fund to charge an additional surcharge to an intermediary that does not remit payment on a timely basis? Should funds be required to report the names of intermediaries who are delayed in remitting payment and the amount due? If so, where should funds provide this information (for example, Form N–PORT, Form N–CEN, fund websites, or registration statements)?

149. Would a liquidity fee requirement have different effects on investor behavior than a swing pricing requirement? For example, because application of liquidity fees is more observable than application of swing pricing, would liquidity fees be more likely to affect investors' decisions of whether to purchase or redeem fund shares?

b. Dual Pricing

We also considered the use of dual pricing as an anti-dilution measure. A fund that uses dual pricing would quote two prices—one for incoming shareholders (reflecting the cost of buying portfolio securities in the market), and one for outgoing shareholders (reflecting the proceeds the fund would receive from selling portfolio securities in the market).[261] Dual pricing is permitted and used by some funds in certain foreign jurisdictions.[262] In comparison to swing pricing and liquidity fees, we believe that dual pricing may impose additional operational burdens and complexity on fund intermediaries, service providers, and other third parties as they would need to handle two share prices on each trade date. We understand that mutual fund order processing systems currently are designed to accommodate only one price, which is applied both to trades and valuation, and a fund's share price feeds into many analyses that intermediaries, funds, or others would need to update if there were two share prices, such as rebalancing activity. In addition, as recognized above, there would be operational costs associated with intermediaries needing to submit purchase and redemption orders separately, rather than netting purchase and redemption orders.

In addition, with a dual pricing framework, we would also address effects on a fund's financial statements and performance reporting, as the Commission has already done for swing pricing.[263] If we were to adopt a dual pricing framework, we could use the same general framework as in swing pricing. Under this approach, a fund would use its ''GAAP'' NAV (*i.e.,* the amount of net assets attributable to each share of capital stock outstanding at the close of the period) in its statement of assets and liabilities and in performance reporting, while it would use its two transaction prices in reporting the dollar amounts received for shares sold and paid for shares redeemed in its statement of changes in net assets and reflect the impact of dual pricing in the fund's financial highlights.

Similar to liquidity fees, dual pricing could be either dynamic (*e.g.,* calculated to reflect spread, other transaction costs, and market impact a fund is likely to incur to meet redemptions or invest the proceeds from subscriptions and based on the magnitude of those flows) or simplified (*e.g.,* a constant spread around a fund's NAV). Dynamic dual pricing generally would necessitate timely flow information, similar to the proposed swing pricing requirement. However, simplified dual pricing may not necessitate timely flow information. Between these two types of dual pricing, a dynamic approach would better reflect the costs associated with the magnitude of fund purchases or redemptions on a given day. Under a simplified dual pricing framework, there also is the potential for either redeeming or subscribing investors to be over-charged for transaction costs that their investing activity does not trigger, because the fund would adjust its NAV for both subscribing and redeeming investors daily without regard to whether the fund has net inflows or net outflows on a given day. A simplified approach, however, would be less costly to implement because, among other things, it would not require a hard close or any alternatives to the hard close to provide actual or estimated flow information.

On balance, we are proposing a swing pricing requirement because it may have operational advantages over dual pricing. We request comment on using a dual pricing framework to impose liquidity costs on transacting shareholders and whether a dual pricing alternative may have fewer operational or other burdens than the proposed swing pricing requirement or a liquidity fee alternative while still achieving the same overall goals of reducing shareholder dilution.

150. How do the operational implications of swing pricing, as proposed, differ from the operational implications of dual pricing? As dual pricing involves calculating and applying two prices on each trade date, would that approach involve operational burdens and complexity for fund intermediaries, service providers, and other third parties that would not exist with a single price under our proposed swing pricing framework?

151. If we adopt a dual pricing framework instead of a swing pricing framework, how should the spread around the NAV be determined? For example, should the spread around the

[261] *See* Swing Pricing Adopting Release, *supra* note 11, at n.40. Swing pricing would permit a fund to continue to transact using one price, as they do today (instead of transacting using separate prices for purchasing and redeeming shareholders).

[262] For example, jurisdictions that permit dual pricing include the UK, Ireland, Australia, and Hong Kong. *See* Jin, *et al, supra* note 163, at n.6 and accompanying text.

[263] *See* Swing Pricing Adopting Release, *supra* note 11, at section II.A.3.g.

NAV be constant or calculated daily or at some other frequency to reflect transaction costs? If the latter, which transaction costs (*e.g.,* spread, other transaction costs, and market impact)? Under a dual pricing framework, would funds need the same investor flow information that is needed for swing pricing, or would implementation of dual pricing be less dependent on investor flow information?

152. Should a dual pricing requirement apply differently based on the type of fund or the type of intermediary through which an investor trades? If so, what would be the basis for the differences in how dual pricing applies?

153. If we adopt a dual pricing framework, should we address the effects of two transaction prices on a fund's financial statements and performance reporting in a manner similar to how the Commission has addressed the effects of swing pricing (*i.e.,* by clarifying that the GAAP NAV must be used in some cases, while transaction prices are used in others)? Are there additional implications of two transaction prices that we would need to address and that would lead to a different result than our current swing pricing approach?

154. Under a dual pricing framework, which value of the fund's shares would market participants use for analyses that currently are based on a fund's NAV, such as rebalancing a client's holdings of different funds to achieve a desired asset allocation or reflecting the value of an investor's holdings on an account statement? If we adopt dual pricing, should we provide guidance on which value to use for these or other purposes?

155. Are there differences between liquidity fees and dual pricing that make one a better framework than the other to address dilution? If so, what are the differences and why is one better than the other (*e.g.,* differences in tax treatment, if any)?

156. What investor flow information, if any, would be required to implement a dual pricing alternative? To the extent that a dual pricing alternative requires timely investor flow information, should the alternative be paired with the proposed hard close requirement? Are there different considerations or effects related to the proposed hard close requirement if we were to require funds to use dual pricing? Would it be effective to implement the dual pricing alternative with an alternative to the hard close requirement discussed below, such as indicative flows, estimated flows, or delayed cut-off times for intermediaries?

157. If we adopt a dual pricing framework, what other changes should be made to the proposal as a result? For example, what reporting should be required on Form N–PORT, Form N–CEN, Form N–1A, Form N–RN, or other forms used by funds that would be subject to the framework? Would any existing reporting items on these or other forms need to be modified if we were to adopt a dual pricing framework instead of swing pricing? Are there other rules (*e.g.,* rule 11a–3 under the Act) that would require changes if we adopt an alternative framework?

158. Would a dual pricing framework affect investor behavior differently than a swing pricing framework or a liquidity fee framework?

2. Alternatives to a Hard Close

We are proposing to require a hard close for open-end funds that are subject to the proposed swing pricing requirement. Under this proposal an eligible order to purchase or redeem any redeemable security of such a fund would be executed at the current day's price only if the fund, its designated transfer agent, or a registered clearing agency receives the order before the fund calculates its NAV. This proposal is designed to facilitate the operation of swing pricing as well as to help prevent late trading and to modernize order processing.

In connection with the swing pricing proposal, we have also considered whether there are alternative methods by which a fund would be able to generate sufficient investor flow information to determine whether to apply swing pricing on a given day. As discussed above, swing pricing requires that funds have significant information about their order flows to determine with accuracy if the fund should impose a swing factor and to determine what that swing factor should be. Instead of requiring that funds operationalize swing pricing based on actual order flow information received before the pricing time, we have also considered whether reasonable estimates, calculated by either the fund or the intermediary, would provide sufficiently accurate information for a swing pricing determination. We have also considered whether later cut-off times for flow information and the publication of the day's NAV would facilitate swing pricing. We discuss each alternative below. We also considered how these alternatives would work if, rather than require swing pricing, we were to require funds to adopt liquidity fees or dual pricing.[264] Although the below discussion focuses on swing pricing, we believe similar considerations would apply in the case of liquidity fees or dual pricing (to the extent a liquidity fee or dual pricing regime, like swing pricing, was based on the amount of net flows), and these alternatives therefore also could be used in combination with a liquidity fee or dual pricing approach.[265]

a. Indicative Flows

We considered whether, instead of requiring a hard close, we should require that funds receive indicative flow information from intermediaries by an established time. This approach would require that intermediaries (*e.g.,* broker-dealers, banks, and retirement plan recordkeepers) calculate an estimate for what they anticipate the given flows for a particular day to be either before the fund's pricing time or a set time thereafter (*e.g.,* by 4:30 p.m. ET or 5 p.m. ET). Consistent with current practices, intermediaries could submit final order flow information after the pricing time once the intermediary has received and calculated the final flows for the day. For example, we could consider orders to be eligible to receive that day's price if, in the case of orders submitted through an intermediary: (1) the intermediary receives the orders from investors before 4 p.m. ET; (2) the intermediary provides estimated order flow to the fund by the identified time; and (3) the intermediary provides final order information by the next morning. Under this approach, a fund would be permitted to use the indicative flow information provided by intermediaries to determine whether a swing factor should be applied to that day's NAV.

In order to calculate the indicative flow information, intermediaries would need to generate an estimated flow based on, among other things, the actual flows that they have received before the pricing time and the prior day's price, as well as any indicative historical information that is available if the indicative flow information is provided to the fund before the pricing time. Alternatively, the intermediary could provide summary net flow information (for example, estimated net purchases of $3 million, estimated net redemptions of 250,000 shares, and the purchase of an unknown quantity of fund shares with proceeds from redeeming 100 shares from a different identified fund), and the fund could apply the prior day's NAV to arrive at an estimated net flow. Intermediaries would need to update

[264] *See supra* section II.D.1.

[265] We provide additional illustrative examples of potential alternatives and pairings in section II.D.3.

their systems and processes to calculate indicative flow information by or shortly after the pricing time while continuing to provide actual final flow information as it is available. We understand that different intermediaries may, based on their different characteristics, use different methods to calculate or provide their indicative flows. A broker-dealer and a retirement plan recordkeeper would not necessarily use the same method due to the differences in how they are able to generate and communicate flow information to funds. Retirement plan recordkeepers, for example, would need to generate indicative flow information that accounts for not only purchase and redemption activity that is a known number of shares or dollars as of the pricing time, but also estimated loan and withdrawal activity that is subject to hierarchy provisions under their specific plans. If an intermediary is unable to provide indicative flow information by the identified time, the orders would receive the next day's price.

Unlike the proposed hard close requirement, the alternative of permitting funds to rely on indicative flows provided by intermediaries would provide intermediaries with more flexibility in providing final flow information. Thus, the broader changes that may be needed for intermediaries to comply with the proposed hard close requirement that are discussed above may not be needed under this alternative. This approach would not ultimately provide funds with the most accurate information about anticipated flows. If intermediaries are required to provide indicative flows before a fund's pricing time, the flow information may be less reliable, particularly during times of stress since intermediaries may not be able to account for or anticipate the effects of a stress event on order flow information. This limitation of indicative flow information may create down-stream effects on the accuracy and efficacy of swing pricing, particularly in times of stress. For swing pricing to serve the goal of mitigating dilution of shareholders' interests, funds need accurate order flow information, particularly in times of stress. In addition, an approach based on indicative flows would be less effective at preventing late trading and at reducing operational risk through improvements to order processing.

We request comment on the indicative flow alternative, including:

159. Should we allow funds to use indicative flow information to determine whether or not to apply swing pricing?

160. If intermediaries are required to provide indicative flows to funds, should the rule establish this requirement by considering an order as eligible to receive a given day's price only if the intermediary provides indicative or final order flow information by an identified time and provides final order information by a later identified time? Should we instead provide that a fund must prohibit an intermediary from purchasing the fund's shares in nominee name on behalf of others if the intermediary does not provide timely indicative flow information? Should the rule require that funds enter into a contractual agreement with intermediaries to require the indicative flow information? If so, should this contract be required to specify how indicative flows are calculated by the intermediary? In either case, should we prohibit or restrict an intermediary from charging fees to funds for the costs associated with providing indicative flow information?

161. Would intermediaries have sufficient incentives to provide timely and accurate indicative flow information? Are there other consequences we should impose for late or materially inaccurate indicative flow information? For example, if an intermediary has a pattern of providing late or inaccurate information, should we require a fund to prohibit the intermediary from purchasing the fund's shares in nominee name on behalf of others? As another alternative, should we prohibit orders received from that intermediary from receiving that day's price and instead require that the orders be executed and settled on a delayed basis at a future day's price, in order to limit the dilutive effects of orders that intermediary submits?

162. When should intermediaries be required to provide indicative flows under this alternative? Are indicative flows needed before the pricing time, or could funds still make timely swing pricing decisions if intermediaries provided indicative flows after the pricing time? How long after the pricing time could funds receive the indicative flow information and still make timely swing pricing decisions? In connection with this approach, would funds publish their prices later than they do today to provide additional time to make swing pricing decisions?

163. Should the intermediary or the fund apply the prior day's price to arrive at an indicative flow estimate? Is there value in the fund performing this calculation because it would have better information about potential changes to the prior day's price that it could take into account (*e.g.,* the size of any swing factor adjustment made on the prior day, as well as potential changes to the value of its portfolio holdings)?

164. Should intermediaries that have minimal holdings with the fund be permitted not to provide indicative flows under this approach? If so, how should we define intermediaries that have minimal holdings of fund shares? How would this approach work if an intermediary's customers began to transact in higher volumes of the fund's shares?

165. Should we provide fund managers a safe harbor from liability under certain circumstances (*e.g.,* absent knowing or reckless behavior) if the fund relies on indicative flows to determine whether to swing the fund's NAV and the size of the swing factor and those indicative flows do not align with the actual flows the fund ultimately receives? From what statutory provisions or rules should any safe harbor provide relief (for example, section 34(b) under the Investment Company Act, rule 22c–1, or other provisions and rules)?

166. If we adopt an indicative flows approach, are there any changes we should make to the proposed swing pricing requirement? For example, instead of requiring use of ''reasonable, high confidence'' estimates of investor flow information, should we use a different standard (*e.g.,* reasonable estimates based on available information)?

167. Do commenters agree with the discussion of the potential benefits, costs, or drawbacks of this alternative? During times of stress, would intermediaries be able to generate accurate indicative flow information?

168. Does this alternative raise different considerations if we were to require funds to use a liquidity fee framework or dual pricing, rather than swing pricing? Should an indicative flows approach operate or be structured differently if paired with a liquidity fee or dual pricing requirement and, if so, how?

169. Is there information about the indicative flows alternative, if adopted, that would be important for investors to understand and that funds should be required to disclose in their registration statements or elsewhere?

b. Estimated Flows

We also considered an approach that would allow funds to estimate their flows for the day for the purposes of determining whether to apply a swing factor to the day's NAV and the amount of the swing factor (*e.g.,* whether the amount of net redemptions exceeds the market impact threshold). In order to

estimate flows for a given day, funds could generate models that incorporate the information available to them. For example, funds could use the flow information that they have already received by a pre-established time as well as historical order flow information in order to estimate expected flows for the day.

The ability of a fund to estimate flow information may differ based on the types and number of intermediaries from which the fund is ultimately receiving flow information. In order to estimate flows, funds may rely on factors that include the historical pattern of flows for a particular intermediary while accounting for any observed changes in the flows for a given fund. This estimate could be based on all of the information received by the fund by a set time, with additional adjustments to account for flows from intermediaries that do not submit orders by that time. For example the fund could base its estimate on all information that it has received by 5 p.m. ET. For some intermediaries, however, like retirement plan recordkeepers, funds would likely need to create models that are able to project estimated flow information based on historical order flow information as retirement plan recordkeepers may not have sufficient information available by the time established by the fund. In addition, to the extent funds do not already receive large trade notifications, funds may determine to negotiate arrangements with intermediaries for receipt of advance notice of certain large transactions that are known in advance by intermediaries, such as replacing a fund as an investment option in a retirement plan.

The considerations for whether estimates generated by the fund provide sufficiently reliable information to implement swing pricing are similar to those discussed above for the alternative for indicative flows from intermediaries. Funds have a narrower view of anticipated flow activity than intermediaries, however, as intermediaries are closer to investor activity and likely have a more accurate estimate of their customers' flows for a particular fund. This benefit of indicative flows over estimated flows may be mitigated to the extent that intermediaries lack incentives or are otherwise unable to provide reasonably accurate indicative flows. During times of stress, funds may have a limited view of anticipated order flow information, which may impact their ability to effectively implement swing pricing. In addition, an approach based on estimated flows would be less effective at preventing late trading and at reducing operational risk through improvements to order processing than the proposed hard close requirement. On the other hand, estimated flows would be less costly than either a hard close or indicative flows.

We request comment on the estimated flow alternative, including:

170. How accurately can funds estimate flows from different intermediaries? For example, are retirement plan flows relatively stable and predictable, or do they vary over different periods? To what extent do retirement plans inform funds in advance of material flows that deviate from historical patterns, such as changes in funds the plan offers? Would funds receiving flows from specific intermediaries be better able to estimate their flows? For example, would it be easier for funds to estimate flows from broker-dealers because broker-dealers tend to be able to provide order flow earlier than some other intermediaries? Would it be easier for funds to estimate flows from retirement plan recordkeepers because those flows are more predictable? To the extent that certain events make flows less predictable, such as changes in the funds a retirement plan offers to its participants, could funds better estimate their flows if intermediaries were required to provide advance notice or other information about these events?

171. Should we provide fund managers a safe harbor from liability under certain circumstances (*e.g.,* absent knowing or reckless behavior) if the fund relies on estimated flows to determine whether to swing the fund's NAV and the size of the swing factor and those estimated flows do not align with the actual flows the fund ultimately receives? From what statutory provisions or rules should any safe harbor provide relief (for example, section 34(b) under the Investment Company Act, rule 22c–1, or other provisions and rules)?

172. Should we require funds to conduct back-testing of estimated flows using final data to refine their estimation process over time and help ensure that estimates used for swing pricing are reasonable?

173. Would funds be able to implement swing pricing based on estimated flow information? If we adopt an estimated flows approach, are there any changes we should make to the proposed swing pricing requirement? For example, instead of requiring use of ''reasonable, high confidence'' estimates of investor flow information, should we use a different standard (*e.g.,* reasonable estimates based on available information)?

174. Does this alternative raise different considerations if we were to require funds to use a liquidity fee framework or dual pricing, rather than swing pricing? Should an estimated flows approach operate or be structured differently if paired with a liquidity fee or dual pricing requirement and, if so, how?

175. Is there information about the estimated flows alternative, if adopted, that would be important for investors to understand and that funds should be required to disclose in their registration statements or elsewhere?

176. To what extent would the estimated flows alternative reduce costs on funds and intermediaries relative to the proposed hard close?

c. Later Cut-Off Times for Intermediaries

We have considered whether establishing later cut-off times for intermediaries to submit order flow information would lessen the burden on intermediaries to comply with the proposed hard close requirement while continuing to give funds the necessary order flow information to implement swing pricing. Under this alternative, investors would continue to need to submit orders before the fund's pricing time to be eligible to receive that day's price, but intermediaries would have additional time to provide those orders to a designated party after the pricing time, such as by 6 or 7 p.m. ET for a fund with a 4 p.m. ET pricing time. To provide time to assess the flows and determine whether to apply swing pricing, a fund might push the time of publication of its price to a later time, such as 8 to 10 p.m. ET. Much like the proposed hard close, this alternative may have additional benefits beyond facilitating swing pricing. Ensuring that all order flow information is provided to a designated party earlier than it is currently may improve order processing. This alternative would be less effective, however, at preventing late trading.

Allowing intermediaries more time to provide order flow information and delaying publication of the NAV would involve many of the systems costs discussed in connection with the hard close. For example, intermediaries would still need to transmit orders before the NAV is available. However, providing intermediaries and funds more time to compile order flow information and to calculate the price may lessen the overall burden of the proposed changes, and may reduce the need for intermediaries to establish cut-

off times prior to the fund's pricing time for receipt of investor orders.

We request comment on the alternative of later cut-off times for intermediaries, including:

177. What would an appropriate delayed cut-off time be (*e.g.,* two or three hours after the fund's pricing time)? Would a delayed cut-off time, in combination with a delayed price publication, provide funds with sufficient time to make swing pricing decisions?

178. If funds were to delay the publication of their price, what steps would funds need to take? Would they need to amend agreements with intermediaries? What effects would a delayed publication time have on intermediaries or other parties?

179. Would a delayed cut-off time for intermediaries to submit orders to a designated party be less burdensome than the proposed hard close? Would a delayed price publication time be less burdensome than the proposed hard close?

180. Would funds be able to implement swing pricing if we require later cut-off times for intermediaries instead of the proposed hard close? If we adopt a later cut-off time approach, are there any changes we should make to the proposed swing pricing requirement? For example, instead of requiring use of ''reasonable, high confidence'' estimates of investor flow information, should we use a different standard (*e.g.,* reasonable estimates based on available information)?

181. Does this alternative raise different considerations if we were to require funds to use a liquidity fee framework or dual pricing, rather than swing pricing? Should a later cut-off time approach operate or be structured differently if paired with a liquidity fee or dual pricing requirement and, if so, how?

182. Is there information about the later cut-off times alternative, if adopted, that would be important for investors to understand and that funds should be required to disclose in their registration statements or elsewhere?

3. Additional Illustrative Examples

While there are many potential combinations of swing pricing and hard close alternatives, several of which we have already discussed in this release, this section provides additional illustrative examples of alternatives to the proposed swing pricing and hard close requirements that are designed to reduce shareholder dilution. The alternatives discussed in this section are intended to have lower operational costs than the proposed requirements, although the reduction in costs involves other trade-offs, as discussed below.

a. Spread Cost Adjustment on Days With Estimated Net Outflows

Spread costs can be a major component of a fund's swing factor. Instead of the proposed swing pricing and hard close requirements, we could require a simplified version of swing pricing in which funds adjust their current NAVs to reflect good faith estimates of spread costs on days the fund reasonably expects to have net redemptions based on estimated flows. Under this approach, if a fund determined its NAV based on the midpoint of each investment's bid-ask spread, on days of estimated net redemptions the fund would swing its transaction price down by an amount designed to reflect spread costs in the portfolio. The adjustment would be based on good faith estimates of spread costs, consistent with the proposed swing pricing requirement. As with the swing factor under the proposal, the estimated spread costs could be determined periodically, as long as significant market developments or other developments that affect the good faith estimate of spread costs prompt a quicker reevaluation.[266] If the fund already uses bid prices for valuation purposes, it would not be required to adjust its current NAV to reflect spread costs.[267]

This approach would be designed to mitigate dilution from spread costs associated with selling investments to meet redemptions. The reflection of costs would be dynamic when a fund expects net outflows, with the adjustment to reduce a fund's transaction price increasing in size as spreads widen during times of stress. A fund would need to estimate the direction of flows (*i.e.,* net redemptions or net purchases) based on available information before the fund publishes its price, but the fund would not need to estimate the size of net flows. A fund's reasonable expectation of the direction of fund flows may be based on different types of information, depending on the fund. For example, a fund could consider indicative flow information from intermediaries, trends in orders submitted that day, general market intelligence, or historical trends in flows.

This approach would impose lower operational burdens and costs relative to the proposal, including by not necessitating a hard close and by simplifying the analysis of a swing factor. At the same time, the approach would address dilution less fully than the proposal. Unlike the proposed swing pricing requirement, this approach would not capture market impact or other costs of selling investments to meet redemptions. For one, a fund could not assess market impact without an estimate of the size of net flows and, without a hard close, estimating the size of net flows with accuracy would be subject to a greater risk of error than estimating only the direction of flows. In addition, as previously discussed, there may be operational challenges and complexities to estimating market impact costs more generally. Another difference from the proposed swing pricing requirement is that this approach would not address dilution from sizeable net purchases. Because smaller levels of net purchases are less likely to result in dilution than net redemptions (as funds have more time to invest the proceeds from net purchases than to sell investments to meet redemptions), it may not be appropriate to require a fund to adjust its current NAV to reflect spread costs on any day it estimates net purchases. For this reason, we have a net inflow swing threshold of 2% in the proposal and, as with the potential inclusion of market impact in this framework, estimating the size of net flows involves a greater risk of error than estimating only the direction of net flows.

In addition to other requests for comment related to variations of swing pricing and estimation of flows, we request comment on requiring a fund to adjust its current NAV to reflect good faith estimates of spread costs on days the fund reasonably expects to have net redemptions, instead of requiring the proposed version of swing pricing and a hard close.

183. Would this approach reduce operational burdens and costs relative to the proposed swing pricing and hard close requirements? Would this approach reduce operational burdens and costs relative to the liquidity fee alternative? Would this approach reduce operational burdens and costs relative to the dual pricing alternative? How effective would this approach be in addressing dilution? To what extent would this approach protect non-

[266] This approach would not require a fund to use bid prices to value each of its investments when determining its NAV. Instead, as appropriate, a fund could continue to value its investments using the midpoint to determine its NAV and, on days of estimated net outflows, the fund would be required to reduce the fund's transaction price based on good faith estimates of spread costs.

[267] *See supra* note 202 (discussing accounting standards that state that the price within the bid-ask spread that is most representative of fair value in the circumstances shall be used to measure fair value and that provide that use of bid prices is permitted for these purposes, as well as use of mid-market pricing as a practical expedient).

transacting investors from dilution due to the bid-ask spread costs and ameliorate any first-mover advantage? Would the effectiveness of the tool vary between normal and stressed market conditions? Should this approach also reflect transaction costs in addition to spreads, for example, commissions, markups, and/or markdowns?

184. How accurately can funds estimate the direction of daily net flows? Should the requirement apply on days the fund reasonably expects to have net redemptions (such that the fund uses this approach only if it affirmatively expects net redemptions) or on days the fund does not reasonably expect to have net purchases (such that the fund defaults to this approach unless it affirmatively expects net purchases)?

185. To what extent do funds already value their portfolio investments using bid prices? What consequences, if any, would a requirement to reflect good faith estimates of spread costs when a fund reasonably expects to have net redemptions have on these funds?

186. Would this approach incentivize funds to value their portfolio investments using bid prices without properly evaluating whether the bid price is most representative of fair value in the circumstances, in order to avoid the need to determine whether the fund reasonably expects net redemptions each day?

187. If we adopt this approach, how should we amend disclosure and reporting requirements? For example, if we required funds to use this simplified version of swing pricing, should current prospectus and financial statement reporting requirements for swing pricing apply? Should we require funds to report the frequency and amount of adjustments made to their current NAVs under this approach? Should a fund be required to report both its current NAV and its adjusted price? Should a fund be required to report information about the accuracy of its estimates of flow information? Where should any such information be located (*e.g.,* Form N–PORT, fund websites, annual and semi-annual reports)?

b. Liquidity Fee When Trading Costs Are Significant

Another alternative we considered is a liquidity fee that would apply only on days when a fund anticipates significant trading costs. A rule could either define the trigger or require funds to establish policies and procedures that identify their own fund-specific triggers. In terms of establishing the trigger, one alternative would be a trading cost trigger that the fund sets in advance or that the Commission establishes by rule (for example, with a set size, a set increase, or a set standard deviation in trading costs based on criteria such as spreads or transaction volumes for the fund's portfolio, either in terms of dollars or as a percentage of the fund's portfolio). As another alternative, the trigger for applying a liquidity fee could include other factors that indicate an increase in trading costs, such as increasing net flows (*e.g.,* based on the fund's flow history or estimated flows) or decreasing liquidity (*e.g.,* based on declines in the percentage of the fund's investments classified as highly liquid, or increases in the percentage of investments classified as illiquid). A fund's trigger for applying liquidity fees could be required to be made public or kept non-public.

As one example of a policies and procedures based approach, a fund could be required to establish written policies and procedures that would define the trigger event(s) that would cause a fund to apply a fee. The fund's policies and procedures would be required to be designed to mitigate dilution and recoup the costs the fund reasonably expects to incur as a result of shareholder redemptions on days when trading costs are higher. Funds would have discretion to define their own trigger events, but all funds would be required to consider certain identified factors, such as trading costs, liquidity of the fund's portfolio, market conditions, and reasonably estimated investor flows, in determining their trigger events.[268]

There are several alternatives for setting a fee amount. For instance, the fund could either base the fee amount on reasonable estimates of expected transaction costs, including market impact, or if the fund determined this estimation is not feasible, the fund could establish a set fee amount, or graduated fee levels, it would apply when a trigger event occurs. The rule could either allow a fund to determine that estimating transaction cost amounts is not feasible in advance, or the rule could require a fund to consider its ability to estimate transaction costs each time a liquidity fee applies. Under another possible approach, the rule could establish a default fee amount, such as 1%, that a fund could opt out of or adjust if determined to be in the best interest of the fund.

With respect to board oversight, if fee triggers or amounts were determined based on written policies and procedures, we could require board approval of the policies and procedures defining a fund's trigger event or identifying how to determine a fee amount, as well as any material changes to those policies and procedures. As for determining when a trigger event occurs and the amount of the fee, similar to the proposed swing pricing requirement, we could allow a liquidity fee administrator approved by the board to make some or all of these determinations.

If designed incorrectly, a fee that only applies when trading costs are significant could incentivize investors to redeem if investors can observe in advance that a fee is likely to apply in the near future. There are various mechanisms we could use to reduce these incentives. For one, if the rule identified specific trigger events that all funds would use, in that case, the potential for preemptive redemptions would be reduced if investors or other market participants could not observe with certainty if a fund is nearing a trigger event. Another approach would be to identify specific thresholds for triggering a fee in the rule and allow a fund to choose to use one or more of those thresholds to determine when to apply a fee. If funds determined their own fee triggers, the rule could provide that a fund's trigger event would be either public or nonpublic. Public disclosure of a fund's trigger for applying liquidity fees would increase transparency. The rule could require, however, that the fund's trigger event be kept nonpublic in order to reduce the potential for preemptive redemptions. Under this approach, a fund would not disclose its defined trigger event, and instead would be required to disclose in its prospectus that it applies a liquidity fee on days its trading costs increase, as well as how it determines the amount of the fee. A fund could be required to report information about how frequently it applied a liquidity fee and the amount of each fee on Form N–PORT.

Unlike the proposed swing pricing requirement, this approach would not address smaller levels of dilution that may occur in the normal course. Instead, it would be designed to focus on periods where funds have heightened dilution risk, such as in stress events. In addition, this approach would not address dilution that may occur from net purchases.

In addition to other requests for comment related to liquidity fee

[268] Consideration of expected investor flows would not require a fund to estimate the size of expected flows with accuracy. Rather, this consideration would be intended to recognize the potential relevance of flows, to the extent a fund has sufficient information to reasonably estimate them. Moreover, if a fund anticipates a significant increase in costs of selling its investments but does not expect to need to sell investments due to an anticipation of net inflows, this approach would not require a fund to impose a fee.

alternatives, we request comment on whether we should require a fund to apply liquidity fees only on days when a fund anticipates significant trading costs, instead of requiring swing pricing and a hard close.

188. Should a fund be required to apply a liquidity fee only when trading costs are significantly increasing, such as a period of stress? If so, should the rule identify a trigger when fees apply, or should funds establish their own trigger events?

189. If the rule establishes a trigger, what should that trigger be based on? For example, should the rule require a fund to apply a liquidity fee when spreads are widening or transaction volumes for the portfolio increase? For instance, should fees be required when spreads widen beyond a 95% confidence level for key components of the fund's portfolio, where the mean and standard deviation of these key markets are measured for the trailing 252 business days (the average number of trading days in a year), and the trigger occurs if the current spread is greater than 1.65 standard deviations (*i.e.,* the equivalent of a 95% confidence in a normal distribution) above the mean for that period? Should different confidence levels, standard deviations, or measurement periods be used? Should a liquidity fee trigger be based on an increase in the transaction volume of the fund's portfolio, such as a trigger when the dollar- or percentage-based transaction volume for that day exceeds the 95% confidence level compared to the average daily transaction volume for the trailing 252 business days? Should different confidence levels or measurement periods be used? Do funds already track information that would allow them to identify readily when a trigger based on widening spreads or increased dollar transaction volume is crossed, or would they need to collect or monitor additional information about spreads or transaction volumes? Should the rule use other or additional triggers? For example, should a trigger be based on or consider large net outflows or a reasonable expectation of large net outflows above a certain percentage, such as net redemptions above 1% or 2% of net assets or net redemptions that are higher than typical for the individual fund based on historical flows? If the rule included a numerical threshold for net redemptions, would funds have concerns about their ability to accurately estimate net flow amounts and therefore be less likely to apply fees? If so, would a safe harbor address these concerns? Should a trigger be based on or consider an identified change in the fund's liquidity classifications, such as an identified decrease in the percentage of highly liquid investments the fund holds or an identified increase in the percentage of illiquid investments the fund holds? Should identification of a trigger event account for indicators of market stress in the financial markets overall or in the specific markets in which the fund invests? If so, what indicators of market stress should the rule include? Should the rule identify multiple potential triggers and allow funds to choose whether to use one or more of those triggers to determine when to apply a fee?

190. Instead of identifying specific trigger points by rule, should we require funds to establish and implement policies and procedures that describe when the fund will impose a fee? Would a policies and procedures approach allow funds to tailor the application of a fee to scenarios in which transacting investors are likely to cause dilution? Under a policies and procedures approach, should we identify the factors a fund must consider in defining its trigger events? If so, what factors should we require a fund to consider (*e.g.,* trading costs, liquidity of the fund's portfolio, market conditions, and reasonably estimated investor flows)? Rather than require funds to consider these factors, should we require funds to define their trigger events with respect to these or other specific factors?

191. Should we permit a fund not to apply a fee upon the occurrence of a defined trigger event? For example, should a fund be required to apply a fee when a trigger event occurs, unless the board determines that it is not in the interest of the fund to apply a fee in the specific circumstance?

192. What risks are associated with requiring a fund to define its own trigger event, and how could we reduce these risks? Would funds define a trigger event such that a fund would be delayed in determining that a fee should apply relative to potentially fast-moving changes in market conditions? If so, would this delay increase the potential for preemptive redemptions and contribute to a first-mover advantage? Would funds define a trigger event in a way that makes it unlikely that a fund would ever apply a fee? Are there ways to ensure that funds' policies and procedures are sufficiently robust, such as requirements to report the policies and procedures to the Commission or to report when a fund applied a fee? For example, should funds be required to confidentially report their trigger events to the Commission and to report how frequently fees applied and in what amounts on Form N–PORT?

193. Should liquidity fees apply only to redemptions if a trigger event occurs? Or should liquidity fees apply to both redemptions and purchases under this approach? Should a single trigger event result in fees applying to both redemptions and purchases, or should funds establish trigger events that differ between redemptions and purchases?

194. How should the amount of a liquidity fee be determined under this approach? Should the rule set a specified fee amount that would occur upon any fund's trigger event, such as 0.5%, 1%, or 2%? Should any fee amount set by rule be a default amount, such that a fund could use a higher or lower fee amount if determined to be in the best interest of the fund? Should funds be required to calculate the amount of the fee based on reasonable estimates of expected transaction costs, including market impact? Should fund policies and procedures, or a rule, establish a set fee amount that would apply if a fund is unable to reasonably estimate expected transaction costs? Should funds be required to consider their ability to reasonably estimate transaction costs each time a trigger event applies, or should funds be able to determine in advance that estimation is not feasible and opt to use a set or graduated fee for all trigger events? Should fund policies and procedures, or a rule, establish graduated fee levels that would apply for different trigger events? Should we establish a limit on the size of a liquidity fee under this approach (*e.g.,* 2%, 3%, or 5%)?

195. After a fee is triggered, how should the rule permit or require a fund to determine when it should no longer apply a fee? For instance, should a fund reassess daily whether trading costs have decreased, or should a liquidity fee remain in place for a set number of days (*e.g.,* 2 to 5 days) and then no longer apply unless the fund determines a fee continues to be in the best interest of the fund?

196. What information should funds be required to disclose in their prospectuses under this approach? How much detail should funds be required to provide about when they will impose a liquidity fee? Should the prospectus state only that a fund will impose a fee when trading costs increase, or should the prospectus also discuss the factors a fund considers to make this determination? Should a fund be required to disclose its trigger events in its prospectus? Would that disclosure contribute to potential preemptive redemptions, or would trigger events be difficult to observe publicly in advance? Should funds be required to disclose fee

amounts in their prospectuses, or their methods for calculating fee amounts?

197. Should the fund's board be required to approve the fund's written policies and procedures defining the trigger event(s) and how the fund will determine the amount of the fee? Should the board be required to approve any material changes to the policies and procedures? Should other board oversight be required? Should the board have to determine that a fee is appropriate every time a trigger event occurs before the fund can impose a fee? Or should the board be required to designate a liquidity fee administrator that would be responsible for determining when liquidity fees apply and the size of the fee? Should the definition of a liquidity fee administrator mirror the proposed definition of a swing pricing administrator? If not, what changes should be made? Similar to the proposed swing pricing requirement, should a liquidity fee administrator be required to provide periodic reports to the board (at least annually) that describe: (1) the administrator's review of the adequacy of the policies and procedures identifying the fund's trigger event and the effectiveness of their implementation, including the effectiveness in mitigating dilution; (2) any material changes to the liquidity fee policies and procedures since the date of the last report (if such material changes are not subject to board approval); and (3) the administrator's review and assessment of the fund's method for determining the size of the liquidity fee?

198. What are the operational implications of this approach for funds and intermediaries? Would intermediaries be able to apply a liquidity fee on the same day the fund announces its imposition? What effects would this approach have on investors?

199. If liquidity fees are only applied rarely under this approach, how would that affect fund and intermediary preparedness for imposing fees? Would it increase investor sensitivity to fees and increase the likelihood of preemptive redemptions?

200. Should we pair a requirement to adjust a fund's current NAV to reflect spread costs on days the fund estimates it will have net redemptions with a requirement to apply a liquidity fee when trading costs increase? Would this combined framework address dilution from net redemptions in a manner similar to the proposed swing pricing requirement without the costs of a hard close?

E. Reporting Requirements

1. Amendments to Form N–PORT

Registered management investment companies and ETFs organized as unit investment trusts are required to file periodic reports on Form N–PORT about their portfolios and each of their portfolio holdings as of month-end.[269] While the reports provide monthly information to the Commission, funds file these reports on a quarterly basis with a 60-day delay, and the public only has access to information for the third month of each quarter. We are proposing to require reports on Form N–PORT to be filed within 30 days of month-end, which would be followed by public availability of much of the reported information 60 days after month-end. We are also proposing to require an open-end fund that is subject to classification requirements in the liquidity rule to provide information regarding the aggregate percentage of its portfolio represented in each of the three proposed liquidity categories, which would be publicly available. The reported aggregate percentages would include adjustments to give effect to other aspects of the proposal. Finally, we are proposing amendments relating to funds' use of swing pricing, conforming amendments to reflect the proposed amendments to rule 22e–4, and amendments to certain entity identifiers.

a. Filing Frequency

We are proposing to amend rule 30b1–9 and Form N–PORT to require funds to file reports on Form N–PORT on a more timely basis, with changes to both the frequency with which a fund would file reports on Form N–PORT and when the reports are due.[270] Specifically, rather than filing monthly reports with the Commission 60 days after the end of each fiscal quarter, we are proposing to require that funds file reports on a monthly basis.[271] These monthly filings would be due within 30 days after the end of the month to which they relate and would be made public 60 days after the end of the month to which they relate.[272] As an example, currently a fund files Form N–PORT reports for the first, second, and third months of each fiscal quarter with the Commission 60 days after the end of the third month of the quarter. Under the proposal, funds would separately file reports for the first, second, and third months of the quarter, with each month's report due within 30 days of month-end.

These changes are intended to provide more timely information regarding the fund's portfolio, including its liquidity profile. Both the current quarterly reporting cadence and the 60-day delay after the end of the quarter before reports are due make it difficult to use reported data to assess events that are developing quickly, or to identify early warning signs of potential distress. By the time the information is filed, it is at least two, and could be as many as four, months out of date.[273]

As proposed in 2015 and adopted in 2016, Form N–PORT would have provided for monthly filings with the Commission, within 30 days after the end of each month.[274] Only reports for every third month would have been available to the public.[275] The Commission originally required monthly portfolio reporting because it would be useful for fund monitoring, particularly in times of market stress.[276] The Commission originally required funds to file each monthly report within 30 days of month end because more delayed data would reduce the utility of the information to the Commission and lag times of more than 30 days would

[269] For purposes of this section, the term ''fund'' refers to registrants that currently are required to report on Form N–PORT, including open-end funds, registered closed-end funds, and ETFs registered as unit investment trusts, and excluding money market funds and small business investment companies.

[270] The proposal would also make a conforming edit to the filing instructions for Form N–PORT. *See* proposed 17 CFR 274.150(a).

[271] We would also make conforming changes to General Instruction A of Form N–PORT and rule 30b1–9 to remove references to the requirement for a fund to maintain in its records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month; this would no longer be necessary because the information would be filed with the Commission. *See* Proposed General Instruction A of Form N–PORT; proposed rule 30b1–9.

[272] *Id;* proposed General Instruction F of Form N–PORT. As is the case currently, if the due date falls on a weekend or holiday, the filing deadline would be the next business day.

[273] Because reports are due 60 days after the end of a fund's fiscal quarter, deadlines vary based on the fund's fiscal year. As an example, depending on a given fund's fiscal year, reports on Form N–PORT that included information for Mar. 2020 were due between June 1, 2020, and July 30, 2020. For instance, for funds with fiscal years ending Dec. 31, Sept. 30, June 30, or Mar. 30—which is just under half of all funds—the due date of the filing was May 30, 2020. Because this was a Saturday, the filing deadline was extended until the next business day on Monday, June 1. *See* General Instruction A to Form N–PORT.

[274] *See* Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016) [81 FR 81870 (Nov. 18, 2016)] (''Reporting Modernization Adopting Release''), at section II.A; Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (May 20, 2015) [80 FR 33589 (June 12, 2015)] (''Reporting Modernization Proposing Release'').

[275] *See* Reporting Modernization Adopting Release, *supra* note 274, at section II.A.

[276] *See id.,* at paragraph following n.453.

make monthly reporting impractical, as reports would overlap with preparation time.[277]

Before the date funds would have been required to comply with this requirement, the Commission experienced a cybersecurity incident that resulted in unauthorized access to certain nonpublic information on the EDGAR system.[278] As part of the Commission's ongoing assessment of its internal cybersecurity risk profile, the Commission re-evaluated and modified the filing frequency for reports on Form N–PORT. The Commission required funds to file a report with the Commission for each month in the fund's fiscal quarter no later than 60 days after the end of each fiscal quarter and to maintain in their records the information that is required to be included on Form N–PORT not later than 30 days after the end of each month. In making this change, the Commission stated that it significantly reduced the sensitivity of the non-public data, but that the staff would continue to monitor and solicit feedback on the data received and the use made (or expected to be made) of such data in furtherance of the Commission's statutory mission, as well as cybersecurity considerations and other matters deemed relevant by the staff.[279]

The Commission applies controls and systems for the use and handling of filing systems for confidential information and associated confidential data in a manner that reflects the sensitivity of the data and is consistent with the maintenance of its confidentiality. The Commission also has gained additional experience in receiving and maintaining sensitive portfolio data on the EDGAR system. This experience includes, for example, the existing non-public portions of Form N–PORT, which are subject to controls and systems designed to protect their confidentiality, as well as confidential treatment requests for reports on Form 13F.[280]

Market events have reinforced the need for timely data regarding funds' portfolios and the liquidity of those portfolios. For example, disruptions in the markets for Treasury securities and corporate bonds began near the end of the first quarter of 2020, but many funds' reports on Form N–PORT reflecting these events were not due until June 1, 2020, or as late as the end of July 2020. This meant that Commission staff were not able to review monthly filings, for example, to assess and analyze how the events were affecting funds or identify issues for further inquiry. Similarly, the Russian invasion of Ukraine began in late February 2022, when many funds were just filing their reports for the final quarter of 2021. This meant that when Commission staff were reviewing data to assess funds' exposures to securities that could be affected by the invasion, the data was several months out of date.[281] As a result, during major market events, the staleness of Form N–PORT data limits the Commission staff's ability to develop a comprehensive understanding of the market. The stale data also can impede our ability to contribute fully to interagency discussions of and responses to market events.

Although funds are required to maintain the monthly data and produce it to Commission staff upon request, any such production would be done on an individual basis. In addition, making individual requests requires Commission staff to determine the appropriate funds from which to collect data, which can be particularly challenging when Commission staff is responding to market events but may not have the market data necessary to determine quickly which funds to prioritize in responding to the event.

Requiring funds to file monthly reports on Form N–PORT within 30 days of the end of each month, consistent with the filing frequency the Commission initially adopted for Form N–PORT, would enhance our ability to effectively oversee and monitor the activities of investment companies in order to better carry out our regulatory functions, consistent with the goals of Form N–PORT reporting.[282]

We request comment on the proposed changes to the timing and frequency with which fund would be required to file reports on Form N–PORT, including:

201. As proposed, should we require that funds file reports on Form N–PORT on a monthly, rather than quarterly, frequency? Because funds are currently required to maintain the information required to prepare their reports on Form N–PORT on a monthly basis, within 30 days after the end of the reporting period, would they have any increased burden due to filing such information monthly, within 30 days after the end of the reporting period, as proposed?

202. As proposed, should we shorten the deadline for filing reports on Form N–PORT to 30 days after the end of the reporting period? Should we instead use a different deadline, such as 15, 45, or 60 days after the end of the reporting period?

203. Should we, as proposed, revise General Instruction A of Form N–PORT and rule 30b1–9 to remove the requirement for a fund to maintain in its records the information that is required to be included on Form N–PORT no later than 30 days after the end of each month because this information would be filed with the Commission under the proposal?

b. Publication Frequency

We are proposing to make funds' monthly reports on Form N–PORT public 60 days after the end of each monthly reporting period.[283] Currently, only the report for the third month of every quarter is made public, meaning the proposal would triple the amount of data made available to investors on Form N–PORT in a given year. Thus, the proposal would enhance the ability of investors to review and monitor information about their funds' portfolios.[284]

We continue to believe that publication of information collected on Form N–PORT can benefit investors by assisting them in making more informed investment decisions.[285] The public availability of monthly information, rather than information only for the third month of each quarter, may enhance these benefits. For example, institutional investors could directly use

[277] *See id.,* at nn.461–462 and accompanying text.

[278] *See* Statement on Cybersecurity (Sept. 20, 2017), *available at https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20; see also* Testimony before the Financial Services and General Government Subcommittee of the Senate Committee on Appropriations (June 5, 2018), *available at https://www.sec.gov/news/testimony/testimony-financial-services-and-general-government-subcommittee-senate-committee.*

[279] *See* Amendments to the Timing Requirements for Filing Reports on Form N–PORT, Investment Company Act Release No. 33384 (Feb. 27, 2019) [84 FR 7980 (Mar. 6, 2019)] at nn.36–39 and accompanying text.

[280] *See* Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV–NR; Amendments to Form 13F, Investment Company Act Release No. 34635 (June 23, 2022) [87 FR 38943 (June 30, 2022)], at section II.C.

[281] As evidence mounted that an invasion was likely to occur, funds may have adjusted their exposure to securities that could be affected, but Commission staff were unable to review this on a market-wide basis until months after the invasion due to the delay in receiving information.

[282] *See, e.g.,* Reporting Modernization Proposing Release, *supra* note 274, at section IV.A. *See also* 2015 Proposing Release, *supra* note 31, at text accompanying n.562.

[283] *See* proposed General Instruction F of Form N–PORT.

[284] We also propose to include additional information about the aggregate liquidity profiles of fund portfolios. *See infra* section II.E.1.c.

[285] *See* Reporting Modernization Adopting Release, *supra* note 274, at section II.A.4.

the monthly information reported on Form N–PORT to evaluate fund portfolios and assess the potential for returns and risks of a particular fund, and other investors may benefit from third-party analysis of the monthly data.

When the Commission first adopted Form N–PORT, it recognized potential negative effects from frequent publication of Form N–PORT data. For example, the Commission acknowledged the risk that frequent public disclosure could allow market participants to use funds' reports on Form N–PORT to engage in predatory trading such as front-running.[286] The Commission also recognized that more frequent public disclosure could permit free riding on a fund's research or trading expenditures by allowing other market participants to copy the fund's trades.[287] In determining to maintain the status quo of quarterly public reporting based on the fund's fiscal quarters, the Commission stated that it was important to assess the impact of the data reported on Form N–PORT on the mix of information available to the public, and the extent to which these changes might affect the potential for predatory trading, before determining whether more frequent or more timely public disclosure would be beneficial to investors in funds.[288]

Since the adoption of Form N–PORT, funds' practices with respect to disclosure of information about their portfolios have continued to evolve. For example, many funds, including actively managed funds, voluntarily provide their complete portfolio holdings on their websites on a monthly basis, typically lagged 30 days. Further, ETFs, including actively managed ETFs, generally are required to provide transparency into their portfolio holdings on a *daily* basis.[289] Many funds also provide monthly information about their portfolio holdings to third party data aggregators, generally with a lag of 30 to 90 days, which in turn make them available to investors for a fee. We believe this demonstrates that investor demand for monthly portfolio holdings already exists and that funds providing the information have determined the potential for predatory trading is justified by the benefit to investors. The proposal would simply allow all investors to receive similar data without paying a fee.[290] Thus, we believe that many funds already provide public transparency of their portfolio holdings more frequently than the proposal would require, and that our proposal would level the playing field by standardizing the reporting timelines for all funds, putting the data in a single location that all investors can access without charge, and using a standardized format that enables investor analysis of reported data.[291] In addition, under the proposal, the public information for each fund's monthly report on Form N–PORT would not be publicly available until 60 days after the end of the month, which is the same delay that currently exists for funds' reports for the third month of every quarter. This is designed to balance the benefits to investors of more frequent portfolio disclosure, while also retaining the existing 60-day delay, which we believe is appropriate in order to make the disclosed positions less timely and thus less likely to facilitate predatory trading practices.[292] As a result, and given that the proposal would provide data for additional monthly periods but would not change the current 60-day delay in making funds' reports on Form N–PORT public, the proposal is intended to mitigate opportunities for predatory trading or free riding of funds' trading strategies.[293]

Furthermore, the proposal is intended to benefit investors through increased transparency of Form N–PORT information, especially because it is provided in structured format and made in a single, centralized database. Giving investors access to this information in monthly reports on Form N–PORT may result in investors being better able to monitor the portfolios of their funds in a systematic fashion, and assist investors in choosing the investment products that most closely align with their desired levels of risk, asset exposures, and liquidity profiles.

The proposed reporting requirement also takes into account the cybersecurity risk profile of the information we are collecting. Under the proposal, we would receive the monthly information 30 days after the end of each month. Because the monthly information reported on Form N–PORT would be made public 30 days after it is filed with the Commission, the Commission would retain less confidential information than under the final rules the Commission adopted in 2016. This is because, under the proposal, information for each month would become public shortly after filing instead of information in only the third month of each quarter being publicly disclosed.

Currently, certain information reported on Form N–PORT is nonpublic, even in the report for the third month of the quarter that is otherwise publicly available. This aspect of the form is unchanged in this proposal, and that information—which includes liquidity classifications for individual portfolio investments—would remain nonpublic in individual reports. However, Commission staff may publish aggregate or other anonymized information about the nonpublic

---

[286] *See* Reporting Modernization Adopting Release, *supra* note 274, at text accompanying n.488. *See also* Investment Company Reporting Modernization, Investment Company Act Release No. 32936 (Dec. 8, 2017) [82 FR 58731 (Dec. 14, 2017)] (noting same concerns).

[287] *Id. But see* Morningstar Comment Letter on Reporting Modernization Proposing Release, File No. S7–08–15, *available at https://www.sec.gov/comments/s7-08-15/s70815-355.pdf* (discussing data that funds providing more frequent disclosure do not appear to exhibit lower returns as a result of predatory behavior).

[288] Reporting Modernization Adopting Release, *supra* note 274, at text accompanying nn.494–499 and accompanying text.

[289] *See* 17 CFR 270.6c–11(c)(1)(i); Exchange-Traded Funds, Investment Company Act Release No. 33646 (Sep. 25, 2019) [84 FR 57162 (Oct. 24, 2019)] (''ETF Release''), at section II.C.4 (stating that, although a few commenters raised concerns about front running or free riding if certain ETFs were required to provide full daily portfolio transparency, the Commission believed it was likely that all current ETFs that may rely on the rule already provide full portfolio transparency as a matter of market practice). In addition, a small number of ''nontransparent'' ETFs have received an exemptive order from the Commission permitting them not to disclose their portfolio holdings on a daily basis. As of Mar. 31, 2022, there were 45 nontransparent ETFs. Several of these nontransparent ETFs voluntarily disclose their complete portfolios on a monthly basis with a one-month lag.

[290] For example, we understand that a majority of funds provide monthly information regarding their portfolios to a third-party data aggregator. Individual investors are able to review the holdings reported by funds providing data to the aggregator using an analysis tool for which the aggregator charges a fee.

[291] In addition, because we propose to make funds' reports on Form N–PORT available for every month, investors could use Form N–PORT to monitor how their funds respond to events regardless of when they occur. For example, investors in some funds have access to Form N–PORT filings for Mar. 2020, while investors in other funds do not. This is because Form N–PORT data is publicly available for the third month of each fund's fiscal quarter, but fiscal quarters vary among funds.

[292] Section 45(a) of the Investment Company Act requires information in reports filed with the Commission pursuant to the Act be made public unless we find that public disclosure is neither necessary nor appropriate in the public interest or for the protection of investors. For the reasons discussed above, we preliminarily believe that keeping the data for the first and second months of a fund's calendar quarter confidential until the expiration of the 60-day period provided by the proposal is necessary or appropriate in the public interest for the protection of investors.

[293] Form 13F is due 45 days after the end of each calendar quarter, meaning that every third month, a fund's disclosure on Form N–PORT would not be the first mandatory disclosure of its portfolio. Funds currently have the ability to designate certain holdings for the third month in every quarter as ''miscellaneous securities,'' which are not disclosed publicly on Form N–PORT. Because we propose that all filings would eventually become public, we are extending this to filings for each month. *See* text accompanying *infra* note 319.

elements of reports on Form N–PORT.[294]

We request comment on the proposed changes to the frequency with which funds' reports on Form N–PORT would be made public, including:

204. Should we, as proposed, make funds' reports on Form N–PORT public on a monthly basis, 60 days after the end of the month to which they relate? How would investors use the additional information? Are there other potential users of public portfolio disclosures, including third-party users that provide services to investors, who find the additional information useful, and through whom investors could benefit indirectly?

205. Many funds already provide monthly information about their portfolio holdings on their websites. Would investors benefit from having centralized information on Form N–PORT that includes all funds, rather than having to look at each fund's website? Would investors benefit from having the information in a structured format rather than the format the fund uses on its website? Would the proposed requirement reduce costs for investors who currently use data aggregators to obtain holdings information regarding the funds in which they invest?

206. Should the lag between filing and publication be extended, for example to 45 days after filing, or shortened, for example to 15 days after filing? Should reports be made public immediately upon filing?

207. Previously, some have suggested that more frequent public disclosure could raise costs for investors due to predatory trading or copy-catting of fund strategies. Given that the proposal would provide data for additional monthly periods but would not change the current 60-day delay in making funds' reports on Form N–PORT public, would the proposal raise costs for investors due to predatory trading or copy-catting? What empirical data exists that supports these assertions?

208. Would actively managed nontransparent ETFs, which generally do not disclose their complete portfolios on a daily basis, be affected by the proposed requirement to disclose their portfolio on a 60-day delay differently than other actively managed funds, and should we permit these funds to disclose their portfolios less frequently as a result?

209. Do funds voluntarily publish data about their portfolios to compete for investors, notwithstanding potential effects on their performance?

210. Are there certain items on Form N–PORT that we propose to make public on a monthly basis that should only be public on a quarterly basis? If so, why is monthly disclosure of the relevant item neither necessary nor appropriate in the public interest or for the protection of investors?

c. Public Reporting of Aggregate Liquidity Classifications

We are proposing to require that funds' monthly reports on Form N–PORT would include the percentage of a fund's assets that fall into each of the three liquidity categories.[295] To give effect to the proposed adjustments to a fund's calculations of its level of highly liquid investments and illiquid investments in the liquidity rule, a fund would be required to make the same adjustments to its reported amount of highly liquid investments and illiquid investments, rather than simply report the percent of assets the fund has classified in each category. Specifically, a fund would reduce its reported amount of highly liquid assets by the amount of highly liquid assets that it posts as margin or collateral for derivatives transactions that are not highly liquid and by the amount of the fund's liabilities. A fund also would increase its reported amount of illiquid assets by the amount of collateral available upon exit of illiquid derivatives transactions.[296] The fund's adjustments are intended to more accurately reflect the availability of assets to meet redemptions. We propose to require that a fund's reported aggregate liquidity classifications include these adjustments, rather than report the adjustments separately, to make it easier for investors to understand the information a fund reports about its liquidity.

The public disclosure framework we are proposing is similar to the framework the Commission adopted in 2016.[297] At that time, the Commission determined to require a fund to publicly disclose the aggregate percentage of its portfolio assets representing each of the classification categories to balance some commenters' concerns about potential adverse effects that could arise from public reporting of detailed portfolio liquidity information with investors' need for improved information about funds' liquidity risk profiles.[298]

As funds began to implement the liquidity rule's classification requirements, and before funds were required to provide public disclosure of aggregate liquidity classifications, the Commission received additional information about the potential challenges and concerns of publicly disclosing a fund's aggregate liquidity profile at that time, namely the risk that the data would be subjective, that it was presented in isolation, and that it lacked the context of other disclosures about the fund.[299] In response, the Commission replaced this disclosure with narrative liquidity disclosure in 2018.[300] In removing the requirement to report aggregate liquidity classifications, the Commission stated that the subjectivity involved in the classification process raises concerns when applied to public disclosure. Specifically, the Commission expressed concern that the quantitative presentation of the aggregate liquidity information may imply precision and uniformity in a way that obscures its subjectivity, and that funds may face incentives to classify their investments as more liquid in order to make their funds appear more attractive to investors, while also potentially increasing the risk of herding if funds adjusted their portfolios in response to the disclosure requirement. In addition, the Commission believed that it would not be appropriate to adapt Form N–PORT to provide narrative context to help investors appreciate the fund's liquidity risk profile and the subjective nature of classification.

The Commission judged at that time that effective disclosure of liquidity risks and their management would be better achieved through prospectus and shareholder report disclosure rather than Form N–PORT, and adopted a requirement to disclose in a narrative format a brief discussion of the operation and effectiveness of its liquidity risk management program in the fund's shareholder reports. The

[294] *See* General Instruction F of Form N–PORT.

[295] *See* proposed Item B.12.a of Form N–PORT.

[296] *See* proposed Items B.8 and B.12.b of Form N–PORT. In certain situations, the adjustments could result in the amounts of a fund's investments in all three categories not summing to 100% of assets. For example, the reduction in the reportable amount of highly liquid assets may be greater than the increase in the reportable amount of illiquid assets, resulting in the percentages of the fund's assets in each category summing to an amount below 100%. Funds would be required to increase their reported amounts of moderately liquid investments if necessary to make the amounts the fund reports sum to 100%. *See* proposed Item B.12.b of Form N–PORT.

[297] *See* Liquidity Rule Adopting Release, *supra* note 8, at section III.C.6.c.

[298] *See id.,* at text accompanying n.621.

[299] *See* Investment Company Liquidity Disclosure, Investment Company Act Release No. 33046 (Mar. 14, 2018) [83 FR 11905 (Mar. 19, 2018)] (''2018 Liquidity Disclosure Proposing Release'') at nn.9–13 and accompanying text.

[300] *See* 2018 Liquidity Disclosure Adopting Release, *supra* note 22. For discussion generally of the Commission's stated rationale for making this change, *see generally id.* and 2018 Liquidity Disclosure Proposing Release, *supra* note 299.

intent of the narrative framework was to provide investors with a holistic view of the liquidity risks of the fund and how effectively the fund's liquidity risk management program managed those risks on an ongoing basis over the reporting period.[301]

In practice, though, the narrative disclosure did not meaningfully augment other disclosure requirements.[302] Instead, based on staff experience with several years of shareholder reports covering a range of market conditions, including a market crisis in March 2020 that included substantial liquidity concerns for certain securities, we found that the narrative disclosure often appeared as a lengthy, boilerplate recitation of the requirements of rule 22e–4 that was not tailored to a particular fund and did not change as conditions in the market changed. For example, many funds' liquidity disclosures did not change after the events of March 2020, even for funds that invested in assets that had experienced severe liquidity issues. This meant that investors had limited information about the liquidity of fund investments or how the fund managed that liquidity risk through these stressful events. We believe that this prevented investors from fully evaluating the liquidity risks associated with a particular fund for purposes of making more informed investment decisions.

Investors and funds have made similar observations. In 2020, when the Commission proposed amendments designed to streamline fund shareholder reports, some commenters requested that we require funds to disclose their aggregate liquidity buckets.[303] Other commenters stated that the narrative disclosure is not particularly relevant to investment decision making.[304] Several other commenters also stated that they believed the narrative disclosure should be moved from shareholder reports.[305] We recently adopted amendments that remove the requirement to disclose the narrative disclosure in the shareholder reports.[306]

Our proposed amendments to the liquidity rule, along with the years of experience that funds have gained in complying with the current rule, also have made the concerns the Commission identified in 2018 less relevant. Since 2018, the staff has conducted outreach with numerous market participants, including fund complexes, liquidity classification vendors, and others, and we are proposing several changes to rule 22e–4 that would prescribe additional parameters for many aspects of the classification process. These changes include introducing the concept of a 10% stressed trade size, establishing a minimum value impact standard, and removing asset class classifications, which would reduce subjectivity in classifications and reduce variation in funds' classification practices, even if incentives for a fund to mis-classify its investments remain.[307] These changes are intended to reduce the risk of subjectivity impeding an investor's understanding.

To the extent that subjectivity remains, investors reviewing this information on Form N–PORT also will have access to additional information in fund prospectuses and shareholder reports, which are delivered directly to investors. Prospectuses and shareholder reports would provide additional information about the fund and context for the liquidity disclosure in Form N–PORT, such as information about the factors affecting a fund's risks, returns, and performance.[308] In addition, the fact that the aggregate liquidity information would be required to change as liquidity conditions in the market change, and that investors would be able to review these changes on a monthly basis and compare them against the fund's prior reports would provide additional context for investors who desire this information. Investors could also compare the fund's reports to reports of similar funds, which could aid their understanding by allowing them to focus on the differences. Finally, the proposed aggregate liquidity disclosure could improve the mix of information available to investors. Though reports on Form N–PORT do not provide information regarding a fund's investment strategy and risk factors, the information reported on Form N–PORT may complement the other information already available to investors in order to allow them to develop a fuller understanding of the fund and its risks.

We request comment on the proposed public availability of the aggregate liquidity classifications funds would report on Form N–PORT, including:

211. Should we, as proposed, require funds to report publicly information regarding the aggregate percentage of their portfolio in each of the three proposed liquidity classification categories? Should we, as proposed, require that this information be reported publicly on a monthly basis and, if not, what factors are unique to liquidity information that should result in it being publicized on a different frequency than other information on Form N–PORT? Instead of, or in addition to, the percentages of a fund's investments in each of the three proposed liquidity categories, should we require additional information to be reported? Is there any additional context, such as narrative disclosure, that would also be useful to investors? Should that narrative disclosure be located in Form N–PORT or somewhere else (*e.g.,* a fund prospectus, shareholder report, or website)?

212. Instead of, or in addition to, aggregate liquidity information, should we require position-level liquidity classifications to be reported publicly on Form N–PORT? Should we instead require position-level liquidity classifications to be reported publicly on a different form, such in a fund's annual and semi-annual reports? How frequently should this information be reported? Would position-level liquidity reporting improve funds' liquidity classifications by allowing the public to review and scrutinize liquidity classifications? Would position-level liquidity reporting improve consistency in classification practices across funds by allowing funds to see how other

[301] *See, e.g., supra* section II.A.1. To the extent a fund would be incentivized to manage its portfolio so as to report higher amounts of highly liquid investments, we believe this would be consistent with the focus in section 22 of the Act on preserving the redeemability of open-end funds.

[302] Tailored Shareholder Reports Adopting Release, *supra* note 26, at text accompanying n.463.

[303] *See, e.g.,* Comment Letter of Consumer Federation of America on 2020 Tailored Shareholder Reports Proposing Release, File No. S7–09–20 (''[S]trongly encourag[ing] the Commission to reconsider its decision'' to remove aggregate liquidity disclosure and characterizing narrative disclosure as ''boilerplate.''); *see also* Comment Letter of Tom and Mary on 2020 Tailored Shareholder Reports Proposing Release, File No. S7–09–20 (''We think funds should be required to disclose their aggregate liquidity bucketing in their annual report. We believe this information is important to investors and will help them appreciate any liquidity risk.''). The comment file for the 2020 Tailored Shareholder Reports Proposing Release, where these comment letters are available, is at *https://www.sec.gov/comments/s7-09-20/s70920.htm.*

[304] *See, e.g.,* Comment Letter of Ubiquity on 2020 Tailored Shareholder Reports Proposing Release, File No. S7–09–20 (''Disclosure [of liquidity information in narrative format] is currently worthless and even with'' the proposed changes which were designed to retain the narrative format, it ''will continue to be worthless.''); *see also* Comment Letter of Tom Williams on 2020 Tailored Shareholder Reports Proposing Release; Feedback Flier of Olivia Brightly on 2020 Tailored Shareholder Reports Proposing Release.

[305] *See, e.g.,* Comment Letters of Morningstar Trustees, ICI, SIFMA. Fidelity, Dechert, James Angel, Lisa Barker, and T. Rowe Price on 2020 Tailored Shareholder Reports Proposing Release.

[306] *See* Tailored Shareholder Reports Adopting Release, *supra* note 26.

[307] *See, e.g., supra* section II.A.1 and note 301.

[308] *See* Reporting Modernization Adopting Release, *supra* note 274, at text following n.486 (''Form N–PORT is not primarily designed for disclosing information to individual investors . . .'').

similarly situated funds had classified the same or similar investments? Would position-level liquidity reporting improve investor access to or understanding of liquidity information, or would this information be difficult for investors to synthesize or understand? Would position-level liquidity reporting simplify the reporting framework for funds if this disclosure were in lieu of separate aggregate presentations? Would changes to the proposal, such as changes to how funds report the effect of the collateral they hold against derivatives that are not highly liquid, or the effect of liabilities, be necessary if we were to require position-level liquidity reporting? Would there be potential negative effects of position-level liquidity reporting? For example, would position-level liquidity reporting result in investors being able to infer information about a fund or company, such as being able to determine that a fund has material nonpublic information about an issuer because the fund categorizes the issuer's securities as illiquid? Would position-level liquidity reporting result in funds' counterparties engaging in predatory trading practices with funds, for example by adjusting the prices they bid for certain assets of a fund due to granular knowledge of how the fund categorizes the liquidity of its portfolio?

213. Should we, as proposed, require adjustments to the percentages of funds' assets in the proposed liquidity categories to account for certain derivatives transactions? Should we instead require information about derivatives transactions to be reported separately? Should certain derivatives transactions be treated differently for these purposes, for example by making differing adjustments based on whether a derivative is exchange-traded, centrally cleared, made with certain categories of counterparty, or otherwise? Should we require differing adjustments for derivatives transactions depending on the purpose, for example whether they are intended to hedge currency or interest rate risks associated with one or more specific equity or fixed-income investments held by the fund as described in rule 18f–4(c)(4)(i)(B)? Are there any changes we should make to aid investor understanding of how funds' use of derivatives affects their liquidity?

214. We propose to require that if the reported sum of a fund's investments in each of the three categories does not equal 100%, the fund must adjust the percentage of assets attributed to the moderately liquid investment category so that the sum of the fund's investments in each category equals 100%. Should we take a different approach, such as making the adjustment optional, or permitting a fund to report aggregate percentages that do not sum to 100%? Should we permit or require funds to provide additional information, such as an explanatory note that the totals have been adjusted and the amount of the adjustment? Are there other metrics for which we should permit or require funds to modify the reported amounts?

215. Would fund prospectuses and shareholder reports delivered directly to investors provide sufficient context for the fund's aggregate liquidity information that would be disclosed on Form N–PORT under the proposal? Because Form N–PORT is not delivered to investors, would investors who have sought out Form N–PORT disclosure in the first instance be more likely to consider the information in the context of other publicly available information about the fund? If investors would not have sufficient context when reviewing Form N–PORT, should we address this by requiring that funds send their most recent report on Form N–PORT to investors when they send other communications, such as their periodic reports or prospectus updates?

216. Instead of, or in addition to, including information regarding funds' aggregate liquidity profiles in Form N–PORT, as proposed, should we require that it be included in other documents, such as funds' annual and semi-annual shareholder reports? If so, should the disclosure included in funds' annual and semi-annual shareholder reports, or other documents, differ from what we propose to include in Form N–PORT? For example, should any disclosure in funds' annual and semi-annual shareholder reports, or other documents be in a different format, such as a pie chart, or also include narrative disclosure to allow funds to provide additional context?

d. Other Proposed Amendments to Form N–PORT

In addition to our proposed amendments to require more timely reporting of information and to enhance public transparency of funds' portfolio holdings and liquidity classifications, we are proposing a few additional amendments to Form N–PORT. These additional amendments include a new reporting item related to swing pricing, amendments to certain existing items to account for the proposal to make monthly Form N–PORT information available to the public, other conforming amendments to reflect the proposed amendments to rule 22e–4, and amendments to certain entity identifiers.

In connection with our proposed amendments to swing pricing, we are proposing to require enhanced transparency into the frequency and amount of a fund's swing pricing adjustments. Currently, if a fund were to engage in swing pricing, it would only be required to report on Form N–CEN if the fund engaged in swing pricing during a given year and, if so, the swing factor upper limit established by the fund.[309] We are proposing to remove that reporting requirement on Form N–CEN and replace it with a new reporting requirement on Form N–PORT that would require information about the number of times the fund applied a swing factor during the month and the amount of each swing factor applied.[310] To recognize that a swing factor adjustment could be positive (when the fund has net purchases) or negative (when the fund has net redemptions), we propose to specify that a fund must use a plus sign before a positive swing factor and a minus sign before a negative swing factor.[311] More frequent and detailed information about a fund's use of swing pricing is intended to help the Commission assess the size of the price adjustments funds are making during normal and stressed market conditions, as well as how often funds apply swing factor adjustments. The public may also benefit from this information to help facilitate an understanding of the frequency and size of swing factor adjustments.

In addition, we are proposing to amend items that currently require funds to report certain return and flow information for each of the preceding three months.[312] Rather than require information for the preceding three months, we are proposing to instead require a fund to report that information only for the month that the Form N–PORT report covers.[313] The Commission currently requires return and flow information for the preceding three months in a single report to provide investors access to monthly data for a given quarter, given that investors currently only have access to Form N–PORT reports for the third month of

[309] *See* Item C.21 of current Form N–CEN.

[310] *See* proposed Item B.11 of Form N–PORT. Funds would be instructed to respond with ''N/A'' when appropriate.

[311] We also propose to add a definition of ''swing factor'' to Form N–PORT, which would cross reference the definition of this term in proposed rule 22c–1(d). *See* General Instruction E of proposed Form N–PORT.

[312] *See* Item B.5 and Item B.6 of current Form N–PORT.

[313] *See* Item B.5 and Item B.6 of proposed Form N–PORT.

each quarter.[314] Monthly data for the preceding three months was also intended to avoid a potential investor misperception that one month's returns or flows represented returns or flows for the full quarter.[315] Because, under our proposal, investors would have access to monthly Form N–PORT reports, we propose to amend the period for which a fund must report return and flow information to align with monthly public reporting.

For similar reasons, we are proposing to amend Part F of Form N–PORT, which currently requires a fund to attach its complete portfolio holdings for the end of the first and third quarters of the fund's fiscal year, presented in accordance with Regulation S–X, within 60 days after the end of the reporting period. We are proposing to require funds to file this disclosure within 60 days of the end of the reporting period for each month, with the exception of the last month of the fund's second and fourth fiscal quarters, because the latter portfolio holdings information is already available in funds' annual and semi-annual reports.[316] That is, we propose that funds would be required to file the portfolio disclosure on Part F of Form N–PORT ten times per year, instead of the current requirement to file twice per year. When the Commission adopted Part F of Form N–PORT, it recognized that not all investors may prefer to receive portfolio holdings information in a structured XML format, and instead might prefer portfolio holdings schedules presented using the form and content specified by Regulation S–X.[317] The Commission stated that requiring funds to attach these portfolio holdings schedules to reports on Form N–PORT would provide the Commission, investors, and other potential users with access to funds' current and historical portfolio holdings for those funds' first and third fiscal quarters, as well as consolidate these disclosures in a central location, together with other fund portfolio holdings disclosures in reports on Form N–CSR for funds' second and fourth fiscal quarters.[318] In conformance with the proposed requirement for funds to file their structured portfolio schedules on a monthly basis, and to make the monthly disclosure more useable for investors, we propose to amend Part F of Form N–PORT so that investors would be able to access unstructured portfolio schedules presented in accordance with Regulation S–X on the same frequency.

Similarly, we are proposing to amend Part D of Form N–PORT regarding miscellaneous securities to align with the proposal to make monthly Form N–PORT reports publicly available. Form N–PORT currently contemplates that detailed information about miscellaneous securities, which would remain nonpublic, would only be included in reports filed for the last month of each fiscal quarter.[319] This is because today all information reported on Form N–PORT for the first and second months of each quarter is nonpublic, which means there is no need for funds to designate any of their investments for those reporting periods as miscellaneous securities.[320] Although our proposed shift from quarterly to monthly public reporting is intended to improve public transparency of funds' portfolio holdings, we continue to believe that treating information related to miscellaneous securities as nonpublic may serve to guard against the premature release of those securities positions and thus deter front-running and other predatory trading practices, and that for this reason public disclosure of miscellaneous securities continues to be neither necessary nor appropriate in the public interest or for the protection of investors.[321] At the same time, it is important for the Commission to receive more detailed information about miscellaneous securities holdings so the Commission has a complete record of the portfolio for monitoring, analysis, and checking for compliance with Regulation S–X.[322] As a result, we are proposing to amend Part D of Form N–PORT to remove the language that limits reporting of nonpublic information about individual miscellaneous securities holdings to reports filed for the last month of each fiscal quarter. The proposed amendment would allow funds in their monthly Form N–PORT reports to report publicly the aggregate amount of miscellaneous securities held in Part C, while requiring funds to provide more detailed information in Part D about the individual holdings in the miscellaneous securities category to the Commission on a nonpublic basis.

We are also proposing amendments to Form N–PORT to reflect the proposed amendments to rule 22e–4. For example, because we are proposing to remove the concept of a reasonably anticipated trade size from rule 22e–4, we are proposing to replace references to this concept in an instruction related to classifying portions of a single holding in multiple liquidity categories with references to the stressed trade size concept.[323] We are also proposing to revise the liquidity classifications a fund will report to reflect the revisions to the liquidity categories in rule 22e–4.[324] Because we are proposing improvements to the way that a fund treats collateral for certain derivatives transactions when calculating whether it holds sufficient assets to meet its highly liquid investment minimum or holds an amount of illiquid assets that exceeds the 15% limit, we also are proposing to revise the information open-end funds must report about the collateral posted as margin or collateral in connection with certain derivatives transactions.[325] We are similarly proposing to revise the information a fund would report about the fund's highly liquid investments to reflect that not all highly liquid investments will count toward the fund's highly liquid investment minimum.[326] In addition to reflecting changes to rule 22e–4, these changes are also designed to provide additional information to Commission staff regarding a fund's level of highly liquid assets and illiquid assets and the

[314] *See* Reporting Modernization Adopting Release, *supra* note 274, at paragraphs accompanying nn.225, 232, and 250.

[315] *See id.,* at paragraphs accompanying nn.225 and 250.

[316] *See* Part F of proposed Form N–PORT. Currently, Part F of Form N–PORT does not require information for the second and fourth quarters of the fund's fiscal year for the same reason. *See* Item 6 of Form N–CSR and Reporting Modernization Adopting Release, *supra* note 274, at section II.J.

[317] *Id.* at section II.A.2.j.

[318] *Id.*

[319] *See* Part D of current Form N–PORT. The form permits funds to report as ''miscellaneous securities'' an aggregate amount of portfolio investments that does not exceed 5% of the total value of the fund's portfolio investments, provided that the securities included in this category are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously been reported by name to the shareholders, or set forth in any registration statement, application, or report to shareholders or otherwise made available to the public.

[320] *See* Reporting Modernization Adopting Release, *supra* note 274, at text following n.424.

[321] *See id.* at n.421 and accompanying text.

[322] *See* Reporting Modernization Adopting Release, *supra* note 274, at section II.A.2.h (requiring that information about miscellaneous securities be reported to the Commission on a nonpublic basis).

[323] *See* Instructions to Item C.7 in proposed Form N–PORT.

[324] *See* Item B.8 in proposed Form N–PORT; General Instruction E (Definitions) in proposed Form N–PORT.

[325] *See* Item B.8 in proposed Form N–PORT. The proposed revisions would require a fund to report the value of its highly liquid investments that are assets that are posted as margin or collateral in connection with moderately liquid or illiquid investments, and would require a fund to report the value of any margin or collateral posted in connection with an illiquid derivatives transaction, where the fund would receive the value of the margin or collateral if it exited the derivatives transaction.

[326] *See* Item B.7.b in proposed Form N–PORT.

effect of derivatives transactions on that amount.

In addition, we propose to amend certain items and definitions related to entity identifiers in the form. Specifically, we propose to amend the definition of LEI in the form to remove language providing that, in the case of a financial institution that does not have an assigned LEI, a fund should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.[327] Instead of classifying an RSSD ID as an LEI for these purposes, we propose to provide separate line items where a fund would report an RSSD ID, if available, in the event that an LEI is not available for an entity.[328] This change is designed to improve consistency and comparability of information funds report about the instruments they hold, including issuers of those instruments and counterparties to certain transactions.

217. Should we require funds to report the number of times the fund applied a swing factor and each swing factor applied, as proposed? Should we require the median, highest, and lowest (non-zero) swing factor applied for each reporting period on Form N–PORT, rather than require disclosure of each swing factor applied?

218. Should we require funds to provide additional information about swing pricing in Form N–PORT reports, such as the swing pricing administrator's determination to use a lower market impact threshold or lower inflow swing threshold, if applicable? Should we separately require funds to disclose information about market impact factors, such as how many times a market impact factor was included in the swing factor each month and the size of those market impact factors (*e.g.,* either the size of any market impact factor applied, or the median, highest, and lowest (non-zero) amount)? Should we require funds to provide information about their imposition of redemption fees under rule 22c–2, which funds can use to recoup some of the direct and indirect costs incurred as a result of short-term trading strategies, such as market timing? If so, should we require funds to disclose in reports on Form N–PORT the number of times they imposed redemption fees during the period and the amount of the fees? Should funds be required to itemize each fee charged, disclose the total amount charged during the period and the average fee charged, or some other presentation?

219. Instead of, or in addition to, requiring information about swing pricing on Form N–PORT, should we require funds to provide information about their use of swing pricing in other locations? For example, would investors find this information more accessible if it were on fund websites, in registration statements, or in shareholder reports?

220. Should we require funds to provide return and flow information only for a single month, as proposed, or should we continue to require funds to provide return and flow information for the preceding three months? Even though investors would have access to monthly reports on Form N–PORT, is it helpful to have return or flow information for previous months in a single report to have a readily available point of comparison?

221. Should we amend Form N–PORT to continue to maintain the confidentiality of information about a fund's miscellaneous securities for each reporting period, as proposed? Are there other conforming amendments we should make to align Form N–PORT reporting requirements with the proposed changes to the frequency funds must file these reports and the timeline for filing and public availability?

222. Should we amend Form N–PORT to require a fund to attach its complete portfolio holdings presented in accordance with Regulation S–X within 60 days after the end of each month except for the last month of the fund's second and fourth fiscal quarters, as proposed? Should we instead require a fund to file this information on a different frequency, such as every month, without exception? Should we maintain the current filing schedule? Should we require funds to attach this information within a different timeframe, such as no later than 45 days or 75 days after the end of the reporting period? If we make changes to other aspects of the proposal, such as changes to the frequency funds file reports on Form N–PORT, the delay between the end of the reporting period and filing, or the time at which filings are made public, should we also make conforming changes to Part F?

223. Are our proposed amendments to remove references to the concept of a reasonably anticipated trade size in Form N–PORT and replace them with references to the stressed trade size effective? Are there other conforming amendments we should make to align Form N–PORT with the liquidity rule amendments?

224. Should we, as proposed, amend Form N–PORT to require funds to identify the value of margin or collateral the fund has posted as margin or collateral in connection with an illiquid derivatives transaction in order to provide a complete picture of the amount of illiquid investments for purposes of the liquidity rule's 15% limit?

225. As proposed, should we amend the definition of LEI in the form and provide a separate item for providing an RSSD ID as an identifier, as applicable?

2. Amendments to Form N–CEN

We are proposing amendments to Form N–CEN to identify and provide certain information about service providers a fund uses to fulfill the requirements of rule 22e–4. The amendments would require a fund to: (1) name each liquidity service provider; (2) provide identifying information, including the legal entity identifier and location, for each liquidity service provider; (3) identify if the liquidity service provider is affiliated with the fund or its investment adviser; (4) identify the asset classes for which that liquidity service provider provided classifications; and (5) indicate whether the service provider was hired or terminated during the reporting period. This information would allow the Commission and other participants to track certain liquidity risk management practices.[329] As liquidity classification services have become more widely used, the proposal would require information about whether and which liquidity service providers are used, for what purpose, and for what period. Among other things, this information would help us better understand potential trends or outliers in funds' liquidity classifications reported on Form N–PORT; for example, by analyzing classifications trends of specific vendors, we might distinguish patterns in how classifications might differ due to vendor models or data.

As described above, we also propose to remove the current disclosure in Item C.21 of Form N–CEN and replace it with a new reporting requirement on Form N–PORT to provide enhanced transparency into the frequency and amount of a fund's swing pricing adjustments.[330] In addition, consistent with our proposed amendments to the definition of LEI in Form N–PORT, we are proposing to make the same changes

[327] *See* General Instruction E of proposed Form N–PORT.

[328] *See* Items B.4, C.1, C.10, and C.11 of proposed Form N–PORT.

[329] *See* Liquidity Rule Adopting Release, *supra* note 8, at n.973.

[330] Item C.21 of Form N–CEN is proposed to be revised to require disclosure on liquidity classification services, as described above.

in Form N–CEN to separate the concepts of LEIs and RSSD IDs.[331]

We request comment on the proposed amendments to Form N–CEN:

226. Would the proposed reporting on liquidity classification service providers assist investors and funds in better understanding how liquidity risk is managed at a fund? Should any other information be provided about the liquidity classification service provider?

227. Should we require any information about a fund's use of swing pricing on Form N–CEN? How would this information relate to the information we propose to require on Form N–PORT?

228. As proposed, should we amend Form N–CEN to separate the concepts of LEI and RSSD ID? As proposed, should funds be required to provide an RSSD ID, if available, when an LEI is not available?

F. Technical and Conforming Amendments

In September 2019, the Commission adopted new rule 6c–11 to allow ETFs that satisfy certain conditions to operate without obtaining an exemptive order from the Commission.[332] We are proposing to make a technical amendment to the definition of ETF in rules 22e–4 and 22c–1, as well as in Forms N–CEN and N–PORT, as a result of this rulemaking. Specifically, the proposed amendments would replace language in each definition that refers to ''an exemptive rule adopted by the Commission'' with a direct reference to rule 6c–11.[333]

We are also proposing to make a conforming amendment to rule 31a–2. Specifically, this proposed amendment to the recordkeeping rule would replace the reference to the current swing pricing provisions in rule 22c–1(a)(3) with a reference to the proposed swing pricing provisions in rule 22c–1(b).[334]

G. Exemptive Order Rescission and Withdrawal of Commission Staff Statements

In light of the scope of our proposed amendments to the liquidity rule, and pursuant to our authority under the Act to amend or rescind our orders when necessary or appropriate to the exercise of the powers conferred elsewhere in the Investment Company Act, we are proposing to rescind an exemptive order that relates to rule 22e–4.[335] As this order's representations and conditions, and the relief provided, are predicated on rule 22e–4 in its current form, the proposed amendments, if adopted, would render the order moot, superseded, and inconsistent with the final rule amendments. In addition, staff in the Division of Investment Management is reviewing its no-action letters and other statements addressing compliance with rules 22e–4 and 22c–1 to determine which letters and other staff statements, or portions thereof, should be withdrawn in connection with any adoption of this proposal. Upon the adoption of any final rule amendments, some of these letters and other staff statements, or portions thereof, would be moot, superseded, or otherwise inconsistent with the final rule amendments and, therefore, would be withdrawn. The staff review would include, but would not necessarily be limited to, the staff no-action letters and other staff statements listed below:

- Investment Company Liquidity Risk Management Programs Frequently Asked Questions (April 10, 2019);
- Reflow, SEC Staff No-Action Letter (July 15, 2002);
- Charles Schwab & Co., Inc., SEC Staff No-Action Letter (July 7, 1997);
- Investment Company Institute, SEC Staff No-Action Letter (Feb. 9, 1973);
- United Benefit, SEC Staff No-Action Letter (July 13, 1971);
- Investment Company Institute, SEC Staff No-Action Letter (Mar. 24, 1970); and
- Investment Companies: Share Pricing: SEC Staff Views, Investment Company Act Release No. 5569 [34 FR 383 (Dec. 27, 1968)].

Additionally, the staff statements, or portions thereof, may be withdrawn following the relevant underlying transition period discussed in section II.H below, if adopted, as determined appropriate in connection with the staff's review of those staff statements.

We request comment on the proposed rescission or withdraw of past Commission or staff statements, and specifically on the following items:

229. Are there additional letters or other statements, or portions thereof, that should be withdrawn or rescinded? If so, commenters should identify the letter or statements, state why it is relevant to the proposed rule, how it or any specific portion thereof should be treated, and the reason.

230. If the amendments to the liquidity rule are adopted, are there any questions and responses in the staff FAQs that would still be relevant and helpful to retain?[336]

H. Transition Periods

We propose to provide a transition period after the effective date of the proposed amendments to give affected funds sufficient time to comply with any of the proposed changes and associated disclosure and reporting requirements, if adopted, as described below. Based on our experience, we believe the proposed compliance dates would provide an appropriate amount of time for funds to comply with the proposed rules, if adopted.

- *Twenty-Four-Month Compliance Date.* We propose that 24 months after the effective date of the amendments, all registered open-end management investment companies, except for money market funds and exchange-traded funds, must comply with the proposed swing pricing requirement in rule 22c–1, as well as the swing pricing disclosures applicable to these funds in the proposed amendments to Forms N–PORT and N–1A.[337] We also propose that 24 months after the effective date of the amendments, funds, transfer agents, registered clearing agencies, and intermediaries must comply with the proposed ''hard close'' requirement in rule 22c–1, and funds must comply with related disclosure requirements we propose to require in Form N–1A.[338]
- *Twelve-Month Compliance Date.* The proposed compliance period for all other aspects of the proposal is 12 months after the effective date of the amendments, if adopted, and includes the following:
  - The proposed amendments to rule 22e–4, which include: (1) amending the rule's liquidity categories, including reducing the number of liquidity categories from four to three; (2) providing specific and consistent standards that funds would use to classify investments, including by setting a stressed trade size and defining when a sale or disposition would significantly change the market value of an investment; and (3) requiring daily classifications; [339] and
  - The proposed amendments to Forms N–PORT and N–CEN, except the swing pricing-related disclosure on Form N–PORT.

[331] *See* Items B.16, B.17, C.5, C.6, C.9, C.10, C.11, C.12, C.13, C.14, C.15, C.16, C.17, D.12, D.13, D.14, E.2, F.1, F.2, F.4, and Instructions to Item G.1 of proposed Form N–CEN.

[332] *See* ETF Release, *supra* note 289.

[333] *See* proposed rule 22e–4(a) and proposed rule 22c–1(d); General Instruction E of proposed Form N–CEN and General Instruction E of proposed Form N–PORT.

[334] *See* proposed rule 31a–2(a)(2).

[335] *See* J.P. Morgan Investment Management Inc., et al., Investment Company Act Release No. 34180 (Jan. 21, 2021). *See also* section 38(a) of the Act, 15 U.S.C. 80a–37(a).

[336] *See* Liquidity FAQs, *supra* note 79.

[337] *See* proposed rule 22c–1(b); Item B.11 of proposed Form N–PORT; and Item 6(d) of proposed Form N–1A.

[338] *See* proposed rule 22c–1(a); Item 11(a) of proposed Form N–1A.

[339] *See* proposed rule 22e–4.

We request comment on the proposed transition dates, and specifically on the following items:

231. Are the proposed compliance dates appropriate? If not, why not? Is a longer or shorter period necessary to allow affected funds to comply with one or more of these particular amendments, if adopted? If so, what would be a recommended compliance date? Should we provide a longer compliance date for smaller funds, and if so what should this be (for example, 36 months for compliance with the swing pricing requirements, and 18 months for the other aspects of the proposal)? How should we define a ''smaller fund'' for this purpose? For example, should a smaller fund be a fund that, together with other investment companies in the same group of related investment companies, has net assets of less than $1 billion as of the end of its most recent fiscal year?

232. In particular, is a longer period necessary for funds to comply with the proposed removal of the less liquid investment category and the amendment to the scope of illiquid investments? How long might it take for funds and other parties to reduce the settlement times for bank loans and other investments that funds currently classify as less liquid investments? Is a longer period necessary for retirement plan recordkeepers or other intermediaries to make necessary changes to their systems?

233. Should the compliance dates be staggered for certain provisions? For example, should the compliance date for the hard close occur prior to the compliance date for swing pricing?

III. Economic Analysis

A. Introduction

The Commission is mindful of the economic effects, including the benefits and costs, of the proposed amendments. Section 2(c) of the Act, Section 202(c) of the Advisers Act, and Section 3(f) of the Exchange Act direct the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act, requires the Commission, when making rules under the Exchange Act, to consider among other matters the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. The analysis below addresses the likely economic effects of the proposed amendments, including the anticipated benefits and costs of the amendments and their likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this proposal.

Open-end funds serve as intermediaries between investors seeking to allocate capital and issuers seeking to raise capital by pooling a portfolio of investments and selling the shares of this portfolio to investors. A prominent feature of open-end funds is the mismatch between the immediate liquidity funds provide to their shareholders [340] and the potential illiquidity of fund portfolio investments (''liquidity mismatch''). In order to pay net redemptions or invest proceeds from net subscriptions, a fund generally incurs trading costs, which can, among other things, take the form of bid-ask spreads, commissions, markups, markdowns, or market impact (the tendency of large trades to shift prices in the market). Therefore, the liquidity mismatch can lead to non-negligible trading costs associated with selling the fund's less liquid portfolio investments in order to meet investor redemptions or buying portfolio investments in order to accommodate investor subscriptions.[341]

As such, the liquidity mismatch and associated trading costs in the open-end fund sector present several potential problems, including: (1) funds may not be able to meet the statutory obligation to satisfy investor redemptions within seven days without incurring significant trading costs; (2) fund investors are subject to the risk of dilution; (3) fund investors' anticipation that they may be diluted may create a first-mover advantage that incentivizes them to redeem their shares before other investors do; and (4) fire sales that can be provoked by an increased pressure to meet redemptions could further disrupt already stressed markets.[342]

Market stress events, such as the one that occurred during March 2020, may exacerbate these issues.[343] For example, during stress events investors may rebalance away from some investments into others for many reasons, including but not limited to, their general risk tolerance, legal or investment policy restrictions, or short-term cash needs. To the extent that such rebalancing activity is correlated across investors of the same fund or is correlated with deterioration in the liquidity of the fund's underlying assets, trading costs for the funds' underlying investments may increase and non-transacting fund shareholders may become exposed to increased dilution risk, which may lower future fund returns. In addition, the risk of investor dilution associated with the illiquidity of funds' underlying investments may create a first-mover advantage that could lead to increased mutual fund redemptions.[344]

Fund managers may not fully incorporate potential future fund shareholder dilution into their investment decisions for several reasons. First, potentially misaligned incentives between fund shareholders and fund managers may cause some fund managers to hold portfolios with liquidity levels that could be insufficient to meet redemptions without imposing significant dilution costs on non-transacting fund investors, especially during periods of market stress. Second, fund investors may not have granular and timely enough information to adequately assess the extent of the liquidity risk they are taking on and, therefore, cannot discipline the extent to which a fund manager exposes the fund's shareholders to dilution risk. Finally, to the extent that first-mover advantage can lead to anticipatory mutual fund redemptions that could impose costs on other market participants, [345] fund managers do not necessarily have an incentive to factor such costs into their investment decisions.

In light of these issues and our associated regulatory experience, [346] the proposal seeks to further address liquidity externalities in the open-end fund sector. In particular, we expect the proposal to: (1) enhance open-end funds' liquidity; (2) improve funds' anti-dilution and resilience mechanisms for

[340] Section 22(e) of the Act establishes a shareholder right of prompt redemption in open-end funds by requiring such funds to make payments on shareholder redemption requests within seven days of receiving the request.

[341] Unless otherwise specified, we use the term ''less liquid'' in this section to refer to investments that are on the lower end of the liquidity spectrum, and not solely investments that are classified as ''less liquid investments'' under the current rule 22e–4.

[342] *See infra* section III.B.3 for additional discussion of these issues.

[343] *See supra* section I.B for a detailed discussion of the Mar. 2020 market events.

[344] *See infra* section III.B.3 for additional discussion.

[345] *See e.g.,* Bing Zhu & René-Ojas Woltering, *Is Fund Performance Driven by Flows into Connected Funds? Spillover Effects in the Mutual Fund Industry,* 45 J. Econ. & Fin. 544, no. 9 (2021). *See infra* section III.B.3 for additional discussion.

[346] *See supra* sections I and II for the discussion of regulatory experience.

any given level of liquidity; and (3) increase the transparency of open-end funds' liquidity management practices. Together, the proposed amendments may mitigate liquidity externalities in the open-end fund sector by improving the ability of funds to meet redemptions without imposing significant trading costs on investors. This, in turn, may reduce the first-mover advantage associated with the dilution from trading costs and curtail run risk in open-end funds,[347] which is consistent with recent analyses discussing how more robust liquidity management may mitigate this risk.[348] The proposed amendments may also reduce the likelihood or the extent of future government interventions.[349]

The proposed amendments to the liquidity risk management (''LRM'') program[350] are designed to support funds' ability to meet redemptions without significant trading costs, such as larger haircuts associated with less liquid investments that open-end funds may hold in their portfolios. Although less liquid investments generally offer a higher return, the trading costs associated with selling these assets during periods of increased redemptions may offset this risk premium, potentially resulting in a lower overall return for fund investors.[351] Therefore, a more robust liquidity management program that requires funds to hold more highly liquid investments may benefit fund investors in the longer term. In addition, requiring funds to hold a greater share of highly liquid investments may help limit the price impact that funds impose on underlying markets when they sell less liquid assets to meet investor redemptions, especially during periods of market stress.[352]

The goal of the proposed swing pricing and hard close requirements is to reduce the dilution of non-transacting fund shareholders by charging redeeming and subscribing investors the trading costs they impose on a fund,[353] which may mitigate the first-mover advantage associated with the dilution from trading costs. Although swing pricing has not yet been implemented by any fund in the U.S., usage of swing pricing in other jurisdictions has been shown in certain cases to mitigate redemption pressure during periods of elevated market volatility.[354] We recognize that swing pricing may not always fully reduce the potential first-mover advantage associated with increasing trading costs and discourage associated investor redemptions.[355] However, even in these cases, we believe that investors would nevertheless benefit from the proposed requirement because it would reduce the dilution of non-transacting fund shareholders, regardless of the amount of trading activity by redeeming or subscribing investors.

Coupled with the proposed amendments to the LRM program and the proposed swing pricing and hard close requirements, the proposed reporting and public disclosure requirements are aimed at promoting transparency and facilitating investors' understanding of liquidity risk in the open-end fund sector, as well as promoting transparency regarding funds' application of liquidity management tools.[356] As a result, the proposed public disclosure requirements may aid investors in making more efficient portfolio allocation decisions.

Many of the benefits and costs discussed below are difficult to quantify. For example, we lack data that would help us predict how funds may adjust the liquidity of their portfolios in response to the proposed liquidity rule amendments; the extent to which investors may reduce their holdings in open-end funds as a result of the proposed swing pricing requirement and other amendments; the extent to which investors may move capital from mutual funds to other investment vehicles, such as closed-end funds, ETFs, or CITs; and the reduction in dilution costs to investors in open-end funds as a result of the proposed amendments (which would depend on investor subscription and redemption activity and the liquidity risk of underlying fund investments). Form N–PORT data is not sufficiently granular to allow such quantification, and many of these effects will depend on how affected funds and investors would react to the proposed amendments. While we have attempted to quantify economic effects where possible, much of the discussion of economic effects is qualitative in nature. We seek comment on all aspects of the economic analysis, especially any data or information that would enable a quantification of the proposal's economic effects.

B. Baseline

1. Regulatory Baseline

a. Liquidity Risk Management Program

Under the current rule,[357] open-end funds classify each portfolio investment into one of the four defined liquidity categories, based on the number of days within which a fund reasonably expects the investment to be convertible to cash or sold or disposed of, without significantly changing the investment's market value. The four categories are: (1) ''highly liquid investments,'' which are cash and investments convertible into cash in current market conditions in three business days or less; (2) ''moderately liquid investments,'' which are convertible into cash in current market conditions in more than three calendar days but in seven calendar days or less; (3) ''less liquid investments,'' which are those the fund reasonably expects to be able to sell or dispose of in current market conditions in seven calendar days or less, but where the sale or disposition is reasonably expected to settle in more than seven calendar days; and (4)

[347] We recognize that factors other than dilution related to trading costs—such as dilution from falling asset prices (market risk) and from potential differences between prices of underlying investments used for a fund's net asset value calculation and execution prices for these investments—may also contribute to the first-mover advantage in redemptions and potential runs in open-end funds. These and other considerations are discussed in greater detail in section III.B.3 below.

[348] *See* Nicolas Valderrama, *Can the Liquidity Rule Keep Mutual Funds Afloat? Contextualizing the Collapse of Third Avenue Management Focused Credit Fund,* 70 Cath. U. L. Rev. 317 (2021). *See* also Landon Thomas Jr., *A New Focus on Liquidity After a Fund's Collapse, N.Y. Times*, Jan. 11, 2016, *available at https://www.nytimes.com/2016/01/12/business/dealbook/a-new-focus-on-liquidity-after-a-funds-collapse.html.*

[349] *See e.g.,* Antonio Falato et. al., *Financial Fragility in the COVID–19 Crisis: The Case of Investment Funds in Corporate Bond Markets,* 123 J. Monetary Econ. 35 (2021). The authors discuss how the Federal Reserve bond purchase program helped to reverse mutual funds' outflows during the Mar. 2020 period.

[350] *See supra* section II.A.

[351] *See e.g.,* Mikhail Simutin, *Cash Holdings and Mutual Fund Performance,* 18 Rev. Fin. 1425, no. 4 (2014), *See also* Aleksandra Rzeznik, *Skilled Active Liquidity Management: Evidence from Shocks to Fund Flows,* (Jul. 29, 2021), *available at* SSRN: *https://ssrn.com/abstract=4106412* (retrieved from SSRN Elsevier database).

[352] *See e.g.,* Sergey Chernenko & Adi Sunderam, *Liquidity Transformation in Asset Management: Evidence From the Cash Holdings of Mutual Funds* (National Bureau of Economic Research (NBER) working paper no. w22391, Jul. 11, 2016), *available at https://ssrn.com/abstract=2807702.*

[353] *See supra* sections II.B and II.C.

[354] *See e.g.,* CSSF Paper, *supra* note 61; Dunghong Jin et. al., *Swing Pricing and Fragility in Open-End Mutual Funds* 35 Rev. Fin. Stud. (2022); Benjamin King & James Semark, *Reducing Liquidity Mismatch in Open-Ended Funds: A Cost-Benefit Analysis* (Bank of England working paper no. 975, Apr. 22, 2022), *available at https://ssrn.com/abstract=4106646.*

[355] *See* CSSF Paper, *supra* note 61; Claessens & Lewrick, *supra* note 61; ESMA, *Recommendation of the European Systemic Risk Board (ESRB) on Liquidity Risk in Investment Funds* (Nov. 12, 2020), *available at https://www.esma.europa.eu/document/recommendation-european-systemic-risk-board-esrb-liquidity-risk-in-investment-funds.*

[356] *See supra* section II.E.

[357] *See* Liquidity Rule Adopting Release, *supra* note 8.

''illiquid investments,'' which cannot be sold or disposed of in current market conditions in seven calendar days or less.

A fund may generally classify and review its investments by asset class unless the fund or adviser has information about any market, trading, and investment-specific considerations that it reasonably expects to affect significantly the liquidity characteristics of an investment compared to the fund's other portfolio holdings within that asset class.[358] Among other requirements, open-end funds generally are required to determine a minimum amount of highly liquid investments they should maintain. In addition, all open-end funds are prohibited from acquiring any illiquid investment if, immediately after the acquisition, the funds would have invested more than 15% of their net assets in illiquid assets; however, an investment in a liability position, such as a derivative, is not subject to this limitation. Under the current rule, a fund is required to identify the percentage of the fund's highly liquid investments that it has posted as margin or collateral in connection with derivatives transactions that the fund has classified as less than highly liquid.[359]

In classifying its investments under the current rule, a fund analyzes how quickly it can sell an investment without the sale ''significantly'' changing the investment's market value. Funds are required to determine two key inputs for this analysis. The first is the fund's reasonably anticipated trade size.[360] Reasonably anticipated trade size interacts with a fund's assessment of future redemption/subscription activity: for example, if the fund would anticipate selling a large position relative to trading volume, the sale may depress the price. The second is the determination of what constitutes a ''significant'' change in value. In both cases, the rule allows funds to make their own reasonable assumptions.

Rule 22e–4 currently requires that funds review their liquidity classifications at least monthly in connection with reporting on Form N–PORT, and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of their investments' classifications.[361] The current rule also requires a fund to monitor and take timely actions related to the liquidity of its investments, including changes to its liquidity profile. Specifically, the rule prohibits a fund from acquiring any illiquid investment, if immediately after the acquisition, the fund would have invested more than 15% of its net assets in illiquid investments that are assets.[362] In addition, the rule requires a fund to provide timely notice to its board, and to the Commission on Form N–RN, if the fund exceeds the 15% limit on illiquid investments, or if there is a shortfall of the fund's highly liquid investments below its highly liquid investment minimum for seven consecutive calendar days.[363]

Rule 22e–4 currently requires a fund to determine a highly liquid investment minimum if it does not primarily hold investments that are highly liquid. Funds that are subject to the highly liquid investment minimum requirement must determine a highly liquid investment minimum considering several factors, review this minimum at least annually, and adopt policies and procedures to respond to a shortfall of the fund's highly liquid investments below the minimum.[364] The current exclusion for funds that invest primarily in highly liquid investments provides some discretion to determine the level of highly liquid investments that constitutes primarily.

b. Swing Pricing

Currently, the rule allows open-end funds that are not excluded funds to use swing pricing. The required swing pricing policies and procedures provide that funds must adjust their NAV per share by a single swing factor or multiple factors that may vary based on the swing threshold(s) crossed once the level of net purchases into or net redemptions from such fund has exceeded the applicable swing threshold for the fund. The current rule permits a fund to determine its own swing threshold for net purchases and net redemptions, based on a consideration of certain factors the rule identifies.[365] The fund's swing factor is permitted to take into account only the near-term costs expected to be incurred by the fund as a result of net purchases or net redemptions on that day and may not exceed an upper limit of 2% of the day's NAV per share.

The determination of whether the fund's level of net purchases or net redemptions has exceeded the applicable swing threshold is permitted to be made based on receipt of sufficient information about the fund investors' daily purchase and redemption activity to allow the fund to reasonably estimate whether it has crossed the swing threshold with high confidence. This investor flow information may consist of individual, aggregated, or netted orders, and may include reasonable estimates where necessary.

In addition, rule 2a–4 requires, when determining the NAV, that funds reflect changes in holdings of portfolio securities and changes in the number of outstanding shares resulting from distributions, redemptions, and repurchases no later than the first business day following the trade date. This calculation method provides funds with additional time and flexibility to incorporate last-minute portfolio transactions into their NAV calculations on the business day following the trade date, rather than on the trade date.[366]

c. Reporting Requirements

Registered management investment companies and ETFs organized as unit investment trusts are required to file periodic reports on Form N–PORT about their portfolios and each of their portfolio holdings as of month-end.[367] Funds file these reports on a quarterly basis, with each report due 60 days after the end of a fund's fiscal quarter. Only information about the fund's holdings for the third month of each fiscal quarter is available to the public. In addition to the publicly available information on Form N–PORT, investors also have access to information about the holdings of ETFs, including actively managed ETFs, which generally are required to provide transparency into their portfolio holdings on a daily basis.[368] Many funds also provide monthly information about their portfolio holdings to third

[358] *See* rule 22e–4(b)(1)(ii)(A).

[359] *See* rule 22e–4(b)(1)(ii)(C). In addition, funds currently are also required to exclude highly liquid assets that are posted as margin or collateral in connection with non-highly liquid derivatives transactions when determining whether the fund primarily holds highly liquid assets. *See* rule 22e–4(b)(1)(iii)(B).

[360] Funds' current practices in classifying the liquidity of their investments and otherwise complying with rule 22e–4 may take consideration of the staff's Liquidity FAQs. *See, e.g., supra* note 79.

[361] *See* rule 22e–4(b)(1)(ii).

[362] *See* rule 22e–4(b)(1)(iv).

[363] *See* rule 22e–4(b)(1)(iv)(A) and rule 22e–4(b)(1)(iii)(A)(*3*); Form N–RN Parts B through D.

[364] *See* rule 22e–4(b)(1)(iii).

[365] *See supra* note 176.

[366] *See* Adoption of rule 2a–4 Defining the Term ''Current Net Asset Value'' in Reference to Redeemable Securities Issued by a Registered Investment Company, Investment Company Act Release No. 4105 (Dec. 22, 1964) [29 FR 19100 (Dec. 30, 1964)].

[367] For purposes of discussions of filing requirements on Form N–PORT, the term ''fund'' refers to registrants that currently are required to report on Form N–PORT, including open-end funds, registered closed-end funds, and ETFs registered as unit investment trusts, and excluding money market funds and small business investment companies.

[368] *See supra* note 289.

party data aggregators, generally with a lag of 30 to 90 days, which in turn make them available to the public for a fee.

Registered investment companies other than face amount certificate companies also report census-type information to the Commission annually on Form N–CEN, including information related to fund service providers and whether a fund engaged in swing pricing during the fiscal year and if so, what was the upper limit for the swing factor. The current definition of LEI in Forms N–PORT and N–CEN provides that, in the case where a financial institution does not have an assigned LEI, a fund should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.[369]

Item 6 of Form N–1A also requires disclosure of a fund's use of swing pricing if the fund chooses to use swing pricing. Specifically, these provisions require that a fund that uses swing pricing explains the fund's use of swing pricing, including its meaning, the circumstances under which the fund will use it, and the effects of swing pricing on the fund and investors, as well as the upper limit the fund has set on the swing factor. Open-end funds are also required to file Form N–RN with the Commission if more than 15% of the registrant's net assets are, or become, illiquid investments as defined in rule 22e–4 and if a registrant's holdings in assets that are highly liquid investments fall below its highly liquid investment minimum for more than 7 consecutive calendar days. The form is required to be filed within one business day of the occurrence of these events.

2. Overview of Certain Industry Order Management Practices

Mutual fund orders can be submitted to funds directly or via an intermediary. An order will be executed at a given day's NAV if an intermediary—rather than solely the fund, its designated transfer agent, or a registered securities clearing agency—receives the order by the fund's pricing time, typically 4 p.m. ET, unless an intermediary specifically established an earlier cut-off time for investor orders. In particular, a financial intermediary currently can submit an order that it received before 4 p.m. ET to a designated party after 4 p.m. ET for execution at that day's NAV.[370] A fund discloses in its prospectus its pricing time and that a purchase or redemption is effected at a price that is based on the next NAV calculation after the order is placed.[371] After a fund finalizes its NAV calculation for a day, it disseminates the NAV to pricing vendors, media, and intermediaries, typically between 6 p.m. ET and 8 p.m. ET. We understand that certain intermediaries use order-processing systems that require knowledge of a fund's NAV. In addition, certain investor orders may also require knowledge of a fund's NAV before the order is sent to the fund.[372] As a result, a fund does not receive certain orders until after the fund distributed its NAV. For example, most retirement plan recordkeepers currently do not process orders from investors until they receive a fund's NAV and funds typically receive orders from these intermediaries the next morning.

We understand that for orders submitted to funds by an intermediary, an intermediary may net orders to varying degrees before their submission to a fund, a practice known as omnibus accounting. In addition, intermediaries may submit one or more netted orders at a single time, or may submit netted orders in batches at different times. For example, if an intermediary does not submit orders until after it has received the fund's final price, it may submit a single order to the fund that reflects the net dollar amount or the number of fund shares to be purchased or redeemed across all investors that submitted orders through that intermediary. If an intermediary does not wait until the fund's final price is received, it may submit two orders: one order expressed in the net number of shares purchased or sold and one order expressed in the net amount of dollars purchased or sold. Other intermediaries may aggregate orders at finer levels, providing aggregate purchase and sale figures separately. While netting practices vary, they may generally save intermediaries money, to the extent that intermediaries incur per transaction costs when submitting orders to a fund.

Intermediaries may track investor orders to various degrees before they send the finalized orders to funds. As such, the processing time of investor order may vary depending on the tracking and netting process of an intermediary. For example, retirement accounts track holdings and trades at the level of individual participants. Each participant account typically has multiple sub accounts that are organized by contribution type or source (pretax, after-tax, employer match, profit sharing, and other). We understand that, at least according to some plan rules, compliance restrictions require plans to track an account according to contribution type or source. For example, we understand that in at least some 401(k) plans, the third party administrator or retirement plan recordkeeper receives participant trades at the participant account level, after which, trades must be pro-rated (usually done based on today's market value) and posted to each contribution type or source. The administrator or recordkeeper then aggregates all participant trades for a particular plan and sends them to the trustee/custodian. The trustee then posts the aggregated plan trades on a trust/custody system (*i.e.,* for mandatory plan reporting purposes). Most trust companies then aggregate all of their client trades at the asset level, generally to minimize trading or NSCC costs.

A significant portion of mutual fund orders is processed through NSCC's Fund/SERV platform. Within this platform, there exists a separate system that processes orders from defined contribution plans called Defined Contribution Clearance & Settlement (''DCC&S''). Fund/SERV for non-retirement clients allows firms to submit orders in currency, shares, or exchanges before knowing the NAV.[373] DCC&S, on the other hand, as a matter of practice does not initiate order processing until the recordkeeper/third party administrator receives NAVs, as well as daily and periodic distribution (dividend and capital gain) rates.[374]

We recognize that the current industry practices related to intermediaries' order submissions prevent funds from knowing their final net flows until later hours, which may be one reason why no funds in the U.S. have implemented the optional swing pricing. We also recognize that swing pricing has been employed in Europe, including by U.S.-based fund managers that also operate funds in Europe.[375] There can be various reasons why swing pricing has been successfully implemented in certain jurisdictions. For example, we understand that intermediary order submission practices in Europe differ from those in the U.S.,[376] allowing funds to have more complete flow information before funds' pricing time. Another factor that may contribute to successful implementation of swing pricing in Europe is that the

[369] *See* General Instruction E of proposed Form N–PORT and Instructions to Item G.1 of the Form N–CEN.

[370] We note that this practice differs from other jurisdictions. *See supra* note 225.

[371] *See* Item 11(a) of Form N–1A.

[372] *See supra* section II.C.3.d.

[373] *See https://www.dtcc.com/wealth-management-services/mutual-fund-services/fund-serv.*

[374] *Id.*

[375] *See supra* section I.B for a more detailed discussion about use of swing pricing in Europe.

[376] *See supra* note 225.

European mutual fund sector does not depend as much as the U.S. mutual fund sector on defined contribution retirement plans. According to ECB's investment fund statistics, as of Q2 2022, pension funds held approximately EUR 1.4 trillion (10%) in investment fund shares [377] out of 14.8 trillion in aggregate value of European investment fund shares issued.[378] This is in contrast to U.S. where 54% of all mutual fund assets were held in retirement accounts as of Q1 2022.[379] Further, according to one estimate, defined contribution retirement plans which, at least in the U.S., have certain transactions that require knowledge of NAV in order to be processed by an intermediary represent only 17% of Europe's total pension assets.[380]

3. Liquidity Externalities in the Mutual Fund Sector

As discussed above, the liquidity mismatch can lead to non-negligible trading costs (*e.g.,* spread or market impact costs) associated with selling the fund's less liquid portfolio investments in order to meet investor redemptions or buying portfolio investments in order to accommodate investor subscriptions. The magnitude of these costs can vary depending on market conditions, the liquidity of the underlying investments held in a fund's portfolio, and the size of funds' transactions in the market. Consequently, if investors transact at a NAV that does not account for ex-post trading costs, investors remaining in the fund have to bear these trading costs because they are ultimately reflected in the fund's future NAV.[381] Therefore, the value of shares held by non-transacting investors can be diluted due to the trading costs associated with the past trading activity of transacting fund investors, lowering the future returns of non-transacting fund shareholders.

We recognize that factors other than trading costs may contribute to dilution. For example, some funds may hold investments that do not have an active and robust secondary market (*e.g.,* high-yield bonds or municipal securities), making them opaque and difficult to accurately price in a timely manner, especially during times of market stress when some of these assets may stop trading. In such events, the last reported prices for these assets may be prices realized during pre-stress market conditions. As a result, the risk that the fund's NAV may be based on ''stale'' information if contemporaneous information about an asset's current value is unavailable or less reliable may increase. If a fund's NAV on a given date is based on such stale information, net redemptions at that NAV can dilute non-transacting fund shareholders when assets are eventually sold at prices that reflect their true, lower value.[382] Prior to the compliance date with the recent rule 2a–5,[383] which aims to improve fund valuation practices, the stale pricing phenomenon has been documented in fixed income funds, and has been found to contribute to strategic redemptions.[384] However, we recognize that while trading costs are strictly dilutive, pricing based on stale information can also result in accretion for non-transacting fund investors if realized sale prices are higher than prices that were based on stale information and used for the NAV calculation.

The stylized example illustrated in Figure 4 below shows how trading costs can dilute a fund that experiences net redemptions under two scenarios.[385] Under the first scenario (the dotted line), the fund is able to sell investments to accommodate redemptions prior to striking its NAV for the day and to reflect these trades as well as trading costs in the calculated NAV for that day.[386] This scenario is a theoretical benchmark that shows the minimum amount of dilution that must occur in order to accommodate redemptions. Under the second scenario (the solid line), the fund trades to accommodate redemptions after striking its NAV for the day. This scenario is generally the way U.S. funds currently accommodate investor redemptions, possibly because funds do not have complete order flow information before the end of the trading day.[387]

[377] *See* Aggregated Balance Sheet of the Euro Area Pension Fund Sector, Section 1.1.1, European Central Bank Statistical Data Warehouse, *available athttps://sdw.ecb.europa.eu/reports.do?node=1000006465.*

[378] *See* Aggregated Balance Sheet of Euro Area Investment Funds, Section 1.1.2, European Central Bank, Statistical Data Warehouse, *available at https://sdw.ecb.europa.eu/reports.do?node=1000003516.*

[379] *See infra* section III.B.4.ii.

[380] *See* Press Release, Cerulli Associates, *Europe's Defined Contribution Market Is Set to Keep Growing,* (Mar. 3, 2022), *available at https://www.cerulli.com/press-releases/europes-defined-contribution-market-is-set-to-keep-growing.*

[381] For example, suppose a fund is fully invested in an underlying asset which can be bought at $1.01 and sold at $0.99. If the NAV is struck at the ''mid,'' the fund's share price is $1, and that is what redeeming investors receive for each fund share redeemed. However, after paying the spread costs, the fund receives only $0.99 for each unit of the underlying asset that is sold to meet redemptions. The fund therefore needs to sell more of its underlying asset position relative to the size of the redemptions it experiences, reducing the assets held by non-transacting shareholders and the fund's subsequent NAV. For example, if 10% of the fund's investors redeem their shares at the NAV of $1, the fund needs to sell 10% / $0.99 = 10.1% of its underlying asset position to meet redemptions and pay the spread costs. This leaves the remaining 90% of fund shares held by non-transacting fund investors with 100% − 10.1% = 89.9% of the fund's prior asset position. Valued at the mid-price of $1, this reduces the fund's NAV to 89.9% / 90% = $0.999.

[382] We recognize that fund investors can also be diluted due to factors other than trading costs or stale pricing, such as market risk. Market risk can also result in accretion for non-transacting fund investors. For example, if a fund redeems shareholders at an NAV of $100 based on market prices at the time NAV is struck, but is then able to liquidate assets at a higher valuation on subsequent days due to changes in market prices, the value of shares held by non-transacting shareholders will increase beyond the increase due solely to the change in the value of the underlying investments held by the fund. While the value of the fund's holdings can go both up and down, such market risk amplifies the risk fund shareholders would otherwise experience. However, since market prices may be very difficult to forecast, the degree to which such dilution contributes to the first-mover advantage is unclear.

[383] The Commission adopted rule 2a–5 in Dec. 2020, and the compliance date for funds was Sept. 8, 2022. *See* Valuation Adopting Release, *supra* note 110.

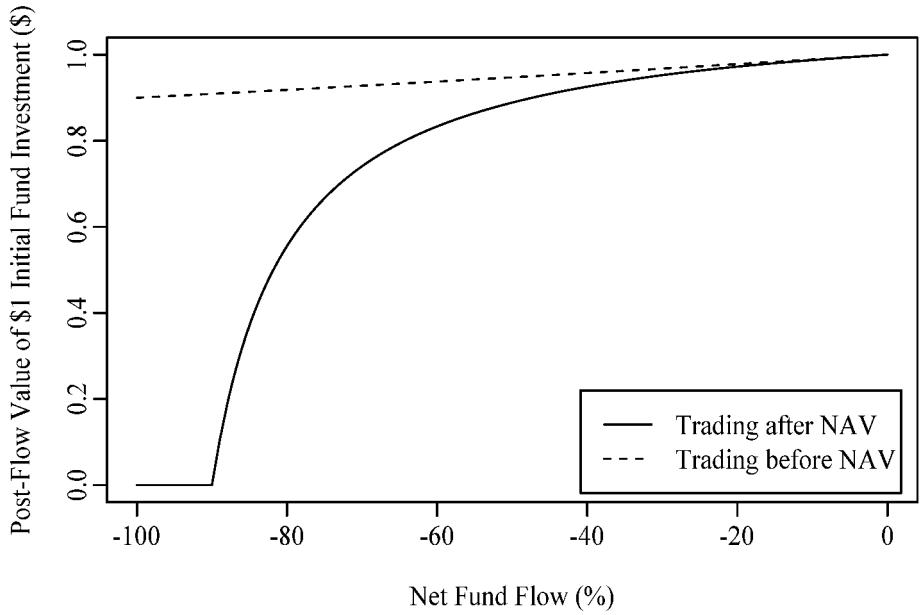
[384] *See, e.g.,* Jaewon Choi et. al., *Sitting Bucks: Stale Pricing in Fixed Income Funds,* 145 J. Fin. Econ. 296, no. 2, Part A, (Aug. 2022).

[385] The examples in the figure assume that a fund holds a portfolio of assets whose value is constant and that liquidating any portion of the portfolio to meet redemptions incurs a haircut of 10%. By assuming that the value of the asset does not change, the examples isolate the effect of trading costs on dilution from the effects of other sources of dilution such as market risk or stale NAVs. *See supra* note 384. The haircut assumption in these stylized examples is used purely for illustrative purposes; haircuts on most assets held by open-end funds generally tend to be smaller.

[386] We recognize that under the current rule 2a–4 under the Investment Company Act, funds are permitted to reflect changes in their portfolio holdings in the first NAV calculation following the trade date and, thus, are not required to include today's trades in the calculation of today's NAV.

[387] We recognize that there may be other operational considerations that result in this common practice. Therefore, even if a fund has complete order flow information before the trading day is over, it may choose to trade at a later date to accommodate today's redemptions.

Figure 4: Dilution Effects of Different Trading Timelines over 1 Day.



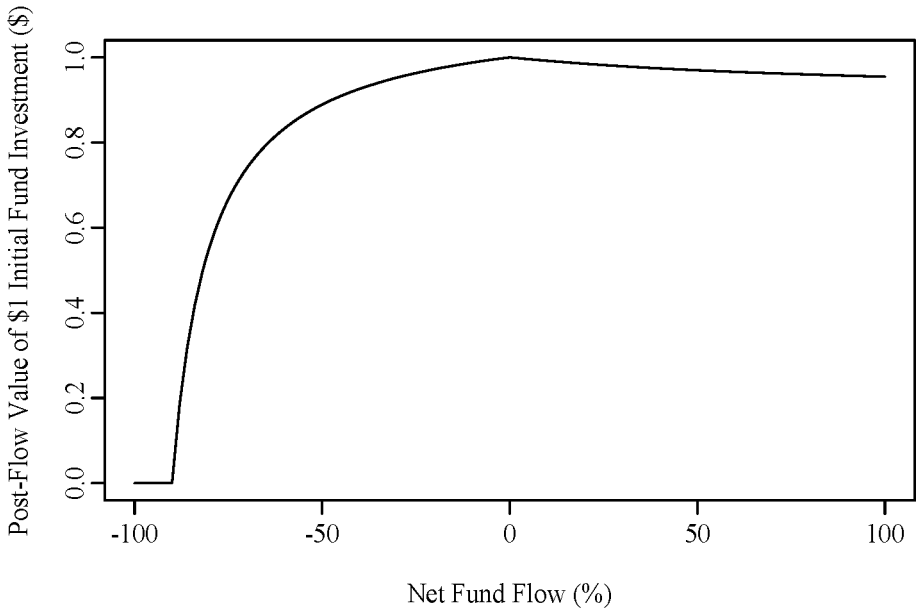
While these two scenarios result in similar dilution for lower levels of redemptions, larger levels of redemptions can contribute nonlinearly to higher fund dilution under the second scenario.[388] This occurs because increasing redemptions result in increasing trading costs for the fund. These trading costs are borne solely by shareholders remaining in the fund, the number of which decreases as more investors redeem. Under this hypothetical scenario, the fund eventually runs out of assets to sell and is unable to meet further redemptions. In contrast, under the theoretical benchmark, the trading costs are borne by both redeeming investors and investors remaining in the fund; therefore, the shareholder base absorbing the trading costs remains constant regardless of the extent of redemptions. Accordingly, dilution increases proportionally to the amount of redemptions and the corresponding increase in trading costs.

Figure 5 removes the theoretical benchmark scenario illustrated in Figure 4 and focuses on how dilution affects both redemptions and subscriptions when trading to accommodate investor transactions occurs after the fund's NAV has been struck.[389]

[388] To the degree that funds determine their NAV using holdings as of the prior trading day, such practices may also contribute to dilution.

[389] To model the effect of net subscriptions, the example assumes that any new cash received by the fund is invested in the same underlying portfolio of investments, and that doing so incurs the same 10% spread cost. Redemptions are represented as negative net flows to the left of 0 on the x-axis and subscriptions are represented as positive net flows to the right of 0 on the x-axis. We recognize that dilution due to subscriptions does not occur until a fund incurs costs investing the subscription proceeds. Therefore, a fund that holds its subscription proceeds in cash indefinitely will not experience dilution.

Figure 5: The Dilutive Effects of Redemptions and Subscriptions.



The theoretical example in Figure 5 illustrates that the dilutive effect of trading costs is asymmetric for redemptions and subscriptions: while redemptions and subscriptions are similarly dilutive for small levels of net flows, their effects are different for more extreme levels of net flows. This occurs because a fund is not able to redeem 100% of its shares due to the non-linear impact of trading costs related to meeting redemptions being absorbed solely by investors remaining in the fund, as described above. In contrast, the trading costs related to subscriptions are shared by both new subscribers and existing fund shareholders, which limits the maximum amount of dilution that can occur due to subscriptions.

The simplified examples above illustrate that non-transacting fund investors are exposed to the dilution risk that arises from accommodating redemptions and subscriptions of transacting fund investors. Incentives of mutual fund managers may not be sufficient to alleviate this risk for various reasons. For example, it is possible that investors do not have enough information to fully understand the nature of the risk they are exposed to by investing in funds that hold less liquid investments. In addition, investors in a fund may have varying preferences for risk and return, with some investors preferring investments with higher expected returns. Although investments that face increased liquidity risk may deliver such higher returns, the returns of funds that hold these investments may also be subject to greater amounts of volatility.[390] A fund manager may choose to hold investments that are less liquid because of their potentially higher returns, or because they offer exposure to a different set of risks (*e.g.,* some investments may be less correlated with the market) than other investments in the fund's portfolio. Because higher returns tend to be associated with future inflows, it is possible that a fund manager's incentives are tilted towards earning higher returns relative to the risk they are taking on (though the opposite is also possible).[391] In particular, to the extent that holding less liquid investments may increase a fund's return (*e.g.,* during normal market conditions) and consequently its AUM, which determine the amount of management fees a fund manager collects, the fund manager may choose to over-invest in such assets,[392] not accounting for potential future trading costs these investments may impose on a fund if the market conditions change, which would result in a higher dilution risk for the fund's investors. Investors may currently lack sufficiently granular information to monitor for this possibility and to discipline the extent to which a fund manager exposes the fund's shareholders to dilution risk.

Investor dilution associated with illiquidity of funds' underlying investments may create a first-mover advantage that may lead to increased mutual fund redemptions similar to bank runs.[393] Such redemptions have been observed prior to the adoption of the current liquidity rule.[394] More specifically, fund investors may have an incentive to redeem their shares quickly if they believe that other investors will also redeem their shares and, by doing so, these other investors will dilute the fund's non-transacting shareholders. This first-mover advantage effect in mutual funds has been documented [395]

[390] *See, e.g.,* Kuan-Hui Lee, *The World Price of Liquidity Risk,* 99 J. Fin. Econ. 136 (2011). *See also* Viral V. Acharya & Lasse H. Pedersen, *Asset Pricing with Liquidity Risk,* 77 J. Fin. Econ. 375 (2005). *See also* Lubos Pastor & Robert Stambaugh, *Liquidity Risk and Expected Stock Returns,* 111 J. Pol. Econ. 642 (2003).

[391] In an open-end fund context, fund inflows are sensitive to fund returns, which can incentivize fund managers to take on more risk. *See, e.g.,* Jaewon Choi & Mathias Kronlund, *Reaching for Yield in Corporate Bond Mutual Funds,* 31 Rev. Fin. Stud. 1930 (2018); Jon A. Fulkerson et. al., *Return Chasing in Bond Funds,* 22 J. Fixed Income, 90 (2013); Ferreira, Miguel A., et al., *The Flow-Performance Relationship around the World,* 36 J. Banking & Fin. 1759, no. 6 (2012).

[392] *See, e.g.,* Linlin Ma et. al., *Portfolio Manager Compensation in the U.S. Mutual Fund Industry,* 74(2) J. Fin. 587 (2019). *See also* Abhishek Bhardwaj et. al., *Incentives of Fund Managers and Precautionary Fire Sales* (Oct. 29, 2021), *available at https://ssrn.com/abstract=3952358.*

[393] Liquidity mismatch between assets and liabilities is a mechanism that creates bank run dynamics that is well-accepted in the academic literature. *See, e.g.,* Douglas Diamond & Philip Dybvig, *Bank Runs, Deposit Insurance, and Liquidity,* 91 J. Pol. Econ., 401 (1983).

[394] *See* Third Avenue Trust and Third Avenue Management LLC; Notice of Application and Temporary Order, Investment Company Act Release No. 31943 (Dec. 16, 2015). *See also* note 348.

[395] *See* Qi Chen et. al., *Payoff Complementarities and Financial Frailty: Evidence From Mutual Fund Outflows,* 97 J. Fin. Econ. 239 (2010). *See also* Itay Goldstein et. al., *Investor Flows and Fragility in Corporate Bond Funds,* 126 J. Fin. Econ. 592 (2017);

Continued

and studied as a mechanism for runs on mutual funds in the academic literature.[396] In addition, it has been shown that the effect of the first-mover advantage may be larger for funds that hold less liquid investments.[397] While the academic literature on mutual fund runs generally relies on an exogenous mechanism to generate initial redemptions from a fund or relies on frictions such as an inability of a fund to raise capital and exogenous shocks such as negative fund returns, the results may extend to trading costs to the degree that dilution due to trading costs may reduce subsequent fund returns, which would trigger runs in these models. At the same time, we recognize that while dilution risk arising from trading costs can create incentives for early redemptions, redemptions may also occur for reasons unconnected to the pooled vehicle nature of the fund. For example, a recent working paper [398] concludes that the behavior of mutual fund investors is similar to that of direct investors with overlapping holdings, and suggests that systemic implications of mutual fund investors' activities are not necessarily due to the liquidity transformation feature of the mutual fund structure, but rather to the fact that mutual funds' investors compete for finite asset market liquidity when they decide to sell assets.

Mutual fund shareholders' transactions may also affect markets for funds' underlying portfolio holdings. Academic research suggests that redemption-induced sales of securities by mutual funds can create price pressure in underlying markets which may result in a fire-sale for these securities.[399] Two studies have constructed measures of mutual fund outflow-induced price pressure on various securities that are widely-used in the academic literature.[400] Subsequent studies use these price impact measures and claim that fire sales induced by investor redemptions hurt peer funds' performance and flows, leading to further asset sales that have a negative price impact.[401] Another paper suggests that redemptions from mutual fund that hold less liquid investments may contribute further to already existing poor market conditions by putting further downward pressure on prices of illiquid stocks.[402] In addition, one paper suggests that the exposure of stocks to fire-sale risk is bigger when mutual funds represent a larger share of the stock's owners.[403] Moreover, academic research also documents the potential effect of mutual fund flows on market-wide return volatility,[404] on a wide array of corporate decisions, [405] on the choices of ETF security baskets, [406] and on sell-side analysts' recommendations on stocks subject to mutual-fund flow-driven stock mispricings.[407] However, several recent studies argue that the aforementioned price impact measures are biased and that with the removal of this bias many established in the prior literature results above no longer hold.[408] Notwithstanding, while we recognize that there is an ongoing debate in the academic literature as to the size of these effects, the literature does point to a potential link between mutual fund flows and prices in the underlying markets.

We recognize that the proposed rules may not address all of the mechanisms that amplify dilution in the mutual fund sector, such as system-wide market stress, misaligned incentives of fund managers and investors, or stale information used for pricing of funds' portfolio holdings. However, even if these dilution-amplification

Yiming Ma et. al., *Bank Debt Versus Mutual Fund Equity in Liquidity Provision* (working paper, May 29, 2020), *available at https://ssrn.com/abstract=3489673;* Luis Molestina et. al., *Burned by Leverage? Flows and Fragility in Bond Mutual Funds* (European Central Bank (ECB) working paper no. 20202413, May 19, 2020) *available at https://ssrn.com/abstract=3605159* (retrieved from SSRN Elsevier database); Michael Feroli et. al., *Market Tantrums and Monetary Policy* (Chicago Booth Research Paper no. 14–09, Mar. 15, 2014), *available at https://ssrn.com/abstract=2409092* (retrieved from SSRN Elsevier database).

[396] *See e.g.,* Yao Zeng, *A Dynamic Theory of Mutual Fund Runs and Liquidity* (working paper no. 42, Apr. 2017), *available at https://ssrn.com/abstract=2907718* (retrieved from SSRN Elsevier database). *See also* Stephen Morris et. al., *Redemption Risk and Cash Hoarding by Asset Managers,* 89 J. Monetary Econ. 71 (2017); Yiming Ma et. al., *Mutual Fund Liquidity Management, Transformation and Reverse Flight to Liquidity* (working paper, Jul. 29, 2020), *available at https://ssrn.com/abstract=3640861(retrieved fromSSRNElsevierdatabase);* and Philipp König & David Pothier, *Safe but Fragile: Information Acquisition, Liquidity Support and Redemption Runs,* J. Fin. Intermediation (in press, corrected proof Dec. 15, 2020).

[397] For example, one paper argues that fund investors' behavior is affected by the expected behavior of other investors in the fund and finds that funds with less liquid assets (where this investor effect is stronger) exhibit stronger sensitivity of outflows to bad past performance than funds with more liquid assets. *See* Qi Chen et. al., *Payoff Complementarities and Financial Frailty: Evidence From Mutual Fund Outflows,* 97 J. Fin. Econ. 239 (2010). *Also see* Meijun Qian and Başak Tanyeri, *Litigation and Mutual-Fund Runs,* 31 J Fin. Stability 119, (2017); and Sirio Aramonte et. al., *Measuring the Liquidity Profile of Mutual Funds* (FEDS working paper no. 2019–55, Oct. 22, 2019), *available at https://ssrn.com/abstract=3473039* (retrieved from SSRN Elsevier database).

[398] *See* Christof W. Stahel, *Strategic Complementarity Among Investors with Overlapping Portfolios* (working paper, May 1, 2022), *available at https://ssrn.com/abstract=3952125* (retrieved from SSRN Elsevier database).

[399] *See e.g.,* Shiyang Huang et. al., *Does Liquidity Management Induce Fragility in Treasury Prices: Evidence From Bond Mutual Funds* (Dec. 30, 2021), *available at* https://ssrn.com/abstract=3689674 (retrieved from SSRN Elsevier database). *See also* Hao Jiang et. al., *Does Mutual Fund Illiquidity Introduce Fragility Into Asset Prices? Evidence From the Corporate Bond Market,* 143 J. Fin. Econ. 277 (2021); Joshua D. Coval & Erik Stafford, *Asset Fire Sales (and Purchases) in Equity Markets, 86 J. Fin. Econ. 479,* no. 2 (2007); Donald J. Berndt et. al., *Using Agent-Based Modeling to Assess Liquidity Mismatch in Open-End Bond Funds,* Summer Sim '17: Proceedings of the Summer Simulation Multi-Conference (Society for Computer Simulation International, San Diego, CA) (Jul. 2017); Valentin Haddad et. al., *When Selling Becomes Viral: Disruptions in Debt Markets in the COVID–19 Crisis and the Fed's Response, 34 Rev. Fin. Stud. 5309,* no.11 (2021).

[400] *See* Coval & Stafford, *supra. Also see* Alex Edmans et. al., *The Real Effects of Financial Markets: The Impact of Prices on Takeovers,* 67 J. Fin. 933 (2012).The constructed measures exploit the idea that large investor redemptions place pressure on mutual funds to sell portfolio holdings, and if these sales are sufficiently large, the funds' liquidity needs may put downward pressure on prices that is unrelated to the fundamental value of the underlying stocks.

[401] *See e.g.,* Pekka Honkanen & Daniel Schmidt, *Learning From Noise? Price and Liquidity Spillovers Around Mutual Fund Fire Sales,* 12(2) Rev. Asset Pricing Stud. 593 (Jun. 2022); Antonio Falato et. al., *Fire-Sale Spillovers in Debt Markets, 76 J Fin. 3055* no. 6 (2021).

[402] *See* Azi Ben-Rephael, Flight-to-Liquidity, Market Uncertainty, and the Actions of Mutual Fund Investors, 31 J. Fin. Intermediation 30 (2017).

[403] *See* George O. Aragon & Min S. Kim, *Fire Sale Risk and Expected Stock Returns* (Mar. 11, 2022), *available at https://ssrn.com/abstract=3663567* (retrieved from SSRN Elsevier database).

[404] *See e.g.,* Charles Cao et. al., *An Empirical Analysis of the Dynamic Relationship Between Mutual Fund Flow and Market Return Volatility,* 32 J. Banking & Fin. 2111, no. 10 (2008).

[405] *See e.g.,* Alex Edmans, *supra.* The authors find that mutual fund investor flows lead to pressure on the price of underlying securities, which may in turn affect the probability of takeover of the firm issuing the security. *Also see* Derrien, François et. al., *Investor Horizons and Corporate Policies,* 48 J. Fin. & Quantitative Analysis 1755 no. 6 (2013). *Also see* Norli, Øyvind et. al., *Liquidity and Shareholder Activism, 28 Rev. Fin. Stud. 486* (2015). *Also see* B. Espen Eckbo et. al., *Are Stock-Financed Takeovers Opportunistic?* 128 J. Fin. Econ. 443 (2018).

[406] *See* Han Xiao, *The Economics of ETF Redemptions* (Apr. 10, 2022), *available at https://ssrn.com/abstract=4096222* (retrieved from SSRN Elsevier database).

[407] *See* Johan Sulaeman & Kelsey D. Wei, *Sell-Side Analysts and Stock Mispricing: Evidence From Mutual Fund Flow-Driven Trading Pressure,* 65 Mgmt. Sci. 5427 no. 11 (2019).

[408] *See* Elizabeth Berger, *Selection Bias in Mutual Fund Fire Sales* (Apr. 18, 2021), *available at https://ssrn.com/abstract=3011027* (retrieved from SSRN Elsevier database). *See also* Malcolm Wardlaw, *Measuring Mutual Fund Flow Pressure as Shock to Stock Returns,* 75(6) J. Fin. 3221 (2020). *See also* Aleksandra and Rüdiger Weber, Money in the Right Hands: The Price Effects of Specialized Demand (Jan. 27, 2022), *available at https://ssrn.com/abstract=4022634* (retrieved from SSRN Elsevier database). *Also see* Simon Schmickler, *Identifying the Price Impact of Fire Sales Using High-Frequency Surprise Mutual Fund Flows* (Jul. 8, 2020) *available at https://ssrn.com/abstract=3488791* (retrieved from SSRN Elsevier database).

mechanisms were not present, several factors may inhibit mutual fund managers' ability to allocate trading costs to transacting investors by using currently available swing pricing. First, as discussed above, funds generally do not have complete information regarding their order flows at the time the NAV is struck, which may restrict the ability to operationalize swing pricing. These U.S.-market specific operational impediments cannot be mitigated by any single fund, which presents a collective action problem. Second, even if funds were currently able to obtain complete flow data prior to striking their NAVs, funds may be hesitant to implement swing pricing to the extent that some investors are averse to bearing the full costs of their transactions via swing pricing, even if it is in the best interest of fund shareholders overall, or because investors in U.S. funds are unfamiliar with swing pricing.[409] In addition, there may be a stigma attached to being the first fund to implement swing pricing. To the extent that such a stigma effect is present in relation to swing pricing, it may deter investors from choosing funds that could implement swing pricing under the optional approach, and that could be a reason why no fund currently chooses to implement swing pricing. Finally, even where fund managers are willing and able to employ liquidity risk management tools, they may not be able to forecast accurately the extent to which episodes of market stress can create challenges for mitigating dilution and meeting shareholder redemptions.[410]

4. Affected Entities

a. Registered Investment Companies

The proposed amendments would mainly affect open-end funds registered with the Commission that are ETFs and mutual funds, excluding money-market funds (hereafter ''mutual funds''). Based on Form N–CEN filing data as of December 2021, we estimate that there are 11,488 of such funds that hold approximately $26 trillion in net assets.[411] Among these, there are 9,043 mutual funds that hold approximately $21 trillion in net assets and 2,445 ETFs that hold approximately $5.1 trillion in net assets.[412] In addition, there are 1,650 mutual funds of funds that hold approximately $3.1 trillion in net assets, [413] as well as 150 feeder funds structured as ETFs that hold $0.6 trillion in net assets.[414]

Different parts of the proposal would affect these two subsets of open-end funds differently. In particular, the proposed amendments to the liquidity management program and certain reporting requirements would affect both mutual funds and ETFs and the proposed hard close and swing pricing requirements and related reporting requirements would affect only mutual funds that are not feeder funds.

We estimate that there are 12,153 funds currently required to file reports on Form N–PORT [415] and there are 2,754 registrants required to file reports on Form N–CEN that would be affected by the proposed reporting requirements.[416] Among these, we estimate that the proposed changes to the reporting requirements on Form N–PORT would also affect 660 closed-end funds and 5 ETFs registered as unit investment trusts with assets of $0.4 trillion and $0.7 trillion, respectively.[417]

i. Open-End Fund Characteristics

Table 2 below shows the number and total assets of open-end funds by fund type.[418] The largest share (by assets) of funds (approximately 63.5% of assets held by all open-end funds) that would be affected by the proposal are equity funds, including U.S. and international equity funds. The second largest type of funds affected by the proposal is taxable bond funds, which on aggregate holds approximately 19.6% of all open-end fund assets.

TABLE 2—NUMBER OF AFFECTED FUNDS BY FUND TYPE, AS OF DECEMBER 2021 [419]

Category	ETFs [1]			Other open-end (not including MMFs)			Total		
	# of funds	Assets, $ trln	% of Total assets	# of funds	Assets, $ trln	% of Total Assets	# of funds	Assets, $ trln	% of Total assets
Allocation	90	$0.03	0.37	377	$1.58	7.59	467	$1.61	5.72
Alternative	193	0.01	0.21	167	0.13	0.64	360	0.15	0.53

[409] We recognize, however, that open-end funds in other jurisdictions have successfully implemented swing pricing, as discussed in section I.B and accompanying notes 59–63.

[410] *See supra* section I.B for a discussion of how market stress events in Mar. 2020 caused some funds to explore the potential of various emergency relief actions due to the combination of abnormally large redemptions and deteriorating liquidity in markets for underlying fund investments.

[411] We use information reported on Form N–CEN to the Commission for each fund as of Dec. 2021, incorporating filings and amendments to filings received through May 15, 2022. Net assets are monthly average net assets during the reporting period identified on part C.19.a of Form N–CEN, and validated with Bloomberg (for ETFs). Current values are based on the most recent filings and amendments, which are based on fiscal years and are therefore not synchronous. We exclude money market funds identified in Item C.3.g of the Form N–CEN from the count of the affected open-end funds. These exclusions were also applied to the estimates that follow.

We note that the submission on the Form N–CEN is required on a yearly basis. Therefore, these estimates do not include newly established funds that have not completed their first fiscal year and, therefore, have not filed the Form N–CEN yet, as well as they do not account for the funds that have been terminated since the last Form N–CEN was filed. Therefore, the estimates for the number of funds and their net assets may be over- or under-estimated.

[412] *See id.* ETFs are identified on Form N–CEN, Item C.3.a.i and include 781 in-kind ETFs with average total net assets of $1.2 trillion. UIT ETFs and exchange-traded managed funds are excluded from ETF totals. Mutual funds are identified as those funds that are not identified as ETFs or money market funds.

[413] Funds of funds are identified in Item C.3.e. A fund of funds means a fund that acquires securities issued by any other investment company in excess of the amounts permitted under paragraph (A) of section 12(d)(1) of the Act (15 U.S.C. 80a–12(d)(1)(A)), but does not include a fund that acquires securities issued by another investment company solely in reliance on rule 12d1–1 under the Act (CFR 270.12d1–1). We note that at most 29 closed-end funds of funds with net assets of $10 billion may be affected by the proposal indirectly, to the extent that they hold shares of open-end funds.

[414] *See* note 411. Master-feeder fund means a two-tiered arrangement in which one or more funds (each a feeder fund) holds shares of a single fund (the master fund) in accordance with section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)) or pursuant to exemptive relief granted by the Commission. *See* Instruction 4 to Item C.3 of Form N–CEN. Feeder funds are identified on Form N–CEN, Item C.3.f.ii.

[415] *See infra* note 540 and accompanying text.

[416] *See infra* note 547 and accompanying text.

[417] Closed-end investment companies are identified on Form N–CEN, Item B.6.b. Unit investment trust (UIT) ETFs are funds of Form N–8B–2 registrants identified in Item B.6.g. which are also reported in Item E.

[418] We note that these statistics are estimated with the Morningstar data; therefore, there is a discrepancy in the number of funds estimated based on the Form N–CEN and the number of funds estimated based on the Morningstar data. This discrepancy exists for two reasons. First, Morningstar data may not include all open-end funds due to its voluntary submission nature; as such, the number of funds based on the Morningstar data may be under-estimated. Second, funds may submit their data to Morningstar on a monthly data, while the submission on the Form N–CEN is required on a yearly basis. Therefore, the number of funds estimated based on the Form N–CEN may be under-estimated because it may not include new funds that haven't filed the Form yet.

[419] Morningstar data, excluding funds of funds, feeder funds, and money market funds. 5 UIT ETFs, with assets of approximately $0.7 trillion are included in the Morningstar ETF totals.

TABLE 2—NUMBER OF AFFECTED FUNDS BY FUND TYPE, AS OF DECEMBER 2021 [419]—Continued

Category	ETFs [1]			Other open-end (not including MMFs)			Total		
	# of funds	Assets, $ trln	% of Total assets	# of funds	Assets, $ trln	% of Total Assets	# of funds	Assets, $ trln	% of Total assets
Bank Loan	7	0.02	0.26	53	0.10	0.47	60	0.12	0.42
Commodities	116	0.14	1.88	28	0.03	0.16	144	0.17	0.60
Intern. Equity	507	1.10	15.20	1,108	3.18	15.30	1,615	4.29	15.27
Miscellaneous	246	0.14	1.86	90	0.01	0.03	336	0.14	0.51
Municipal Bond	68	0.08	1.13	546	0.98	4.71	614	1.06	3.79
Nontrad. Equity	33	0.02	0.23	92	0.03	0.13	125	0.04	0.15
Sector Equity	481	0.84	11.62	398	0.63	3.02	879	1.47	5.24
Taxable Bond [2]	426	1.17	16.06	1,268	4.32	20.77	1,694	5.49	19.55
US Equity	684	3.72	51.18	1,952	9.82	47.18	2,636	13.54	48.22
Total	2,851	7.26	100	6,079	20.82	100	8,930	28.08	100

1. Includes ETFs that are UITs.
2. Excludes bank loan funds.

The proposal would disproportionally affect open-end funds that hold less liquid investments. Among the investments classified by open-end funds in December 2021, $27.3 trillion of all investments were reported as highly liquid, $441 billion of all investments were reported as moderately liquid, $276 billion of all investments were reported as less liquid, and $198 billion of all investments were reported as illiquid. Among the investments reported as less liquid, 71% ($194 billion) are bank loan interests, 10% ($26 billion) are debt securities, 9% ($25 billion) are equities, and 6% ($17 billion) are mortgage-backed securities. [420] Therefore, we believe that the proposal to remove the less liquid category would primarily affect open-end funds that hold bank loan interests. As of December 2021, there are 746 open-end funds that classified approximately $204 billion in bank loan interests, which represents approximately 0.7% of all open-end fund investments classified, [421] and makes up approximately 15% of the bank loan market. [422] Among these bank loan interests, 95% were reported as less liquid. We recognize that some open-end funds have large concentrations in bank loan interests and are typically referred to as ''bank loan'' funds. As shown in Table 2 above, as of December 2021, there are 53 bank loan funds that hold approximately 0.5% of total open-end fund assets.

The proposal would also disproportionally affect open-end funds that hold investments whose fair value is measured using an unobservable input that is significant to the overall measurement. [423] We estimate that, as of December 2021, 2,006 open-end funds reported $76.5 billion in investments that were valued using unobservable inputs that are significant to the overall measurement, which is approximately 0.27% of all open-end fund assets. [424] Among these, $16.9 billion were classified as highly liquid investments and $2.1 billion as moderately liquid investments by 541 funds. [425] In addition, $7.8 billion were classified into less liquid category and $49.8 billion were classified into the illiquid category.

ii. Open-End Fund Flows

To inform our understanding of historical redemption and subscription patterns, we analyzed daily fund flow data during the period between January 2009 and December 2021. [426] Table 3 below shows net fund flow percentiles pooled across time and funds. Figure 6 below shows the time series of daily fund flow percentiles for equity and fixed income funds, showing 1st, 5th, 50th, 95th, and 99th percentiles of fund flows for each day. Similarly, Figure 7 shows the time series of weekly fund flow percentiles for equity and fixed income funds, showing the 1st, 5th, 50th, and 95th, and 99th percentiles of fund flows for each week.

Table 3 shows, for example, that weekly outflows exceed roughly 7% in one out of one hundred fund-week observations and that weekly outflows exceed 1.3% in five out of one hundred observations. [427] To help put these figures in context statistically, we see that the fund flow distribution exhibits heavy left (and right) tails relative to the normal distribution. That is, events such as outflows of 6.6% should occur far fewer than one out of one hundred times if fund flows were normally distributed. Similarly, events such as inflows of 8.3% should occur far fewer than one out of one hundred times if fund flows are normally distributed.

Whereas Table 3 looks at percentages across all funds and days or weeks, Figure 6 shows the cross-section of daily fund flows at each point in time and breaks up the fund universe into fixed income and equity funds. Figure 6 shows that the dispersion of flows exhibits significant variation; there are times when percentiles widen out considerably, even during non-stressed market conditions. [428] Times of

[420] In addition to these, a smaller number of other categories are classified as less liquid investments.

[421] Source: Form N–PORT. Loan investments are identified via Form N–PORT, Item C.4.a and liquidity classifications are from Form N–PORT, Item C.7.

[422] *See* Leveraged Loan Primer, supra note 99 (stating that the S&P/LSTA Loan Index, which is used as a proxy for market size in the U.S., totaled approximately $1.375 trillion as of Feb. 2022).

[423] *See supra* note 111.

[424] Source: Form N–PORT. The fair value hierarchy for an investment are identified on Form N–PORT, Item C.8., and liquidity classifications are identified on Form N–PORT, Item C.7. We observed that the investments classified as highly liquid that were Level 3 investments primarily were mortgage-backed securities.

[425] *Id.*

[426] Data source: Morningstar Fund Flow Data. We restrict our analysis to funds that have a ''Global Broad Category Group'' of Equity or Fixed Income because we believe the data for other types of funds (*e.g.,* Alternative and Commodity funds) contain more extreme values that may be spurious. We restrict our analysis to include fund flow data starting 2009. While some Morningstar data is available for 2008, we have not included that data in our historical flow analyses because of gaps in the 2008 data (*e.g.,* the 2008 dataset covers a more limited set of funds). We trim outliers from the dataset by restricting outflows from a fund to be no more than 100% of AUM and inflows to be no more than 300% of AUM on a given day or 1000% of AUM for a given week when analyzing weekly flows. For daily flows, we determine the flow percentage by dividing dollar flows on date T by total net assets on date T. This assume that total net assets on a given day do not account for that day's flows. Similarly, for weekly flows, we aggregate by business week, summing dollar flows over the course of the week and dividing by the first available day's net assets in that week. Making the opposite assumption, that total net assets on a given day do incorporate that day's flows, does not significantly alter our results.

[427] *See supra* note 426 for a description of how the data set was constructed.

[428] *See id.* Daily flows for equity funds have notable seasonal spikes that tend to occur during the month of Dec., independent of market stress events. These flow spikes may be attributable to any year-end rebalancing of investors from, *e.g.,* underperforming funds into outperforming funds;

substantial flows into bond funds do not necessarily correspond to flows into equity funds. What this implies is that looking at the distributions separately may reveal greater dispersion, as flows across the sectors diversify each other. For equities, a number of time periods exhibit cross-sections in which the lowest percentile of funds have daily outflows in excess of 10%. For bond funds, flows of this magnitude are rarer. However, such episodes do occur for bond funds and correspond with times of broader stress in fixed income markets. Similarly, Figure 7, which shows weekly flows, also shows that outflows in the lowest percentile of funds of below 10% are not uncommon, both in bonds and in equities.[429] For fixed income funds, both the daily and weekly flow plots in Figures 6 and 7 show that during March 2020, some funds experienced significant outflows, consistent with the aggregate monthly outflows discussed in section I.B.

TABLE 3—POOLED FUND FLOWS, AS A % OF NET ASSETS

	Percentile				
	1st	5th	50th	95th	99th
Daily fund flows	−1.60	−0.30	0	0.40	2
Weekly fund flows	−6.60	−1.30	0	1.80	8.30

BILLING CODE 8011–01–P

to year-end distributions that are characterized as flows by Morningstar and subsequently re-invested; or to spurious or errant data points. We believe that latter is less likely because these seasonal spikes are still evident when the data is aggregated to the weekly level in Figure 7. To the extent seasonal fund flow spikes are driven by predictable events such as, *e.g.,* capital gains distributions, fund managers are more likely to be able to plan for any impacts of such events on a fund, include funds that hold investments with lower liquidity.

[429] *See id.*

Figure 6. Daily Equity and Fixed Income Fund Flows over Time, % of Net Assets.

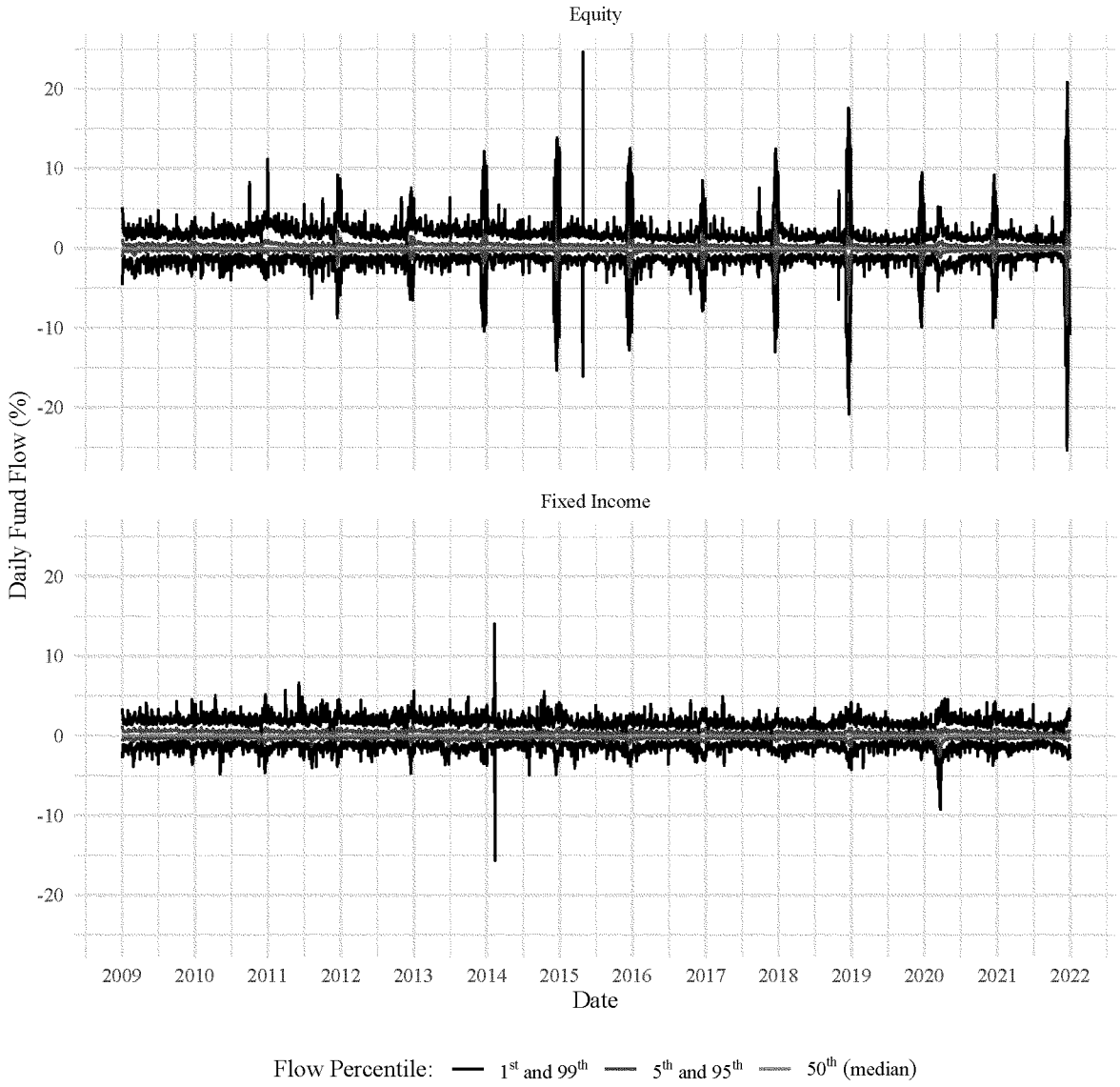
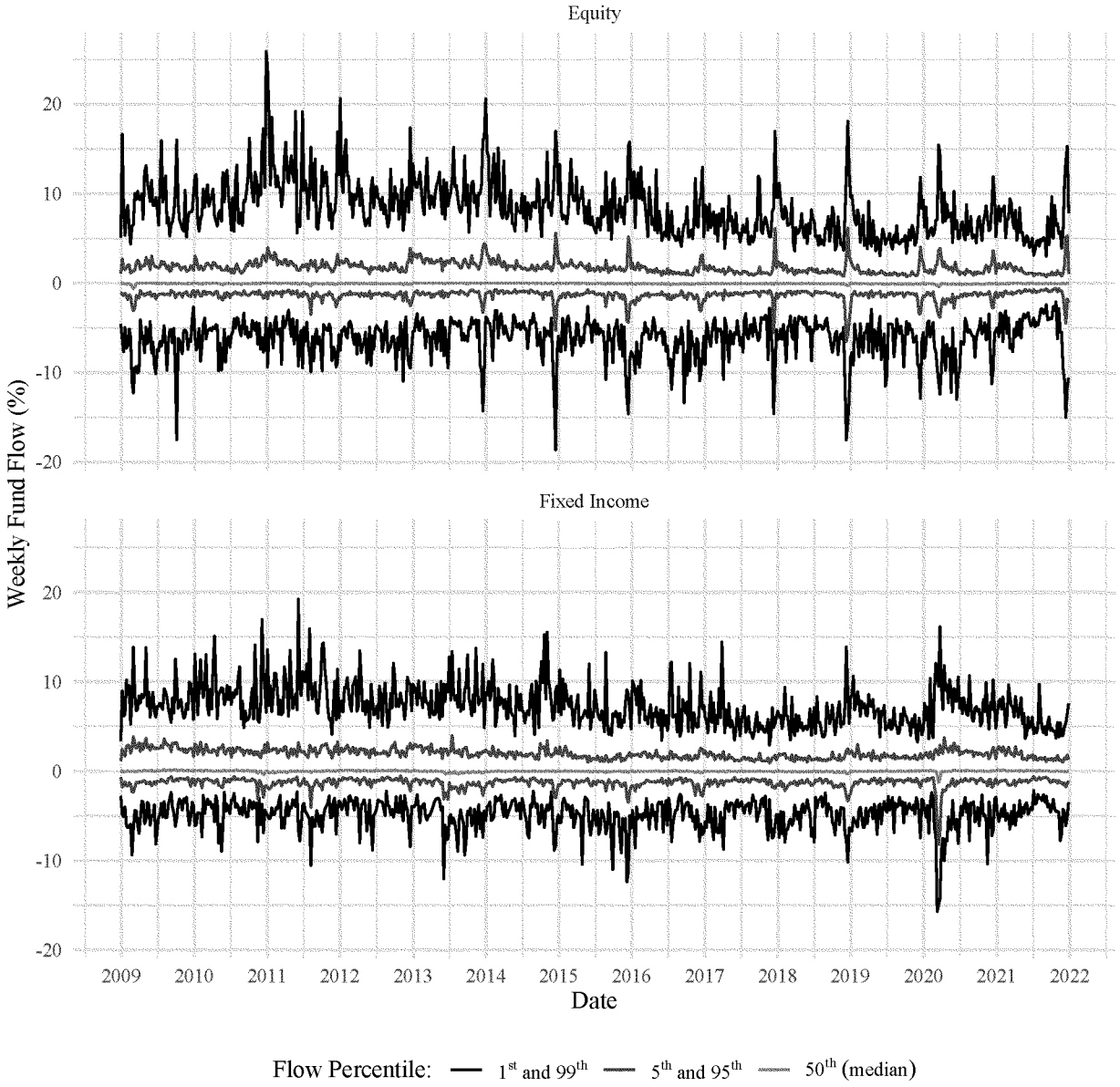


Figure 7. Weekly Equity and Fixed Income Fund Flows over Time, % of Net Assets.



BILLING CODE 8011–01–C

b. Fund Intermediaries

As discussed above, the proposed hard close requirement would affect a large group of intermediaries. Specifically, under the hard close requirement, intermediaries generally would need to submit orders for fund shares earlier than they currently do for those orders to receive that day's price. As discussed in greater detail below, this may affect all market participants sending orders to relevant funds, including broker-dealers, registered investment advisers, retirement plan recordkeepers and administrators, banks, insurance companies, and other registered investment companies.

i. Broker-Dealers

Based on an analysis of Financial and Operational Combined Uniform Single (FOCUS) Reports filings as of December 2021, there were approximately 3,508 registered broker-dealers with over 240 million customer accounts.[430] In total, these broker-dealers have over $5 trillion in total assets as reported on Form X–17A–5.[431] More than two-thirds of all broker-dealer assets and just under one-third of all customer accounts are held by the 21 largest broker-dealers, as shown in Table 4.[432] Of the broker-dealers registered with the Commission as of December 2021, 434 broker-dealers were dually registered as investment advisers.[433]

TABLE 4—NUMBER OF BROKER-DEALERS BY TOTAL ASSETS, AS OF DECEMBER 2021

Size of broker-dealer (total assets)	Total number of BDs	Cumulative total assets ($ bln)	Cumulative number of customer accounts
>$50 billion	21	3,682	75,808,084
$1 billion to $50 billion	124	1,581	153,243,391
$500 million to $1 billion	30	22	518,545
$100 million to $500 million	147	31	9,559,082
$10 million to $100 million	532	19	128,669
$1 million to $10 million	1,065	4	885,269
<$1 million	1,589	0.5	10,854
Total	3,508	5,338	240,153,894

ii. Retirement Plans

Retirement plans and accounts are major holders of mutual funds. We estimate that, as of 2022Q1, approximately 54% of non-MMF mutual fund assets were held in retirement accounts, which include employer-sponsored defined contribution (''DC'') plans and individual retirement accounts (''IRAs'').[434] At year-end 2021, mutual funds accounted for 58% ($6.4 trillion) of DC plan assets and 45% ($6.2 trillion) of IRA assets.[435] Among DC plans, 401(k) plans held $5 trillion of assets in mutual funds, 403(b) plans held $670 billion, other private-sector DC plans held $539 billion, and 457 plans held $177 billion.[436] Combined, the mutual fund assets held in DC plans and IRAs at the end of 2021 accounted for 32% of the $39.4 trillion U.S. retirement market.[437]

According to a recent study, DC plans vary in size by both number of participants and plan assets.[438] For example, as shown in the Table 5 below, among 401(k) plans, 94.1% of plans had less than $10 million of plan assets. While the number of plans with plan assets over $1 billion is relatively small, these largest plans manage approximately 47.8% of all assets held in 401(k) plans.

TABLE 5—DISTRIBUTION OF 401(K) PLANS BY PLAN ASSETS, 2018

Plan assets	Plans		Participants		Assets	
	Number	Percent	Thousands	Percent	Billions of dollars	Percent
Less than $1M	343,108	58.5	6,007.5	8.4	$107.1	2.1
$1M to $10M	208,789	35.6	13,660.6	19.1	620.7	12.2
>$10M to $50M	26,458	4.5	9,894.5	13.9	532.4	10.4
>$50M to $100M	3,564	0.6	4,808.0	6.7	247.1	4.8
>$100M to $250M	2,407	0.4	6,744.8	9.5	374.7	7.3
>$250M to $500M	1,034	0.2	5,395.1	7.6	362.1	7.1
>$500M to $1B	603	0.1	4,763.9	6.7	424.1	8.3
More than $1B	659	0.1	20,073.4	28.1	2,439.7	47.8
All plans	586,622	100.0	71,347.7	100.0	5,108.0	100.0

[430] The data is obtained from FOCUS filings as of Dec. 2021. There may be a double-counting of customer accounts among, in particular, the larger broker-dealers as they may report introducing broker-dealer accounts as well in their role as clearing broker-dealers. Customer Accounts includes both broker-dealer and investment adviser accounts for dual-registrants.

[431] Assets are estimated by Total Assets (allowable and non-allowable) from Part II of the FOCUS filings (Form X–17A–5 Part II and Part IIA, *available at https://www.sec.gov/files/formx-17a-5_2.pdf)* and correspond to balance sheet total assets for the broker-dealer. The Commission does not have an estimate of the total amount of customer assets for broker-dealers because that information is not included in FOCUS filings. The Commission estimates broker-dealer size from the total balance sheet assets as described above.

[432] Approximately $4.97 trillion of total assets of broker-dealers (98.7%) are at broker-dealers with total assets in excess of $1 billion.

[433] This estimate includes the number of broker-dealers who are also registered with either the Commission or a state as an investment adviser.

[434] *See* Inv. Co. Inst. (ICI), *The U.S. Retirement Market, First Quarter 2022 (June),* Table 28, *available at https://www.ici.org/system/files/2022-06/ret_22_q1_data.xls.*

[435] *See* ICI, *2022 Investment Company Factbook,* Chapter 8, *available at https://www.icifactbook.org/pdf/2022_factbook.pdf.*

[436] *Id.*

[437] *Id.*

[438] *See* BrightScope & Investment Company Institute, 2021, *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2018 (''BrightScope/ICI Report''),* at 7, Ex. 1.2, *available at www.ici.org/files/2021/21_ppr_dcplan_profile_401k.pdf.* These data is limited to 401(k) plans covered in the Department of Labor Form 5500 research file, as we do not have data on the size distribution for other types of DC plans. We note, however, that 401(k) plans represent approximately 70.4% of all DC plan assets. Investment Company Institute, ''The US Retirement Market, First Quarter 2022'' (June), Table 6, *available at https://www.ici.org/system/files/2022-06/ret_22_q1_data.xls.*

The same study shows that mutual funds held 43% of private-sector 401(k) plan assets in the sample in 2018. CITs held 33% of assets, guaranteed investment contracts (GICs) held 7%, separate accounts held 3%, and the remaining 14% were invested in individual stocks (including company stock), individual bonds, brokerage, and other investments.[439] While mutual funds accounted for at least 55% of assets in plans with less than $1 billion of plan assets, they accounted for only 23% of assets in plans with more than $1 billion of plan assets (dominated by CITs that accounted for 49% of plan assets).[440]

iii. Retirement Plan Recordkeepers

According to one source, as of September 2021, the total DC recordkeeping assets were approximately $9.7 trillion, as shown in Table 6 below.[441] The largest recordkeeper managed approximately 33% of all recordkeeping assets, and the 10 largest recordkeepers managed approximately 83% of all recordkeeping assets.

TABLE 6—LARGEST RETIREMENT PLAN RECORDKEEPERS, AS OF SEPTEMBER 30, 2021

Recordkeeper	Recordkeeping assets, $ billion
Fidelity Investments	$3,1698
Empower	1,048
TIAA–CREF	710
Vanguard Group	702
Alight Solutions	545
Voya Financial	499
Principal Financial Group	449
Bank of America	346
Prudential Financial	283
T. Rowe Price Group	268
All others	1,676
Total	9,695

c. Other Affected Entities

A significant portion of mutual fund orders are processed through NSCC's Fund/SERV platform: in 2021 Fund/SERV processed 261 million mutual fund transactions with the aggregate value of $8.5 trillion,[442] which we estimate to be at least 36.8% of the value of all mutual fund transactions.[443] A part of the platform, referred to as Defined Contribution Clearance & Settlement, focuses on purchase, redemption, and exchange transactions in defined contribution and other retirement plans. This service handled a volume of nearly 154 million transactions in 2021.[444]

Mutual funds may employ the services of third-party or affiliate transfer agents. We estimate that, as of March 2022, there are 99 mutual fund transfer agents that serve both open- and closed-end funds for the 2021 reporting year.[445]

We expect that a range of other entities would be affected by the proposal:

- Mutual fund order processing entities (besides Fund/SERV);
- Mutual fund liquidity service providers;
- Other third-party service providers.

We do not currently have data on the number and size of these entities. We solicit comments on these statistics. In addition, we solicit comment on what other entities would be affected by the proposed amendments.

C. Benefits and Costs of the Proposed Amendments

1. Liquidity Risk Management Program

The proposed rule would make several changes to the liquidity risk management framework adopted in 2016. In particular, it makes changes to (1) the manner and frequency in which funds must classify each of their portfolio holdings into one of several liquidity buckets; (2) the minimum amount a fund must hold in the highly liquid investment category; (3) the treatment of margin and collateral for certain derivatives transactions, for purposes of the highly liquid investment minimum and 15% limit on illiquid investments, as well as the treatment of a fund's liabilities for purposes of the highly liquid investment minimum; and (4) the

[439] *Id.*

[440] *Id.*

[441] Larry Rothman, *Large Record Keepers Keep Dominating Market,* Pensions & Investments, (Apr. 11, 2022), *available at https://www.pionline.com/interactive/large-record-keepers-keep-dominating-market.*

[442] *See* Depository Trust and Clearing Corporation (DTCC), *2021 Annual Report, pg. 57, available at https://www.dtcc.com/~/media/files/downloads/about/annual-reports/DTCC-2021-Annual-Report.*

[443] We do not have data to calculate the value of all mutual fund transactions directly. Therefore, we use ICI data on long-term mutual funds' portfolio purchases and sales as a proxy for the total value of transactions in mutual fund shares, assuming that a significant portion of portfolio purchases reflects investor subscriptions and a significant portion of portfolio sales reflects investor redemptions. We estimate this value to be $27.07 trillion by adding the total value of purchases and the total value of sales for long-term mutual funds. *See* ICI, *2022 Investment Company Factbook,* Table 31, *available at https://www.icifactbook.org/22-fb-data-tables.html.*

We estimate the share of the value of mutual fund transactions processed by Fund/SERV as the aggregate value reported by Fund/SERV divided by the long-term mutual funds' portfolio purchases and sales. We recognize that mutual funds may effect portfolio purchases and sales for purposes other than investing new cash from subscribing investors and meeting investor redemptions, such as portfolio rebalancing. Therefore, the total value of transactions in long-term mutual fund shares may be overestimated. Accordingly, the share of mutual fund transaction value processed by Fund/SERV may be underestimated. We also recognize that the aggregate value reported by Fund/SERV may or may not include the value of mutual fund transactions via DCC&S. To the extent that the reported value excludes such transactions, the share of mutual fund transaction value processed by Fund/SERV may be further underestimated. We solicit comments on these statistics.

[444] *See id.*

[445] Mutual fund transfer agents are those transfer agents that answered with a positive value for any of Items 5(d)(iii–iv), 6(a–c)(iii–iv), or 10(a) on a Form TA–2. We note that the identified mutual fund transfer agents may serve both open-end and closed-end funds. To the extent that some of the identified transfer agents only serve closed-end funds, the number of affected transfer agents may be over-estimated.

definition of the liquidity buckets, including illiquid investments. Whereas the existing rule provides funds with a considerable level of discretion regarding how fund investments are classified, as well as regarding the determination of a highly liquid investment minimum, the proposed rule would reduce that discretion and is intended to prepare funds for future stressed conditions by improving the quality of liquidity classifications by preventing funds from over- or under-estimating the liquidity of their investments, including in times of stress. The proposed rule is also intended to provide classification standards that are consistent with more effective practices the staff has observed across funds. As a result, we expect enhanced liquidity across open-end funds and lower risk of a fund not being able to meet shareholder redemptions without significant investor dilution, which could reduce the risk of runs arising from the first-mover advantage. Thus, the proposed amendments may improve overall market resiliency.

The proposed amendments to the liquidity risk management program would impose costs on open-end funds. We estimate, for Paperwork Reduction Act purposes, that the modification of existing collection of information requirements of rule 22e–4 will result in an annual cost increase of $7,101 per fund.[446] In addition, funds may experience other costs related to changing business practices, computer systems, integrating new technologies, etc. We are not able to quantify many of these costs for several reasons. First, we do not have granular data on the current systems, business practices, and operating costs of all affected parties, which would allow us to estimate how their systems and practices would change along with any associated costs. Second, we cannot predict how many funds would respond to the proposed changes to the liquidity risk management program by changing their portfolio allocation in order to be compliant with the proposed highly liquid investment minimum and the 15% limit on the illiquid investments and how many funds may choose to convert to the closed-end form or cease to exist. Finally, we cannot predict how many investors would decide to exit open-end funds in a response to the portfolio allocation changes that funds may implement as a result of the proposed amendments to the liquidity risk management. We request comment on these and other potential costs of the proposed changes to the liquidity risk management program, particularly any dollar estimates of the costs that funds and other affected parties will incur as a result of the rule.

a. Methodology for Liquidity Classifications

The proposed rule would substitute the fund's reasonably anticipated trade size determination with a stressed trade size (''STS'') determination, with an STS being a set percentage of the fund's net assets. The proposed rule would also prescribe specific methods to determine when a price change should be considered ''significant'' and remove the funds' ability to perform liquidity classification at the asset-class level.

Generally, the three proposed amendments to the liquidity classification methodology may help funds to prepare better for future stress events or periods of high levels of redemptions by improving the quality of liquidity classifications via the requirement for more frequent classification and making the methodology more disciplined, objective, and consistent across funds. This, in turn, may help funds meet investor redemptions without significant trading costs, potentially decreasing dilution risk. We recognize, however, that the proposed liquidity classification methodology would still be dependent on the size of an investment position within a fund's portfolio relative to the size of the market for the investment. Therefore, although funds would follow a more standardized methodology for liquidity classifications, the same investment could be classified differently by different funds, depending on how much of this investment a fund holds, thereby reducing comparability of liquidity classifications between different funds. The specific economic effects for each of three proposed amendments are discussed below.

i. Replacing Reasonably Anticipated Trade Size With Stressed Trade Size

Funds may currently use their subjective judgment when determining the meaning and calculation of reasonably anticipated trade size. The proposed requirement to replace the reasonably anticipated trade size with the STS as a set percentage of a fund's net assets would decrease such subjectivity because funds would no longer have discretion in determining the amount of each investment they should assume will be sold or disposed of in determining the liquidity classifications. A stricter methodology for liquidity classifications of funds' investments may be more objective and consistent, which would benefit investors by improving funds' ability to meet investor redemptions without significant levels of dilution in both normal and stressed market conditions. In particular, requiring a fund's classification model to assume the sale of the proposed stressed position size would better emulate the potential effects of stress on the fund's portfolio and help better prepare a fund for future stress or other periods where the fund faces higher than typical redemptions. In addition, to the extent that the proposed STS would be simpler and more objective than the determination of a reasonably anticipated trade size, all else equal, the operational burden or costs that funds currently experience in making liquidity classifications may be reduced.

We also propose to set the STS minimum of 10%. Based on an analysis of historical weekly fund flows for equity and fixed income funds, we estimate that a random fund in a random week has approximately a 0.5% chance of experiencing redemptions in excess of the 10% STS, and there were 3.4% of weeks where more than 1% of funds experienced net redemptions exceeding 10%.[447] Although this data analysis implies that funds infrequently experience redemptions of 10% or more, we believe that the 10% STS has the advantage of simulating a stress event and would better prepare funds to accommodate redemptions during such events. Although funds could consider events larger than 10% for their STS calculation voluntarily, we believe that the proposed requirement would achieve a more consistent methodology for liquidity measurement across funds.

[446] *See infra* section IV.B.

[447] An analysis of historical Morningstar weekly fund flow data for equity and fixed income funds from 2009 through 2021 shows that the 1st percentile flow is approximately −6.6% while the 5th percentile flow is approximately −1.3%. The same analysis shows that the 10% STS corresponds to approximately the 0.5th percentile of pooled weekly fund flows. The same analysis shows that if the 5th percentile fund flow is computed for each week, it never exceeds the 10% STS. If the 1st percentile fund flow is computed for each week, it exceeds the 10% STS for approximately 3.4% of the weeks in the sample.

However, we recognize that specific funds may experience varying costs and benefits associated with the 10% STS. For example, two funds with comparable levels of AUM but with underlying investments that have different liquidity characteristics may experience stress at different levels of redemptions. For example, a large-cap equity fund may not experience stress at the 10% level of redemptions, whereas a fixed income fund with comparable AUM might. As such, the extent to which investors of a given fund benefit from the 10% STS will vary based on the liquidity of its underlying investments.[448]

Funds and their investors may incur costs as a result of replacing reasonably anticipated trade size with the STS. To the extent that funds would assign a higher liquidity category under the current reasonably anticipated trade size approach compared to the liquidity category that would be assigned using the proposed STS, the proposed amendment may result in funds rebalancing their portfolios in order to meet the highly liquid investment minimum and to comply with the limit on the illiquid investments. As such, a fund either may have to increase its holdings of highly liquid investments or decrease its holdings of moderately liquid and illiquid investments. As a result, the risk-return profile of the fund's portfolio would change towards more liquid and less risky investments that may have lower returns. To the extent that such reallocation would result in deviations from a benchmark return (if any), funds may experience higher tracking error.[449] In addition, to the extent that investors seek particular risk exposures and returns that would be difficult for the affected funds to provide under the proposed amendments, the proposed amendments may drive them towards other investment vehicles that do not face daily redemptions, such as closed-end funds, or to other vehicles or means of investing that are not subject to the liquidity rule, such as separately managed accounts or CITs. However, to the extent that these other vehicles or means of investing do not offer the same investment strategies or do not provide the same benefits and protections as the open-end funds to investors, investors may find such investment avenues less favorable compared to open-end funds. As a result, the set of investment options available to investors with particular risk-return preferences may decrease.

ii. Determining a Significant Change to Market Value

Under the current rule, a fund may determine value impact (a ''significant price change'') in a variety of ways, including methods that depend on the type of asset, or vendor, model, or system used. The proposed amendments would establish a uniform standard of how funds should determine what constitutes a significant price change, which would improve consistency and objectivity of liquidity classification methodologies across mutual funds. To the extent that some funds may currently use definitions of a significant price change that result in under-estimation of the price impact and classification of investments in more liquid categories, the proposal would limit the extent to which funds are able to do so. This, in turn, would help funds to prepare better for potential stress events and potentially reduce the risk of not being able to meet investors' redemptions without incurring significant trading costs, thereby decreasing dilution risk. The proposed amendment may also decrease ongoing costs related to the liquidity classification process, all else equal, by reducing the number of determinations a fund must perform during the liquidity classification process.

For shares listed on a national securities exchange or a foreign exchange, the proposed rule would require funds to use an average daily trading volume threshold of 20% to determine whether a trade will cause a significant price change.[450] Funds will have less discretion in this circumstance than under the existing rule. This should result in a more robust and consistent liquidity classification process that would help ensure that the liquidity classifications for all holdings of a certain investment of particular size are classified in the same manner across funds which, in turn, may help all funds to prepare better for periods of high investor redemptions.

For any investments other than shares listed on a national securities exchange or a foreign exchange, the proposed rule would define a significant change in market value as any sale or disposition that a fund reasonably expects would result in a decrease in sale price of more than 1%, which is the measure used in several commonly employed liquidity models.[451] This alternative measure is proposed because we recognize that average daily trading volume in, for example, a single bond issue would not be representative because it does not represent the full pool of liquidity available for a debt security, since bonds are split into many different issues and differ from common shares, where volume is concentrated because there generally is only one class of shares for each issuer.

Although not all liquidity classification models currently specify a price decrease explicitly as the determination for a significant change in market value, we believe it would improve the quality of classifications to require a more objective principle. However, the proposed rule may still result in some heterogeneity in how funds classify otherwise similar holdings because funds and liquidity classification vendors would still be able to choose which price impact model to use for their classifications,[452] depending on the assumptions of the fund or a liquidity classification provider. As a result, liquidity classifications for the same investment of the same size may vary across funds, to the extent that funds or liquidity classification vendors have different theoretical assumptions about the same investment. For example, it may be difficult to choose a price impact model for assets that do not have readily available recent price information, and funds may have to use subjective judgment in determining the sale amount that constitutes a significant change in market value. To the extent that such subjectivity could still result in over-estimation of liquidity of funds' investments, the potential increase in the ability of funds to meet investors' redemptions without significant dilution under the proposed rule may be lower than anticipated. In addition, to

[448] *See also* section III.B.4.a.ii for discussion of fund flows based on fund type.

[449] Tracking error is the difference between the fund's return and that of the benchmark which measures how closely a fund replicates the returns of the identified benchmark.

[450] *See supra* section II.A.1.a.ii.

[451] *Id.*

[452] There are various estimation techniques for price impact (market impact), such as those that use linear models, power law models, log models, I–STAR model, and other. *See, e.g.,* Albert S. Kyle, *Continuous Auctions and Insider Trading,* 53 Econometrica, 1315 (1985), Robert Almgren et. al., *Direct Estimation of Equity Market Impact,* 18 Risk 58 (2005); Elia Zarinelli et. al., *Beyond the Square Root: Evidence for Logarithmic Dependence of Market Impact on Size and Participation Rate,* Market Microstructure and Liquidity no. 2 (Dec. 5, 2014) *available at https://arxiv.org/pdf/1412.2152.pdf;* Bence Toth, *et.al, Anomalous Price Impact and the Critical Nature of Liquidity in Financial Markets* (working paper, Nov. 1, 2011), *available at https://arxiv.org/abs/1105.1694;* Robert Kissell et. al., Optimal Trading Strategies: Quantitative Approaches for Managing Market Impact and Trading Risk, (AMACON 2003); Saerom Park et. al., *Predicting Market Impact Costs Using Nonparametric Machine Learning Models* (research article Feb. 29, 2016), *available at https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0150243.*

the extent that the reference price against which the price impact is calculated is stale for some investments (*i.e.,* investments that are traded infrequently), the estimated trading volume that would not cause a significant price change may be less accurate for such investments.

iii. Removing Asset Class Classification

The proposal to remove funds' ability to perform liquidity classifications at the asset-class level may improve the quality of liquidity classifications by reducing the potential of funds over- or under-estimating the liquidity of their investments. Currently, because the definitions of asset classes are not consistent across funds in terms of their scope and granularity, an investment (of the same size) could be classified as belonging to different asset classes by different funds. Moreover, if a classification is performed on an asset-class basis, changes in liquidity profiles of individual investments may not be accounted for in the way these investments are classified, which may lead to an over- or under-estimation of funds' investments' liquidity. In contrast, under the proposal, funds would more specifically gauge the liquidity of each investment, which could strengthen their liquidity management, potentially decreasing the risk of not being able to meet investors' redemptions without significant costs that could arise from an over-estimation of fund's investments' liquidity. To the extent that the liquidity classifications of investments within the same asset class would not differ between asset-level and investment-level classifications, the proposal to remove funds' ability to perform liquidity classifications on the asset-class level may increase ongoing operational burden for funds that rely on this classification method without any commensurate benefits. However, the asset-class level classification is not expected to be compatible with other proposed changes to the liquidity risk management program, such as the value impact standard. Specifically, a fund would not be able meaningfully to apply a standard based on average daily trading volume or a price decline in a given investment at the asset class level because the average trading volume, or market depth generally, can vary from investment to investment even within the same asset class.

b. Removal of the Less Liquid Category

We propose to eliminate the less liquid investment category. Currently, investments are defined as less liquid if it is reasonably expected that they could be sold within seven calendar days but the sale is reasonably expected to settle in more than seven days. Under the proposal, investments that do not sell and settle within seven calendar days without significant price change would be classified as illiquid. We believe that the proposal to remove the less liquid category would primarily affect open-end funds that hold bank loan interests, as the most common type of investment in this category is bank loan interests.[453]

On the one hand, recent research suggests that during the period between March 1 and 23 of 2020, bank loan mutual funds experienced outflows of approximately 11% of their AUM; substantially higher than high-yield bond funds (which investors may consider close substitutes to bank loan funds) and all other types of funds.[454] Moreover, these outflows had longer duration, which suggests greater risk of investor runs in these funds. On the other hand, other research[455] examines the resilience of bank loan funds to liquidity shocks and does not find substantial evidence of lower liquidity among bank loan funds compared to corporate bond funds generally. However, the risk of not being able to meet investor redemptions within seven days without significant costs may be higher for bank loan funds compared with other types of funds, as the trading costs related to bank loan fund outflows (including costs associated with obtaining financing to bridge the settlement gap) may be larger than those of other types of funds. Specifically, as noted by LSTA, over the course of the first three weeks of March of 2020, bid-ask spreads for bank loans widened by 288 basis points to a record 422 basis points.[456] In contrast, recent research shows that, between February 3 and March 20 of 2020, high-yield corporate bonds' bid-ask spreads widened by an estimated range between 79[457] and 166[458] basis points to 102 and 223 basis points respectively.

Moreover, bank loan funds, unlike other funds, experience specific trading costs related to bridging the settlement gap, *i.e.,* the costs related to using financing during the time it takes for a loan trade to settle. Although other types of open-end funds may use bank credit lines, most instruments held by open-end funds do not come with the same level of settlement uncertainty. Because the process of trade settlement for bank loans is not standardized and involves many parties, the settlement process can take longer. Therefore, when an open-end fund sells a bank loan interest, it is possible that the trade will not be settled for an extended amount of time. As shown in Table 7 below, bank loan funds on average use higher amounts of financing via credit lines and use them for longer/shorter period of time on average.

TABLE 7—OPEN-END FUNDS' USE OF CREDIT LINES BY FUND TYPE, AS OF DECEMBER 2021[459]

	Number of funds	Has line of credit	Used line of credit	Avg. credit line use	Avg. number of days used
Bank Loan	56	48	9	$29,411,240	114

[453] *See supra* section III.B.4.a.

[454] Nicola Cetorelli et. al., *Outflows From Bank-Loan Funds During COVID–19,* Federal Reserve Bank of New York, Liberty Street Economics (June 16, 2020), *available at https://libertystreeteconomics.newyorkfed.org/2020/06/outflows-from-bank-loan-funds-during-covid-19/. See also* Ayelen Banegas & Jessica Goldenring, *Leveraged Bank Loan Versus High Yield Bond Mutual Funds, Fin. & Econ. Discussion Series 2019–047* (Board of Governors of the Federal Reserve System, Washington, DC), Jun. 2019, (''Banegas/Goldenring paper'') *available at https://www.federalreserve.gov/econres/feds/leveraged-bank-loan-versus-high-yield-bond-mutual-funds.htm.* This paper finds that, as of end of 2018, flows as a share of assets have been larger and more volatile for bank loan funds than for high-yield bond funds.

[455] Mustafa Emin et. al., *How Fragile Are Loan Mutual Funds*? (working paper, Nov. 18, 2021) *available at https://ssrn.com/abstract=4024592* (retrieved from SSRN Elsevier database).

[456] *See* Loan Syndication & Trading Association (LSTA), *March Loan Returns* (April 2, 2020), *available at https://www.lsta.org/news-resources/march-loan-returns-total-12-37.*

[457] *See* Nina Boyarchenko, et. al., *It's What You Say and What You Buy: A Holistic Evaluation of the Corporate Credit Facilities* (working paper no. 8679, Nov. 11, 2020), *available at https://ssrn.com/abstract=3728422* (retrieved from SSRN Elsevier database).

[458] *See* Simon Gilchrist, et. al., *The Fed Takes On Corporate Credit Risk: An Analysis of the Efficacy of the SMCCF* (working paper no. 2020–18, Apr. 20, 2021), *available at https://ssrn.com/abstract=3829900* (retrieved from SSRN Elsevier database).

[459] N–1A RIC credit line usage is from Form N–CEN, and excludes ETFs and MMFs. Data is as of Dec. 2021, incorporating filings received through June 3, 2022.

TABLE 7—OPEN-END FUNDS' USE OF CREDIT LINES BY FUND TYPE, AS OF DECEMBER 2021 [459]—Continued

	Number of funds	Has line of credit	Used line of credit	Avg. credit line use	Avg. number of days used
Other Categories	8,979	5,462	969	8,431,142	24
Total	9,035	5,510	978	8,624,210	24

In contrast, high yield bonds primarily have T+2 settlement. Although high yield bonds may have the same or lower liquidity compared to bank loans,[460] from the perspective of funding investor redemptions, bank loans are less certain to be converted to U.S. dollars within a specific timeframe. As a result, when engaging in financing to bridge the settlement gap, a fund that sells a high-yield bond would likely use the credit line only for two days while a fund that sells a bank loan will have to use it for a longer period. This, in turn, may increase the risk of bank loan funds not being able to meet investor redemptions within seven days without imposing additional financing costs on fund investors, which may increase dilution. Therefore, we believe that a limit on the amount of time a trade is reasonably expected to settle and convert to U.S. dollars to qualify as a non-illiquid investment is intended to promote liquidity in open-end funds and reduce investor dilution from trading costs, including wide bid-ask spreads and the costs related to bridging the gap between the maximum time allowed to meet investor redemptions and prolonged settlement of certain investments.[461]

The removal of the less liquid category may also reduce the risk of runs in the open-end fund sector. As discussed above, bank loan funds may be more prone to sector-wide outflows compared to other types of funds due to the low dispersion of returns across bank loan funds (*i.e.,* the correlation of bank loan fund returns is higher relative to the correlation of returns for other types of funds), which may lead to further redemptions and higher investor dilution, and may consequently be amplified by a fund's usage of financing for a prolonged period of time. To the extent that bank loan funds rebalance their portfolios to hold bank loans with shorter settlement times, investor dilution and the risk of runs on bank loan funds may be reduced.

Open-end funds may experience costs as a result of this amendment.[462] First, open-end funds would experience a one-time switching cost to adapt the classification and reporting systems for the removal of the less liquid category, which would be passed on to funds' investors. To the extent that the settlement time for bank loan interests cannot be reduced, these loan interests would have to be reclassified as illiquid. As a result, funds that hold these investments may be required to rebalance their portfolio by divesting from bank loans interests in order to comply with the maximum allowed allocation towards illiquid investments, which may result in both aggregate holdings and individual portfolio concentrations of bank loan interests among open-end funds to be reduced. Such portfolio reallocation may result in one-time switching costs that would be passed on to investors. In addition, to the extent that portfolio concentration of bank loan interests decreases significantly for some bank loan funds as a result of the proposal, these funds' investment strategy would have to be redefined. Moreover, to the extent that some funds would not be able to successfully rebalance their portfolios away from bank loan interests with longer settlement times without losing investors, these funds may cease to exist or may seek shareholder approval to convert to a closed-end form.

Furthermore, to the extent that such portfolio reallocation results in lower fund returns, this may drive investors of these funds to either substitute their investments in open-end bank loan funds to other types of open-end funds or choose other types of funds or investment vehicles that are able to hold higher amounts of bank loan interests. To the extent that these other vehicles or means of investing do not offer the same investment strategies or do not provide the same benefits and protections as the open-end bank loan funds to investors, investors may find such investment avenues less favorable compared to open-end bank loan funds. As a result, the set of investment options available to investors with this particular strategy preference may decrease. This effect may be more pronounced for retail investors who generally have limited access to the bank loan market and to private funds that may hold bank loan interests.

To the extent that investor demand for holding bank loans in a fund structure is high, some funds may choose to restructure as closed-end funds, in order to be able to keep their current holdings of bank loan interests. The funds that choose to do so may experience one-time switching costs related to shareholder votes for the fund conversion, such as costs of preparing and distributing proxy materials and costs associated with the solicitation process.[463] In addition, some investors may rush to redeem their shares before the conversion which may increase dilution of the remaining investors.

However, we recognize that while operational constraints may play a role in why settlement times for bank loan interests are prolonged, misaligned incentives of trading parties (such as delayed settlement compensation) and a collective action problem may also be important factors in determining settlement time for bank loan interests.[464] Therefore, to the extent that it is currently operationally possible to have a shorter settlement time for bank loan interests, and to the extent that non-fund transaction parties would be able to speed up the settlement process at a relatively low cost, open-end bank loan funds may not have to rebalance their portfolios or restructure to a closed-end form under the proposal.

[460] *See supra,* note 455. Authors show that, controlling for the fund size and rating, bank loan liquidity is similar to or greater than liquidity of similarly rated public bonds. The authors construct two indirect measures of liquidity: the first measure is based on the difference between the transaction prices and net asset values (NAVs) of shares of loan and high yield bond ETFs; the second measure is the perceived liquidity of corporate bonds based on the relationship among cash holdings, flow volatility, and fund holdings. *See also* Sergey Chernenko & Adi Sunderam, *Measuring the Perceived Liquidity of the Corporate Bond Market* (working paper no. 27092, May 2020), *available at https://www.nber.org/papers/w27092.*

[461] *See also* section II.A.1.b.iii.

[462] We recognize that those funds that primarily hold bank loan interests with shorter settlement times may be less affected by this proposed amendment. For example, loans that are larger in size, more standardized, and more frequently traded, such as those that are a part of S&P/LSTA U.S. Leveraged Loan 100 Index, may have shorter settlement times.

[463] We recognize that there may be other costs funds could incur to convert to a closed-end fund, such as potential exchange listing costs or costs of conducting periodic repurchase offers.

[464] *See supra* section II.A.1.b.i and note 106.

c. Definition of Illiquid Investments

We propose to amend the definition of illiquid investments to include investments whose fair value is measured using an unobservable input that is significant to the overall measurement.[465] We recognize that, in light of the proposed removal of the less liquid category, only a small fraction of these investments that are classified as highly liquid or moderately liquid would be affected by this proposed amendment. We estimate that approximately 0.07% of all open-end fund assets would be affected by this amendment.[466] Therefore, we do not anticipate that this amendment would significantly impact open-end fund sector.

This amendment may improve the quality of investments' liquidity classifications. To the extent that valuation using unobservable inputs that are significant to the overall measurement may have an increased risk that the fund cannot sell the investment in time to meet redemptions without dilution, classifying such investments as illiquid may reduce this risk. To the extent that this risk results in investor dilution, and to the extent that the overall open-end funds' holdings of these investments would decrease as a result of this amendment, investor dilution may be reduced and overall liquidity of funds that hold such investments may increase as a result.

Although we understand that some funds already have a practice of classifying these investments as illiquid, this amendment may result in a one-time switching cost for funds that do not currently follow this practice. In addition, to the extent that some funds hold a significant share of their portfolio in such investments and these investments are not currently classified as illiquid, these funds would have to rebalance their portfolios and potentially change their investment strategy.

d. Proposed Minimum for Highly Liquid Investments

Rule 22e–4 currently requires a fund to determine a highly liquid investment minimum if it does not primarily hold investments that are highly liquid investments. We propose for open-end funds to have a highly liquid investment minimum of at least 10% of the fund's net assets, which is the assumed stressed trade size.[467] In addition, we propose to remove the provision allowing funds not to establish a highly liquid investment minimum if they ''primarily'' hold highly liquid assets.

Requiring a highly liquid investment minimum that is equal to or above the assumed stressed trade size of 10% of net assets may benefit funds and their investors by creating more standardized liquidity risk management among funds, thereby increasing their liquidity and helping all mutual funds to be better prepared to meet investor redemptions without incurring significant trading costs. A higher amount of liquid assets may help fund managers to avoid transacting at fire-sale prices during market stress and, therefore, control trading costs better over time. This, in turn, may decrease dilution risk for fund shareholders.[468] By requiring a minimum of 10% of highly liquid assets, we set a minimum baseline level of liquidity that would help reduce dilution risk.

Funds may experience costs as a result of the proposed requirement. We recognize that funds that currently have an established highly liquid investment minimum already have the procedures in place for ongoing monitoring for meeting the minimum. As such, we do not expect the direct compliance costs related to meeting the highly liquid investment minimum, such as monitoring costs and costs related to shortfall policies and procedures, to increase for these funds. However, those funds that have an established minimum of less than 10% may have to rebalance their portfolios in order to meet the proposed requirement if they do not hold more highly liquid investments than the proposed requirement. In addition, funds may need to shift their portfolios away from less liquid holdings, potentially leading to higher tracking error relative to their benchmarks (if any)[469] and lower returns. However, a higher amount of liquid investments may help fund managers to control trading costs better over time, which may result in a higher long-term returns for investors. Therefore, the return loss of holding more liquid investments (relative to less liquid investments) may be fully or partially offset by the savings on funds' trading costs.[470]

To the extent that some open-end funds' portfolio allocations change significantly as a result of this proposal, these funds may experience additional costs related to disclosure of changes to the fund's allocations and/or strategy and costs related to a potential change of the fund's name. These costs would be passed on to fund investors.

Funds that do not currently have an established highly liquid investment minimum may experience a one-time switching cost related to establishing shortfall policies and procedures and to reviewing the highly liquid investment minimum at least annually as a result of the proposed amendment. Funds may also experience one-time switching costs related to establishing monitoring procedures related to the highly liquid investment minimum. To the extent that some funds that do not currently have an established highly liquid investment minimum are able to leverage the experience of the funds in the same complex that do have an established highly liquid investment minimum, these one-time switching costs may be reduced for these funds.

The proposal to remove the provision allowing funds to not establish a highly liquid investment minimum if they ''primarily'' hold highly liquid assets may eliminate compliance costs related to monitoring whether a fund primarily holds highly liquid assets. Because funds that hold a substantial amount of highly liquid investments would generally hold an amount of highly liquid investments that is above the proposed 10% highly liquid investment minimum, a separate compliance system that would identify whether a fund ''primarily'' holds highly liquid assets may be operationally inefficient. We believe that the ''primarily'' determination would become unnecessary in light of the proposed highly liquid investment minimum that would be applicable to all funds. We recognize that cost savings from the removal of the ''primarily'' provision would be partially or fully offset by the cost increase stemming from the proposed highly liquid investment minimum because funds currently relying on the ''primarily'' provision would have to build a compliance and monitoring systems around the highly liquid investment minimum.

e. Amendments to Calculation of the Amount of Assets That Count Toward the Highly Liquid Investment Minimum or the Limit on Liquid Investments

We also propose to amend how the highly liquid investment minimum calculation and the calculation of the 15% limit on illiquid investments

[465] *See supra* note 112.

[466] *See supra* section III.B.4.a.

[467] *See supra* note 69 (recognizing that in-kind ETFs would not be subject to the proposed highly liquid investment minimum amendments).

[468] Section III.B.3.b analyzes the frequency of large percentage redemptions from funds. We recognize that if a fund were to experience a 10% redemption, it could sell primarily its highly liquid assets (which would then be significantly more than 10% of each of these holdings), or it could sell a vertical slice of its portfolio, in which case it would sell 10% of all assets.

[469] *See supra* note 449.

[470] *See supra* note 351 and accompanying text.

account for the value of assets that are posted as margin or collateral for certain derivatives transactions, as well as the value of fund liabilities in the case of the highly liquid investment minimum. Specifically, in assessing compliance with the fund's highly liquid investment minimum, the proposal would require a fund to: (1) subtract the value of any highly liquid assets that are posted as margin or collateral in connection with any derivatives transaction that is not classified as highly liquid; and (2) subtract any fund liabilities. In addition, the proposal would amend the rule's limitation on illiquid investments to provide that the value of margin or collateral that a fund could only receive upon exiting an illiquid derivatives transaction would itself be treated as illiquid for purposes of that limit.

The amendments to the highly liquid investment minimum calculation and the calculation of the 15% illiquid investment limit may benefit funds and investors. Particularly, these amendments would require funds to calculate the amount of highly liquid investments and illiquid investments in a way that more accurately reflects the amount of assets a fund could sell quickly to meet redemptions without significant dilution and the amount of assets that could not be sold within seven days without significant trading costs respectively. This, in turn, would better prepare funds for periods of increased investor redemptions and thereby enhance investor-protection benefits of funds' liquidity risk management programs.

More specifically, we recognize that, although investments used for collateral are generally classified as highly liquid, the value of those highly liquid investments cannot be accessed unless the derivative is exited, which takes a longer time for derivatives classified as moderately liquid or illiquid. In addition, an unrealized loss on a derivative or other liability may result in a margin call, for which highly liquid investments may be used. Moreover, if a fund may use highly liquid investments to service its liabilities (*e.g.,* paying interest on a loan), this fraction of highly liquid investments would also be unavailable to meet investors' redemptions. While we recognize that funds generally already subtract investment liabilities when calculating highly liquid investment minimum,[471] subtracting all of the fund's liabilities may further reduce the amount of highly liquid investments available to satisfy the fund's highly liquid investment minimum. Therefore, the amendments to the highly liquid investment minimum calculation would help to ensure that highly liquid investments used to satisfy the fund's highly liquid investment minimum actually are available to meet shareholder redemptions.

Similarly, the proposed amendment to add the value of excess collateral of illiquid derivatives investments to the amount of illiquid investments for the purposes of determining compliance with the 15% limit on illiquid investments would limit the extent to which the fund's assets would be unavailable to meet redemptions because of the fund's associated illiquid derivatives investments. This amendment would effectively increase the amount of illiquid investments a fund holds, potentially pushing these holdings over the 15% limit and triggering the compliance procedures for going over the limit, which may impose additional costs on the fund.

The proposed amendments may result in funds rebalancing their portfolios in order to meet the highly liquid investment minimum and comply with the limit on illiquid investments. Depending on the value of highly liquid assets a fund has that are posted as collateral or margin for non-highly liquid derivatives and the value of the fund's liabilities relative to the fund's total amount of highly liquid investments, under the proposed amendment, a fund may have to either increase its holdings of highly liquid assets or decrease its holdings of moderately liquid and illiquid derivatives in order to meet the highly liquid investment minimum. A fund similarly may have to decrease its holdings of illiquid investments or increase its holdings of highly liquid or moderately liquid investments as a result of the proposed amendment to the calculation of the limit on illiquid investments. To the extent that such portfolio reallocation would significantly change a fund's strategy, funds may experience additional costs related to disclosure of changes to the strategy. In addition, the risk-return profile of the fund's portfolio may change towards more liquid and less risky investments that may have lower returns. To the extent that some investors demand higher returns, they may choose to invest in other investment vehicles that could offer higher returns.

f. Other Amendments Related to Liquidity Categories

We also propose other amendments related to the liquidity classification categories. First, we propose to amend the term ''convertible to cash'' and its definition to instead refer to conversion to U.S. dollars, codifying prior Commission statements. Second, we propose to specify that funds must count the day of classification when determining the period in which an investment is reasonably expected to be convertible to cash. Third, we propose to simplify the definition of moderately liquid investments as those that are neither a highly liquid investment nor an illiquid investment.

To the extent that, at present, open-end funds use differing definitions of convertible to cash and may inconsistently include or exclude the day of liquidity classification when performing the classifications, the two related proposed amendments would benefit funds and investors, as these amendments may improve the quality of liquidity classifications by reducing over- or under-estimation of investments' liquidity, thereby potentially reducing trading costs related to investors' redemptions. On the other hand, open-end funds that do not currently define ''convertible to cash'' as convertible to U.S. dollars, which may include some funds that invest in foreign securities, and open-end funds that do not currently count the day of classification during the classification process may experience a one-time switching cost. In addition, these funds may have to rebalance their portfolios, to the extent that their current approach results in an over-estimation of investments' liquidity.

g. Frequency of Liquidity Classifications

Currently, rule 22e–4 requires that funds review their liquidity classifications at least monthly and more frequently if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of their investments' classifications. We propose to require that funds classify all of their portfolio investments each business day.

To the extent that funds already monitor their classifications on a daily basis in order to be in compliance with the current highly liquid investment minimum and 15% limit on illiquid investments requirements, we believe that this amendment likely will not produce significant additional benefits or costs. However, to the extent that funds do not monitor their classifications daily, or to the extent that monitoring classifications is a less stringent procedure relative to performing classifications for the funds that do monitor classifications daily, this amendment may produce benefits and costs.

[471] *See supra* section II.A.2.b.ii.

On the one hand, requiring daily liquidity classification could help ensure efficient implementation of funds' liquidity management programs and enhance their investor protection benefits. Specifically, daily liquidity classifications may help funds identify changes in liquidity profiles of their investments in a timelier manner and monitor potential increases in trading costs for specific investments, thereby preparing funds for more efficient trading during times of increased redemptions and increasing their ability to respond more quickly to rapid changes in liquidity of portfolio investments, which may decrease investor dilution. In addition, the daily classification requirement, in combination with the proposed standards for trade size and value impact, may make the liquidity classification process more standardized, timely, and efficient.

On the other hand, funds may experience a one-time set-up cost and increased ongoing costs as a result of this amendment. First, those funds that generally do not evaluate their classifications more frequently than monthly would have to change their systems for performing classifications on a daily basis. In addition, these funds would experience increased ongoing costs due to increased frequency of classifications.[472] Second, those funds that already monitor their classifications on a daily basis would have to change their systems, to the extent that monitoring classifications on a daily basis is a different procedure compared to the proposed requirement to perform classifications.

In addition, in times of market stress some highly liquid investments may become less liquid due to unusual selling pressure (*e.g.,* Treasuries during March 2020), and more frequent classification may move these investments to less liquid buckets. In such instances where funds do not typically expect highly liquid investments to decrease in liquidity, more frequent reclassification of these investments may not help funds better accommodate increased redemptions compared to the baseline.[473] However, to the extent funds would prefer to avoid triggering events that would cause additional compliance requirements such as Form N–RN filings, the potential for some investments to become less liquid in times of market stress could incentivize funds to be more conservative, ex-ante, in how they classify holdings and manage liquidity risk. This, in turn, may result in funds investing in more liquid assets, thereby decreasing the dilution risk in the mutual fund sector.

2. Swing Pricing

The proposed amendments would make several changes to the swing pricing framework adopted by the Commission in 2016. In particular, the proposed amendments would (1) require funds to implement swing pricing for each pricing period when a fund has any amount of net redemptions or when net subscriptions exceed 2% of the fund's NAV; (2) establish specific thresholds that determine when a fund is required to adjust its NAV and the factors a fund needs to incorporate into its swing factor; (3) require that swing factors are calculated assuming a vertical slice of the fund's portfolio; and (4) remove the upper limit on the swing factor of 2%. By requiring all funds to implement swing pricing, the proposed amendments would impose the estimated trading costs associated with redemptions and subscriptions onto investors whose transactions generate these costs, reducing the dilution of non-transacting fund shareholders. As such, the proposed amendments are also intended to reduce the first-mover advantage that stems from the dilution of non-transacting shareholders, particularly during stressed market conditions.

The proposed swing pricing framework would impose costs on mutual funds that would be passed on to their investors. We estimate, for Paperwork Reduction Act purposes, that the modification of existing collection of information requirements of rule 22c–1 associated with establishing and implementing swing pricing policies and procedures, board reporting, and recordkeeping will result in an annual cost increase of $7,775 per fund.[474] Funds would also incur additional operational costs associated with establishing and implementing swing pricing policies and procedures, including the periodic calculation of swing factors associated with the swing pricing framework's thresholds.[475] In addition, the economic benefits of swing pricing would be offset by the costs associated with the proposed hard close requirement.[476] Finally, to the extent that the proposed swing pricing framework would make mutual funds less attractive to investors, mutual funds may experience investor outflows and/or reduced inflows.

We are not able to quantify many of the costs associated with the proposed swing pricing framework for several reasons. First, we do not have granular data on the current practices and operating costs for all funds, which might allow us to estimate how their systems would change as a result of the proposed swing pricing requirement. Second, we cannot predict the number of investors that would choose to keep their investments in the mutual fund sector nor the number of investors that would exit mutual funds and instead invest in other fund structures such as ETFs, closed-end funds, or CITs. We also cannot estimate how many funds would choose to upgrade their systems and processes in order to comply with the proposed swing pricing requirement versus how many funds would instead convert to an ETF or a closed-end structure. We request comment on the full costs of the swing pricing requirement, particularly any dollar estimates of the costs that funds and other affected parties will incur as a result of the rule.

a. Mandatory Swing Pricing

At present, rule 22c–1 permits mutual funds to use swing pricing, and yet no U.S. open-end fund has chosen to use it as an anti-dilution tool. We propose to require all affected mutual funds to use swing pricing. In particular, we propose to require every fund to establish and implement swing pricing policies and procedures that would adjust the fund's NAV per share by a swing factor either if the fund has net redemptions of any amount or if the fund has net

[472] Under the proposed amendments, a more frequent classification may not necessarily result in more frequent portfolio rebalancing. For example, if a fund exceeds the 15% illiquid threshold, it would not have to sell its illiquid investments, rather it would not be able to acquire more. In addition, if a fund falls below the highly liquid investment minimum, it would still be able to purchase and sell highly liquid investments. However, both of these events would trigger filing of Form N–RN.

[473] For example, during Mar. 2020 the liquidity of U.S. government securities unexpectedly decreased. Under the proposal, this event would trigger more rapid re-classification into a lower liquidity category. However, because of the unexpected nature of this event, a fund would still not be prepared to immediately meet an increased level of redemptions.

[474] *See infra* section IV.C.

[475] Note that the swing factor itself in theory does not impose a net cost across all types of shareholders. Instead, swing pricing affects a zero-sum distribution of estimated future trading costs among transacting and non-transacting shareholders. The dilution that different types of fund shareholders ultimately experience will reflect this distribution in addition to the actual trading costs incurred by the fund from transactions that accommodate investor subscriptions or redemptions. Beyond the economic effects of the swing factor itself, the processes for calculating and applying the factor as well as the hard close will impose additional costs on all shareholders and intermediaries, which are discussed below.

[476] *See infra* section III.C.3 for a detailed discussion of benefits and costs of the proposed hard close requirement.

subscriptions that exceed an identified threshold.

We expect the proposed mandatory swing pricing requirement to benefit investors. First, swing pricing would protect non-transacting mutual fund investors because it would require transacting fund shareholders to bear the estimated trading costs that arise due to their trading activity. In contrast, currently, investors transacting in fund shares generally do not bear the costs associated with their trading activity, imposing dilution on non-transacting shareholders.[477] For example, an industry study on the use of swing pricing in other jurisdictions estimates that dilution effects can be significant, with effects on annual returns of selected funds in one complex ranging from 10 to 66 basis points in 2019.[478] While these estimates from other jurisdictions may be based on fund transaction cost components that differ from the U.S., such as those associated with government taxes and levies, to the extent that dilution effects are comparably significant in the U.S., the proposed mandatory swing pricing requirement would reduce the dilution of non-transacting fund shareholders.[479] Second, mandatory swing pricing could benefit markets overall because it may reduce the first-mover advantage that arises from dilution associated with trading costs. As a result, the proposed amendment may mitigate the risk of runs on mutual funds and may decrease the risk of fire-sales for the funds' underlying investments.

We believe that these benefits may be more pronounced in the case of net redemptions because dilution may be more severe when net redemptions occur. One reason for this asymmetry is that investor redemptions are required to be met within seven days, whereas the money a fund receives from new subscriptions is not required to be invested within a specific timeframe. Therefore, funds must incur the trading costs that exist during the seven days following investor redemptions, regardless of how large or small these costs are. On the other hand, while fund managers may generally accommodate new subscriptions by investing promptly to increase fund returns and reduce tracking error, they may also elect to wait to purchase investments at more advantageous prices or lower trading costs, resulting in lower dilution of non-transacting fund shareholders. Another reason for asymmetry in dilution from redemptions and subscriptions is that large redemptions can have a greater correlation across funds exposed to the same asset class in times of market stress, which in turn may induce more redemptions and further increase trading costs and associated dilution.[480] Therefore, while swing pricing would reduce dilution from trading costs associated with both net subscriptions and redemptions, we believe that the magnitude of this anti-dilution benefit would be greater in the case of net redemptions.

Another potential benefit of the mandatory swing pricing approach is that it would help overcome the collective action problem that may exist under the current optional framework and may have prevented voluntary swing pricing implementation due to the stigma that could be attached to being the first fund to implement swing pricing. To the extent that such a stigma effect is present in relation to swing pricing, it may deter investors from choosing funds that could implement swing pricing under the optional approach, and that could be a reason why no U.S. fund currently chooses to implement swing pricing.[481] We also recognize that U.S. mutual funds are currently also allowed to implement certain purchase and redemption fee approaches (which do not necessarily require substantial operational changes in contrast to swing pricing), yet these funds do not widely use redemption fees as an anti-dilution tool, possibly because of any stigma attached to anti-dilution tools generally.[482]

The mandatory swing pricing requirement would impose costs on mutual funds, investors, their intermediaries, and other market participants. In addition to the costs associated with the proposed hard close requirement discussed below, mutual funds would experience initial and ongoing operational costs associated with developing and administering swing pricing policies and procedures, changing their systems to accommodate swing pricing, updating fund prospectuses, as well as any costs associated with educating investors about swing pricing procedures. These costs would ultimately be passed on to fund investors.

To the extent that investors expect an increase in the costs of investing in mutual funds as a result of the proposed mandatory swing pricing, they may choose to divest from the mutual fund sector. To the extent that such investor outflows would be substantial, funds may experience a reduction in their economies of scale, which may lead to a further increase in fund fees. In addition, the mandatory swing pricing approach would reduce the set of investment choices available to investors, relative to the optional approach, where investors can choose to invest in funds that use swing pricing or funds that do not use swing pricing.

The determination and application of a fund's swing factor could delay the publication and dissemination of the fund's NAV relative to current practices. To the extent that intermediaries require NAVs for purposes such as updating and publishing client account statements, they would incur costs updating their operations and systems to adapt to later NAV publication times. In addition, any other market participants, such as financial data aggregators, that depend on fund NAV publication would also incur costs updating their operations and systems to adapt to later NAV publication times.

b. Swing Threshold Framework

The current rule permits a fund to determine its own swing threshold for net purchases and net redemptions, based on a consideration of certain factors the rule identifies.[483] For a fund

[477] In this section when we discuss trading costs, we refer to both direct (*e.g.,* spread costs) and indirect trading costs (*e.g.,* market impact costs).

[478] *See* BlackRock, *Swing Pricing: The Dilution Effects of Investor Trading Activity on Mutual Funds* (white paper, Oct. 2020), *available at https://www.blackrock.com/corporate/literature/whitepaper/swing-pricing-dilution-effects-of-trading-activity-on-mutual-funds-october-2020.pdf.* To our knowledge, such data on fund dilution are not available for the U.S. and we solicit data that could enable quantification of the benefits of swing pricing. *See also supra* section I.B and *supra* notes 59, 60, 61, and 161 for additional discussion of swing pricing experience in other jurisdictions.

[479] *See supra* section III.B.3 for a discussion of other sources that may contribute to dilution. We solicit comment on the relative impact of these sources on dilution. While the proposed swing pricing requirement is unlikely to reduce dilution associated with stale valuations directly, the proposed requirements would nevertheless help mitigate dilution resulting from trading costs associated with strategic trading behavior that may seek to take advantage of stale valuations.

[480] *See, e.g.,* Dunhong Jin et. al., *Swing Pricing and Fragility in Open-End Mutual Funds* (working paper, revised Jan. 7, 2021) *available at https://ssrn.com/abstract=3280890* (retrieved from SSRN Elsevier database). *Also see* section III.B.3 and note 395 for additional research references.

[481] While we recognize that swing pricing has been successfully implemented in other jurisdictions, these other jurisdictions do not have the same regulatory frameworks and investor base, which may influence investors' sentiment towards anti-dilution tools and the extent of the potential stigma effects. In addition, other jurisdictions do not have the same intermediary structures between funds and their investors as in the U.S. *See supra* section III.B.2.

[482] *See supra* note 67 (stating that, based on staff review of fund prospectuses, fewer than 5% of funds impose a redemption fee on at least one share class).

[483] The factors a fund currently must consider in determining the size of its swing threshold are: (1) the size, frequency, and volatility of historical net

Continued

experiencing net redemptions, the proposal would require the fund to apply a swing factor for any level of net redemptions. In addition, the proposed rule would establish a threshold for inclusion of market impact costs in its swing factor when net redemptions exceed 1% of the fund's net assets (the ''market impact threshold''). For funds experiencing net subscriptions, the proposal would require funds to apply a swing factor that accounts for all trading costs (*i.e.,* including market impact costs) when net purchases exceed the threshold of 2% (the ''inflow swing threshold'').

Under the current rule, funds are able to tailor their swing pricing thresholds to their size, the characteristics of their underlying portfolio holdings, and the characteristics of their investor base. While this principles-based approach may be less burdensome for funds, some funds may find it suboptimal to implement swing pricing routinely due to the operational costs of doing so frequently. As a result, they may choose thresholds that reduce the frequency and impact of swing pricing on transaction prices for fund shares. This, in turn, could reduce the benefits of the proposed swing pricing requirement, including protecting non-transacting investors from dilution due to trading costs and reducing the first-mover advantage associated with such costs. Therefore, we believe that a uniform approach to swing thresholds would better protect non-transacting investors in the mutual fund sector by ensuring that trading costs are passed on to transacting investors, regardless of which fund's shares investors hold in their portfolios.

Trading costs incurred by a fund can be dilutive when a fund experiences either redemptions or subscriptions. However, as discussed above, subscriptions are likely to be less dilutive than redemptions. To the extent that determining the swing factor is costly, as discussed below, only requiring funds to do so when net subscriptions exceed 2% would limit the frequency with which funds incur such costs. Based on the analysis of historical daily fund flows in Table 3, a random fund on a random day has approximately a 1% chance of exceeding the inflow swing threshold. In addition, there were only 0.2% of days where more than 5% of funds in the sample experienced net subscriptions exceeding the inflow swing threshold.[484] Therefore, we do not expect most funds to experience the costs of applying a swing factor in the case of net subscriptions frequently. The anti-dilutive benefits of swing pricing in response to net redemptions are likely to be more than those associated with net subscriptions, as discussed above. Therefore, we believe that applying swing factor on any day with net redemptions may benefit non-transacting investors compared to applying swing factor only when a certain threshold is crossed. However, to the extent that applying the swing factor more frequently is costly, these benefits may be offset by such costs.

The proposed market impact threshold of 1% may result in varying costs and benefits for funds and their investors. For example, two funds that invest in underlying assets with similar liquidity characteristics may experience market impact at significantly different levels of redemptions, as measured in percentage, if they are significantly different in size. A 1% redemption from a fund with low AUM may not result in sales of assets that result in market impact, whereas a 1% redemption from an otherwise similar fund with significantly larger AUM might. Similarly, two funds with comparable levels of AUM holding investments with different liquidity characteristics may experience market impact at different levels of redemptions. For example, a large cap equity fund may not experience market impact at the 1% threshold, whereas a fixed income fund with comparable AUM might. As such, the extent to which a given fund and its investors benefit from evaluating market impact at the 1% threshold will vary based on factors such as the fund's size and the liquidity of its underlying investments. For funds that may experience market impact even when redemptions are below the 1% threshold, we note that funds can choose to incorporate market impact into their swing factor at a lower threshold than 1%. To the extent that calculating market impact may be costly, only requiring funds to do so when net redemptions exceed 1% would limit the frequency with which funds incur such costs. We estimate that a random fund on a random date has approximately a 1.6% chance of exceeding the market impact threshold, and there were 2.3% of dates where more than 5% of funds experienced net redemptions exceeding the market impact threshold.[485]

c. Calculation of the Swing Factor

The current swing pricing framework provides an upper limit of 2% for the swing factor and requires that the swing factor take into account only the near-term costs expected to be incurred by the fund as a result of net purchases or net redemptions that occur on the day the swing factor is used,[486] as well as borrowing-related costs associated with satisfying redemptions; however, it does not specify how a fund should select investments for the purposes of estimating the trading costs and it does not require a fund to include market impact costs in the swing factor.[487] We propose removing the current upper limit of 2% for the swing factor and requiring a fund's swing pricing administrator to make good faith estimates, supported by data, of the overall costs, including market impact costs under certain conditions, that the fund would incur if it purchased or sold a pro rata amount of each investment in its portfolio equal to the amount of net purchases or net redemptions (*i.e.,* a vertical slice).[488] Because a fund would need to calculate its costs based on the purchase or sale of a vertical slice of its portfolio, rather than selecting specific investments to be sold/purchased and estimating the cost of selling/purchasing those specific investments, we propose removing borrowing costs from the swing factor calculation.

i. Vertical Slice Assumption

The vertical slice assumption may benefit investors of the affected funds. Specifically, the vertical slice assumption is designed to recognize the potential longer-term costs of reducing a fund's liquidity and would more fairly reflect the costs imposed by redeeming or purchasing investors than an approach that focuses solely on the costs associated with the instruments that a fund expects to buy or sell (or

purchases or net redemptions of fund shares during normal and stressed periods; (2) the fund's investment strategy and the liquidity of the fund's portfolio investments; (3) the fund's holdings of cash and cash equivalents, and borrowing arrangements and other funding sources; and (4) the costs associated with transactions in the markets in which the fund invests. *See* rule 22c–1(a)(3)(i)(B).

[484] The analysis also shows that if the 99th percentile net fund flow is computed on each date, it exceeds the inflow swing threshold on approximately 34% of days.

[485] An analysis of historical Morningstar daily fund flow data for equity and fixed income funds from 2009 through 2021 shows that the 1st percentile flow is approximately −1.6% while the 5th percentile flow is approximately −0.3%. The same analysis shows that the 1% market impact threshold corresponds to approximately the 0.016 percentile of pooled daily net fund flows. The same analysis shows that if the 1st percentile fund flow is computed on each date, it exceeds the market impact threshold on approximately 84.6% of dates.

[486] These near-term costs include spread costs, transaction fees, and charges arising from asset purchases or asset sales resulting from those purchases or redemptions.

[487] *See* rule 22c–1(a)(3)(i)(C).

[488] *See* proposed rule 22c–1(b)(2).

expected borrowing costs, in the case of redemptions). For example, if investor redemptions continue for multiple days, a fund that sells its most liquid investments on the first day could experience increased trading costs on subsequent days because it has to sell a bigger fraction (relative to a vertical slice) of its less liquid assets. As a result, redeeming investors on subsequent days would be charged more than investors who redeemed on the earlier date via a higher swing factor. In addition, the future costs associated with rebalancing the fund portfolio to its pre-redemption level of highly liquid investments are not currently permitted to be incorporated into the swing factor because they are not near-term costs that may be considered under the current rule. Therefore, the proposed vertical slice assumption would help to ensure that redeeming investors bear not just the immediate trading costs they impose on the fund, but also, in cases where a fund sells its most liquid investments to meet redemptions first, the estimated transaction costs associated with rebalancing the fund's portfolio to its pre-redemption level of highly liquid investments, such that subsequent redeeming investors are not charged for the costs associated with past redemptions.

We recognize that selling a vertical slice of a portfolio in order to meet investor redemptions may not be a practice used by all mutual funds during all times. For example, recent research documents that during tranquil market conditions, corporate bond funds tend to reduce liquid asset holdings to meet redemptions; however, when aggregate uncertainty rises these funds tend to scale down their liquid and illiquid assets proportionally to preserve portfolio liquidity.[489] Another paper finds that some funds holding less liquid assets reacted to redemptions in March 2020 by adding to their cash buffers even after meeting investor redemptions, rather than selling their most liquid assets first or selling a vertical slice of their portfolio.[490] Therefore, we recognize that the vertical slice assumption could result in using estimates of transaction costs in the calculation of the swing factor that differ from the estimated trading costs tailored to a different asset liquidation approach. As a consequence, to the extent that the trading costs estimated based on the vertical slice assumption are higher or lower than estimated trading costs of the fund's portfolio liquidation strategy, redeeming investors may be over- or under-charged relative to the immediate trading costs of a fund's actual liquidation strategy.

ii. Market Impact Costs

We propose requiring funds to include a good faith estimate of market impact costs in the calculation of their swing factors when (1) net subscriptions are above the inflow swing threshold or (2) when net redemptions exceed the market impact threshold of 1%. To the extent that funds are able to forecast market impact costs accurately, this requirement would ensure that transacting investors bear, in addition to direct transaction costs, the estimated impact of their transactions on the ultimate price a fund pays or receives for any investments it buys or sells. This may allow non-transacting shareholders to recapture more of the dilution imposed on the fund by transacting fund investors. As a result, the proposed market impact inclusion may also help reduce first-mover advantage.

Several factors may limit the anti-dilution benefits of including market impact costs in the swing factor. First, funds may incur costs in obtaining reasonable ex-ante estimates of market impact costs, either because they need to pay vendors for such estimates or because they need to exert costly effort to develop such estimates internally. These costs may ultimately be passed on to investors. Second, it may be difficult and sometimes not feasible to develop objective estimates of market impact for some of the investments that mutual funds hold, such as those that generally lack a robust and liquid secondary market (*e.g.,* municipal securities and small-cap equities). In addition, market impact may be more difficult to estimate during periods of stress when trading in certain markets may be limited or stop. Therefore, funds may need to use subjective discretion to determine market impact estimates in certain circumstances, which may result in funds over- or under-estimating the true ultimate market impact costs associated with a given day's orders. This, in turn, would result in over- or under-charging transacting investors, exposing them to additional risk regarding the price at which they will ultimately transact their shares.[491]

Third, because funds would still have some discretion in determining their swing factors, such as discretion over which price impact model is used to estimate market impact, some funds may have an incentive to under- or overestimate their swing factors, depending on the circumstances. For example, a fund may choose to underestimate market impact, biasing the swing factor estimate downwards, in order to attract investors that prefer less volatile transaction prices for fund shares. On the other hand, funds may have an incentive to overestimate market impact and overcharge transacting investors relative to the trading costs they are expected to impose on the fund, because doing so may increase the performance of the fund.[492] However, the proposed requirement that funds report each swing factor on Form N–PORT may mitigate any incentive funds have to under- or overestimate their swing factors, as it will provide public transparency regarding the size of these NAV adjustments.[493]

iii. Removal of the Upper Limit on the Swing Factor

The proposed removal of the upper limit on the swing factor may benefit fund investors by permitting swing pricing to address the dilution that transacting investors impose on a fund more fully. The magnitude of this benefit would depend on how often funds' trading costs exceed the current 2% swing factor. To the extent that trading costs are more likely to exceed this threshold during stressed periods, we expect this amendment to benefit non-transacting fund investors during such periods when dilution may be increasing, which may further address the first-mover advantage related to dilution from trading costs. In addition, to the extent that trading costs for certain types of funds are more likely to exceed the current 2% swing factor, the proposed amendment would ensure that investors in these funds are as protected from dilution as investors in funds for which trading costs generally correspond to a swing factor lower than 2%. These benefits may be partially offset because the removal of the upper limit for the swing factor may also have a destabilizing effect during periods of stress. For example, if investors expect that trading costs will continuously increase, and that the swing factor will

[489] *See* Hao Jiang, et al., Dynamic Liquidity Management by Corporate Bond Mutual Funds, J. Fin. & Quantitative Analysis 1622, no. 5 (Aug. 2021).

[490] *See* Andreas Schrimpf, et. al., *Liquidity Management and Asset Sales by Bond Funds in the Face of Investor Redemptions in March 2020* (Mar. 17, 2021) *available at https://ssrn.com/abstract=3799868* (retrieved from SSRN Elsevier database).

[491] Transacting investors already face market risk when submitting an order to buy or sell fund shares because these orders must be submitted prior to the time at which a fund determines its NAV.

[492] When a fund overcharges transacting investors, the fund increases its assets and hence the performance of the fund.

[493] *See supra* section III.B.4.

increase accordingly, they may be incentivized to redeem their shares at the onset of market stress, when the swing factor is lower.

iv. Removal of Borrowing Costs From the Swing Factor

We propose removing borrowing costs from the costs that should be included in the swing factor. To the extent that the vertical slice assumption would result in higher magnitude swing factors, any decrease in swing factor magnitude due to the proposed removal of borrowing costs from the swing factor calculation may be fully or partially offset. Therefore, we do not expect this aspect of proposal to have substantial effects. Although affected funds would still be allowed to engage in bank or inter-fund borrowing in order to fund investor redemptions, the proposed swing factor calculation will not reflect potential borrowing costs for funds that do use borrowing to fund redemptions.[494] To the extent that these costs are higher than the estimated costs of buying or selling a vertical slice of a fund's portfolio, they would be borne by investors remaining in the fund, limiting the anti-dilution benefits of the proposal.

3. Hard Close Requirement

With respect to putting swing pricing into practice, requiring a hard close would ensure that funds receive more timely flow information. Because swing pricing requires both fund flows and estimates of trading costs, requiring a hard close should reduce any flow estimation error that would otherwise occur if funds had to rely heavily on estimated fund flows in adjusting their NAV. In addition, by providing funds with more complete flow information, the hard close requirement could have auxiliary benefits unrelated to swing pricing, including settlement modernization, and order processing improvements.[495] Also, a fund that knows its flows sooner may be able to plan and implement trading strategies to meet those flows in a more cost effective manner.

The hard close requirement may change operational burdens for mutual funds and other parties related to mutual fund order processing. Currently, because mutual fund flows from different intermediaries and investors are received by funds at different times, fund transfer agents may have to process the orders in multiple batches that may span until the next day. On the one hand, if doing so is costly in terms of labor and/or strain on the processing systems and to the extent that these costs are non-negligible, the hard close requirement may decrease operational burden by allowing all orders to be processed within a shorter time frame. On the other hand, to the extent that processing all orders in a short amount of time, as it would be implied under the proposal, requires more manpower and/or more processing capabilities, the hard close requirement may increase operational burden of open-end fund transfer agents. This effect may be more pronounced for smaller transfer agents that do not enjoy economies of scale.

In addition, the hard close requirement may allow funds to plan next-day and future activity related to today's redemptions or subscriptions more efficiently. For example, the hard close would in some cases improve the reliability of the flow information fund portfolio managers use by eliminating cancellations and corrections. In addition, if a portfolio manager uses flow information posted at the custodian, the hard close generally would provide timelier flow information. To the extent that these effects are present, the hard close requirement would allow funds to have timelier information that would permit them to plan and execute their trades in a more efficient manner. This, in turn, may reduce funds' tracking errors and may help prevent any error corrections or trade cancellations after the pricing time.

However, requiring a hard close may impose significant switching costs (*e.g.,* changing business practices, computer systems, integrating new technologies, etc.) on funds, their intermediaries, and service providers that could ultimately be passed on to investors. We recognize that these switching costs could be larger for certain types of intermediaries. For example, some intermediaries may have more layers of intermediation than others, and, therefore, would have to update more systems and processes. As another example, some intermediaries may have more reporting and recordkeeping requirements than others, and would have to update more systems and processes to comply with the hard close requirement. In addition, some intermediaries have their processes and systems set up such that the daily price information is required before any orders can be processed. For example, retirement plan recordkeepers and any affiliated brokers and trust companies, as well as DCS&S, would have to modify their processes and systems substantially, as these processes currently require daily price information for all investments prior to processing of any investment instructions from the plan participants. In addition, retirement plans may have to modify their provisions, and employers sponsoring these plans may need to modify payroll systems, as well as change the information (*e.g.,* websites, manuals, and training materials) they provide to employees regarding how to submit orders, as a result of the hard close requirement.

A substantial number of affected retirement plans are small in size as shown in Table 5. Therefore, a large number of small plans may be disproportionally affected by the implementation costs related to the proposed hard close because they may not enjoy economies of scale. To the extent that these costs are too large relative to the size of assets under management, some of the plans may cease to exist or choose to offer other investment vehicles such as ETFs or CITs. For example, in 2003, one commenter stated that one cost related to a hard close that was substantially similar to what we are proposing would be requiring submission of trades on sub-account levels rather than on an omnibus level, which would result in an incremental cost increase of $4.1 million per year for this commenter with 1.3 million of omnibus trades per year.[496] To the extent that not all investors have a choice of intermediary, such as participants in employee-provided retirement plans, the costs stemming from the proposed hard close requirement may be borne by either investors (*i.e.,* plan participants) or their employers that sponsor the plan.

In addition, to the extent that not all intermediaries may be able to comply with the hard close requirement, the investors that use these intermediaries may face a decreased ability to invest in mutual funds via certain intermediaries. To the extent that the strategies that open-end funds subjected to the proposed requirement cannot be replicated or to the extent that such replication would be more costly outside of the mutual fund sector (*e.g.,* via a separately managed account), investors may end up with either less

[494] Fund borrowing may defer but not always eliminate the need for a fund to sell portfolio investments, as a fund will eventually have to re-pay the loan. As a result, a fund may incur borrowing costs in addition to trading costs, but only the latter would be captured by the adjustment of NAV by the swing factor under the proposal.

[495] *See supra* section II.C.3.a for additional discussion.

[496] Comment Letter of Charles Schwab (Oct. 27, 2003) on 2003 Hard Close Proposing Release, File No. S7–27–03, *available at https://www.sec.gov/rules/proposed/s72703/s72703-2.pdf.*

diversified portfolios, or experience higher costs of investing.

The hard close requirement may disadvantage certain investors that do not have a choice in their intermediary, if it precludes them from responding to market events after a specific cut-off time that is earlier than 4 p.m. ET or lengthens the amount of time for completing certain types of transactions [497] compared to investors that submit orders directly to funds. For example, if an intermediary sets up a cut-off time for transactions that is earlier than the fund cut-off time (4 p.m.), investors in mutual funds that use these intermediaries will not be able to react to market events that take place between an intermediary cut-off and the fund cut-off time, thereby increasing a market risk for investors that trade via intermediaries with earlier cut-off times. However, investors that trade directly with a fund or use intermediaries with later cut-off times would have an advantage and still be able to respond to some or all market events during this time frame (depending on the applicable cut-off time), allowing them to decrease their market risk relative to investors that would be pushed to next-day pricing.

In addition, to the extent that investors designate their employers to make retirement contributions to intermediaries via payroll procedures, and to the extent that payroll procedures have to be performed during a specific time frame in order for transaction to receive that day's price, the employers may experience a cost of switching the system to accommodate an earlier cut-off time for orders. These effects may be more pronounced for employers and investors in the western regions of the U.S. who may not have a sufficient time window to process contributions and/or (re)allocate their portfolios. In addition, to the extent that some intermediaries already impose an earlier cut-off time for investors' orders, the hard close may entail an even earlier cut-off time, which may further disadvantage investors.

In addition, the proposed hard close might affect current order processing for funds of funds. We understand that an upper-tier fund in a fund of funds structure may not submit its purchase or redemption orders for lower-tier funds' shares until after 4 p.m. Under the proposed rule, the upper-tier fund would have to submit purchase or redemption orders for lower-tier funds' shares before the lower-tier funds' designated pricing time in order to receive that day's price for the orders.

We are not able to quantify many of the costs of the hard close requirement for several reasons. First, we cannot predict how the costs would be allocated between funds and their intermediaries because we do not have detailed information about the number of intermediate steps required to be completed between the time an investor places an order and the time a fund receives this order for each type of an intermediary and which party currently bears the costs of each intermediate step. Second, we do not have granular data related to the current practices and operating costs for each intermediary type, both those that are regulated by the Commission and those that are not. Therefore, we cannot predict how their systems and practices would change in response to the hard close requirement and estimate the associated costs of these changes. Third, we cannot predict how many intermediaries will choose to upgrade their systems and processes in order to maintain their ability to offer mutual funds to the client, how many intermediaries will choose to impose an earlier cut-off time for investor orders, and the number of intermediaries that will retain their existing systems and order cut-off times and offer products that would not be subject to the proposed hard close requirement, such as CITs, ETFs, or closed-end funds in place of mutual funds. Finally, we cannot predict how many investors will respond to changes that intermediaries may implement in response to the hard close requirement by divesting from the mutual fund sector. We request comment on these costs of the hard close requirement, particularly any dollar estimates of the costs that funds, intermediaries, and other affected parties will incur as a result of the rule.

4. Commission Reporting and Public Disclosure

The Commission is proposing to change reporting frequency of Form N–PORT, to change public availability of certain items on Form N–PORT, and to amend Forms N–PORT, N–CEN, and N–1A. The proposed amendments are intended to increase transparency around funds' activities related to liquidity management and anti-dilution tools and to make information more usable by filers, regulators, investors, and other potential data users. The proposed amendments would also provide more information about a fund's portfolio and its liquidity risk profile to investors, thereby improving their portfolio allocation decisions.

Open-end funds will experience costs as a result of the proposed changes to the three forms. In connection with the proposed information collection requirements under the Paperwork Reduction Act, we estimate that the proposed changes to Form N–PORT would result in an internal cost increase of $2,472,356 and an external cost increase of $5,613,175, the proposed changes to Form N–1A would result in internal cost increase of $10,609,390; and the proposed changes to Form N–CEN would not on aggregate result in an increase of ongoing costs.[498]

a. Commission Reporting Frequency

Currently funds file Form N–PORT reports for the first, second, and third months of each fiscal quarter with the Commission 60 days after the end of the third month of the quarter. We are proposing to require funds to file Form N–PORT reports with the Commission within 30 days after the end of each month. We believe that this amendment would help the Commission to oversee funds' activities on a timelier basis. We do not expect this part of proposal to have substantial economic effects on funds, as funds already are required to maintain records of the information that Form N–PORT requires no later than 30 days after the end of each month and many funds report monthly information about their portfolio holdings on a voluntary basis to third party data aggregators, generally with a lag of 30 to 90 days, which in turn make them available to investors and other data users for a fee.[499] To the extent it is less efficient for fund groups to submit on a more frequent monthly basis instead of in one batch after quarter-end, the costs borne by fund groups may marginally increase under the proposal.

The data the Commission would receive on Form N–PORT reports within 30 days of month-end would include portfolio information which, depending on the fund, may not currently be public. To the extent this nonpublic information was subject to a data breach before its scheduled publication 60 days after month-end, unauthorized access could harm shareholders by expanding the opportunities for professional traders or others to exploit the information. However, the Commission has controls and systems for the use and handling of the proposed modified and new data in a manner that reflects the sensitivity of the data and is consistent with the maintenance of its confidentiality. In addition, as discussed below, many funds already

[497] *See supra* section II.C.3.d.

[498] *See infra* sections IV.D, IV.E, and IV.F. These annual direct costs include ongoing as well as initial costs, with the latter being amortized over three years.

[499] *See* rule 30b1–9. *Also see* section II.E.1.b. and note 287.

publicize their monthly holdings, which reduces the sensitivity of the information the Commission would store confidentially, and Form N–PORT reports would become publicly available 60 days after month-end.

b. Public Availability of Form N–PORT Data and Aggregate Liquidity Disclosure

Currently, funds are required to make the report for the third month of every quarter available to the public. We are proposing to make funds' monthly reports on Form N–PORT public 60 days after the end of each monthly reporting period. We are also proposing to require an open-end fund to provide information regarding the aggregate percentage of its portfolio in each of the three proposed liquidity classification categories, which would become public on the same time frame.

Public disclosure of aggregate liquidity classifications would help investors to assess the liquidity profile of the funds in which they are investing, and may be more useful to investors than the narrative liquidity disclosure the Commission adopted in 2018. The proposed disclosure may provide more information about a fund's liquidity risk profile to investors, thereby improving their portfolio allocation decisions. In addition, observing other funds' aggregate liquidity profiles might provide some information that is useful in a fund's own liquidity classification process. These benefits may be offset to the extent that liquidity classifications are not directly comparable across mutual funds, although the proposal would establish minimum standards that reduce the amount of discretion funds currently have in classifying their investments. We expect that funds will incur one-time and ongoing costs associated with preparing the portion of Form N–PORT associated with the aggregate liquidity profile, as discussed in section IV.

The proposal would triple the amount of data made available to investors and other potential users on Form N–PORT in a given year. To the extent that investors currently are not able to obtain monthly portfolio data from other sources, such as fund websites or third-party data aggregators the proposed requirement would enhance the ability of investors to monitor funds' portfolios, which in turn may help investors to make more efficient investment decisions.[500] Many funds report their monthly portfolios to third party data aggregators. Because the data made available to data aggregators is inconsistent across funds and time, the proposed amendment would increase consistency of portfolio data available to investors and other data users. To the extent that 60 days is not a long enough delay in disclosure of portfolio data, funds may be subject to predatory trading or ''copycatting activities'' that could potentially affect portfolio returns.[501] This effect may be more pronounced for funds with more proprietary trading strategies.

c. Other Amendments to Forms N–PORT, N–CEN, and N–1A

We are proposing to remove the reporting requirement for swing pricing on Form N–CEN and replace it with a new reporting requirement on Form N–PORT that would require information about the number of times the fund applied a swing factor during the month and the amount of each swing factor applied. We are also proposing amendments to Form N–CEN to identify and provide certain information about service providers a fund uses to fulfill the requirements of rule 22e–4. In addition, instead of classifying an RSSD ID as an LEI, we propose to provide separate line items where a fund would report an RSSD ID, if available, in the event that an LEI is not available for an entity. We also propose to amend certain items and definitions on Form N–PORT to conform them to the proposed amendments. Finally, we propose to amend Item 11(a) of Form N–1A to require, if applicable, that funds disclose that if an investor places an order with a financial intermediary, the financial intermediary may require the investor to submit its order earlier to receive the next calculated NAV. In addition, as a result of the proposed swing pricing requirement, funds would be required to disclose information about swing pricing in response to certain existing items in the form.[502]

The proposed amendments would increase transparency around funds' activities in several ways. First, additional information about funds' service providers would enable investors and other data users to assess fund liquidity management practices and help the Commission oversee the industry better. Second, information about swing pricing application can help the Commission and investors understand swing factor adjustments a given fund makes and evaluate how often a fund has any net redemptions or has net subscriptions of more than 2% and the amount of the swing factor adjustment.

The proposed amendments would impose PRA costs, as discussed in above. Some funds may already maintain some of the information they would be required to report under the proposal in the ordinary course of business. However, we recognize that funds would incur some costs in reporting the information. We recognize that, due to economies of scale, such costs may be more easily borne by larger fund families, and that costs borne by funds would be passed along to investors in the form of higher fees and expenses. In addition, the proposed disclosures of each swing factor and the number of times a swing factor was applied may create incentives for funds to compete on this dimension. Specifically, investors who prefer lower variability in the value of their investments may move capital from funds that had high historical swing factors to funds with lower swing factors. However, while NAV swings penalize redeemers or subscribers under certain circumstances, they benefit investors remaining in the fund, which may make funds actively using swing pricing more attractive to longer term investors.

The proposed amendments related to entity identifying information would help the Commission and market participants to identify entities related to funds' businesses more efficiently.

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The proposed amendments may affect allocative efficiency in several ways. First, the proposed changes to the liquidity classification methodology, proposed public disclosure of funds' aggregate liquidity classifications, and swing pricing disclosures are expected to benefit investors by reducing information asymmetries between funds and investors. To the degree that some investors may currently be uninformed about liquidity risks of funds' investments, the proposed disclosure requirements may increase transparency about liquidity costs transacting investors impose on remaining fund investors and liquidity risks in open-end funds. To the degree that greater

[500] *See e.g.,* Ji-Woong Chung et. al., *Intended Consequences of More Frequent Portfolio Disclosure* (working paper, Apr. 17, 2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4086186* (retrieved from SSRN Elsevier database).

[501] A recent working paper examines the costs of Form 13F disclosure and finds that additional disclosure may harm portfolio returns over time. *See* David Kwon, *The Differential Effects of the 13f Disclosure Rule on Institutional Investors* (working paper, May 5, 2022*), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4095482* (retrieved from SSRN Elsevier database).

[502] *See* Items 6(d), 4(b)(2)(ii), 4(b)(2)(iv)(E), and 13(a) of Form N–1A.

transparency about liquidity risk of mutual funds may lead some risk averse investors to use other instruments, in lieu of mutual funds for long-term investment, allocative efficiency may increase.[503] In addition, the increased transparency may result in greater allocative efficiency as investors with low tolerance of liquidity risk and costs may choose to reallocate capital to funds that have lower liquidity risk and costs. Further, to the degree that uncertainty about the proposed swing pricing requirement may reduce the attractiveness of affected funds to investors, transparency about historical swing factors may reduce those adverse effects.

Second, market efficiency for funds' underlying investments may increase, to the extent that the proposed amendments mitigate the risk of runs on open-end funds and decrease fire-sales for the funds' underlying investments. In addition, a potential shift in demand from illiquid to liquid investments may encourage the development of market structures that increase the liquidity of investments that are currently less liquid. For example, currently, only a fraction of traded bank loan interests has a standardized settlement process and transparent prices and quotations. To the extent that the proposed amendments would lead market participants to standardize and shorten the settlement process for bank loan interests, the prices and spreads for bank loans may become more transparent at a sector level, increasing the efficiency in this market. On the other hand, the proposed liquidity requirements may lead funds to allocate less to these investments. Absent other frictions, the difference in demand for these investments could be made up for by other investors or other the same investors through other structures (such as more direct investment). However, if this difference in demand is not fully absorbed by other market participants, the efficiency in this market may decrease.

Third, the hard close requirement may make portfolio allocation less efficient for investors, to the extent that intermediaries used by these investors would impose an earlier cut-off time for orders and investors would not be able to reflect the entire day's market information into their allocation decisions. In addition, to the extent that certain types of orders would no longer be executed at today's prices and rather would be sent to funds the next day, investors may be exposed to additional market risk as well as potentially decreased portfolio returns because an intermediary may hold the cash from investors' orders submitted after the cut-off time (but before 4p.m. ET) until it could submit these orders at the end of the next day.

The proposed amendments may affect funds' portfolio efficiency. For example, funds may start considering the liquidity of investments and their overall portfolios to a higher degree when making portfolio allocation decisions and considering other factors, such as an investment's risk and expected return, to a relatively lower degree. This may reflect an optimal choice, to the extent that funds' investors believe that illiquidity of a fund's portfolio is more costly relative to the cost of foregoing less liquid portfolio investments that may offer higher returns. On the other hand, if liquidity considerations lead to deviations from the fund's investment strategy or benchmark return, the proposed amendments may decrease the efficiency of funds' portfolios.

The proposed daily classifications may also affect funds' portfolio efficiency. On the one hand, if daily fluctuations in market values of a fund's portfolio investments are large (and therefore the daily changes in the dollar value of the stressed trade size is also large) but revert to the mean within several days, liquidity classification for the same portfolio position may also fluctuate daily while eventually reverting to the mean. In this scenario, funds may start managing the portfolio positions inefficiently in order to be in compliance with the highly liquid investment minimum and the 15% limit on illiquid investments. On the other hand, daily classifications may increase informational efficiency of the funds' investments, to the extent that funds' demand for daily information results in increased availability of such information offered by third-party providers. As a result, funds' portfolio allocation decisions may become more efficient.

The proposed amendments may also affect operational efficiency of funds and intermediaries. First, to the extent that the proposed removal of the less liquid category results in an increased standardization of settlement practices and a reduction of settlements times for bank loan interests and other investments that are currently classified as less liquid, a reduction in allowed settlement time for investments in order to qualify as moderately liquid investments may facilitate operational efficiency of funds that trade these investments. Second, the proposed removal of the less liquid category may facilitate operationalizing funds' swing pricing by reducing uncertainty related to trading costs for investments that are currently classified as less liquid. In particular, to the extent that open-end funds will become more certain about trades' settlement dates, it may allow them to more accurately estimate trading costs and, therefore, more accurately estimate the swing factor. Third, intermediaries may improve their order-processing systems as a result of the proposed hard close requirement, improving ongoing operational efficiency for both intermediaries and funds.[504]

2. Competition

The proposed amendments may affect the competitive landscape for open-end funds. There are two main economic effects discussed above that may cause the change in the competitive landscape for open-end funds: (1) cost increases for funds, fund managers, and fund administrators stemming from proposed changes in the liquidity risk management program, proposed mandatory swing pricing, and the hard close; and (2) additional constraints on funds' holdings of certain investments that could limit these funds' investment strategies due to proposed changes to funds' liquidity classifications, the proposed definition of illiquid investments, and proposed changes to the highly liquid investment minimum.

Competition within the open-end fund sector may evolve as a result of the two effects stated above in several ways. First, to the extent that certain funds substantially change their investment strategies towards more liquid investments, the number of open-end funds that hold more liquid investments may increase, and competition among those funds for investors may increase. Conversely, competition among funds that hold less liquid investments may decrease. These effects depend also upon how investor demand for funds with liquid and illiquid investments may change with the proposed amendments. Second, to the extent that smaller open-end funds would experience a more substantial operational burden compared to larger fund complexes that exhibit economies of scale and may be able to set up their trading desks in a more efficient

[503] *See, e.g.,* Jennifer Huang et. al., *Shifting and Mutual Fund Performance,* 24 Rev. Fin. Stud. 2575, no. 8 (2011). The paper argues that if investors are not fully aware of risk-shifting behavior or if the changing risk level hampers their ability to assess fund performance, then individual portfolios are less likely to be efficient.

[504] *See supra* section II.C.3 for additional discussion.

manner,[505] smaller funds may become less competitive than larger funds. As a result, smaller funds may decide to liquidate or to convert to other fund structures, such as ETF or closed-end structures, to the extent such conversion would be less costly compared to remaining a mutual fund. Third, to the extent that some open-end funds may currently deliver higher returns because they set a lower highly liquid investment minimum and reasonably anticipated trade size compared to other funds with similar investment strategies but higher highly liquid investment minimums and reasonably anticipated trade sizes, the proposed amendments to apply uniform minimum for the stressed trade size and highly liquid investment minimum may minimize such a competitive advantage in performance and level the field among open-end funds. Finally, to the extent that investors would prefer funds with less volatile transaction prices for fund shares under the proposed swing pricing requirement, funds with larger trading costs may become less competitive relative to the funds with smaller trading costs.

Competition for investment flows between open-end funds and other collective investment vehicles within retail and institutional non-retirement space may also be affected. To the extent that the proposed amendments reduce investor dilution and the liquidity risk of open-end funds, some investors may increase their holdings of open-end funds relative to other investment vehicles. That said, we also recognize that some investors may attach more importance to investing in less liquid investments through a pooled vehicle with the ability to redeem on a daily basis and may view potential costs of dilution as the price of shareholder liquidity.

In addition, there are three reasons why investors may reduce their investment in open-end funds, making open-end funds less competitive with other types of investment vehicles, such as closed-end funds (*e.g.,* interval funds), ETFs, or CITs. First, holding open-end funds may become relatively more costly compared to these other collective investment vehicles. Second, some investors may prefer to have holdings of less liquid investments, such as bank loan interests or investments that are valued using unobservable inputs that are significant to the overall measurement, such as long-dated currency swaps and three-year options on exchange-traded shares, within a collective investment vehicle structure. Third, some investors may be averse to the potential effects of the proposed swing pricing requirements, such as redeeming investors that may be charged for more than the dilutive costs they impose on the fund, as well as any investor averse to the increased uncertainty regarding the price at which the investor's fund transactions will ultimately execute.

For these reasons, some open-end funds may decide to offer their existing strategies in alternative fund structures, such as ETF or closed-end fund structures instead of maintaining these strategies within open-end funds under the proposed rule.[506] Funds may make such a determination if doing so would be more cost-efficient, if they anticipate that investors would prefer to invest in their strategies via these alternative structures, or if their existing strategies would no longer be viable under the proposed amendments that call for an increased share of more liquid investments in funds' portfolios. This may give fund complexes or other financial institutions that have more experience in these alternative structures a competitive advantage over those that do not. In addition, some open-end fund strategies may be more amenable to being migrated to other structures than others. For example, a passive open-end fund that does not rely on specialized skills or knowledge of a fund manager may be relatively easy to offer as an ETF. On other hand, while some active investment strategies are available as ETFs, funds may consider the structure less attractive if they consider the daily revelation of their holdings undesirable and they determine that obtaining the exemptive relief that would enable them to structure the fund as a non-transparent ETF would be too costly.[507] Such funds may end up at a competitive disadvantage to those that can more easily offer their strategies in other structures under the proposal.

Competition between open-end funds and other collective investment vehicles, such as ETFs, and CITs,[508] as well as separately managed accounts, within the retirement space may also be affected. As discussed in section III.B.2, processes and systems related to executing investors' orders within their retirement plans require knowledge of NAVs prior to sending investors' trades to funds, and it may be costly to change these processes. To the extent that retirement plans can offer collective investment vehicles or ETFs that are not open-end funds but have similar investment strategies to open-end funds at a lower cost, open-end funds would become less competitive within the retirement sector. One type of a vehicle that offers similar investment strategies to open-end funds at a lower cost is CITs. CITs differ in certain respects, however. For instance, CIT fees are bespoke for each plan, meaning that fees are individually negotiated and a plan participant cannot roll a CIT investment to an IRA when leaving the plan. Recent analysis from ICI demonstrates that, as of 2018, among all assets held in 401(k) plans, mutual funds comprise 43% while CITs amount to 33%.[509] To the extent that the proposed hard close requirement would make mutual funds more costly or difficult to trade relative to CITs, the share of CITs among retirement assets may further grow making open-end funds less competitive.

The proposed hard close requirement may have effects on competition among intermediaries. First, to the extent that intermediaries that are affiliated with fund complexes have an advantage in processing fund orders more swiftly compared to intermediaries that are not affiliated with the funds they offer, the former may not have to impose earlier order deadlines on investors, which would result in competitive advantage over intermediaries that are not affiliated with the funds they offer. Second, to the extent that larger intermediaries enjoy economies of scale and would be able to implement the hard close in a more cost-effective way relative to smaller intermediaries, smaller intermediaries may become less competitive as they may have to pass

[505] *See e.g.,* Gjergii Cici et. al., *Trading Efficiency of Fund Families: Impact on Fund Performance and Investment Behavior,* 88 J. Banking & Fin.1 (Dec. 22, 2015, rev. Jan. 12, 2016), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2514203.* The authors find that by operating more efficient trading desks that help reduce trading costs, fund families improve the performance of their funds significantly relative to fund families with less efficient trading desks.

[506] To the extent existing mutual funds convert to ETFs, certain investors in these funds may incur long-term capital gains taxes as a result of such conversions.

[507] *See* Precidian ETFs Trust, et al., Investment Company Act Release Nos. 33440 (Apr. 8, 2019) [84 FR 14690 (Apr. 11, 2019)] (notice) and 33477 (May 20, 2019) (order) and related application (''2019 Precidian'') for an example of exemptive relief pertaining to non-transparent ETFs.

[508] CITs are an alternative to mutual funds for defined contribution plans. Like mutual funds, CITs pool the assets of investors and invest those assets according to a particular strategy. Unlike mutual funds, which are regulated under the Investment Company Act of 1940, CITs are regulated under banking laws and are not marketed as widely as mutual funds; which reduces their operational and compliance costs compared with mutual funds.

[509] *See* BrightScope/ICI working paper at 2.

the implementation costs on to their investors.

To the extent that daily classifications would require a more frequent use of liquidity classification providers, demand for liquidity classification providers may increase. To the extent that funds would expand their outsourcing of liquidity classifications, competition among outside liquidity classification providers may increase. However, to the extent that some liquidity classification providers currently used by funds have operational capacity only for less frequent than daily provision of services, they may become less competitive compared to those that can provide the service on a daily basis.

The proposed amendments may also affect competition in markets for funds' underlying investments. To the extent that open-end funds would change their overall portfolio towards more liquid investments as a result of the proposed amendments, and to the degree that such reallocation would be correlated across funds, competition in the markets for more liquid investments may increase, while competition in market for less liquid investments may decrease, which may further decrease the liquidity of these investments. For example, the proposed removal of the less liquid category may affect competition in the secondary market for bank loan interests. To the extent that open-end funds would demand bank loan interests that are more liquid and standardized in terms of the settlement process, competition in the bank loan market may be affected—both among the loan issuers and loan administrators. Specifically, increased demand for shorter settlement may drive bank loan market participants to compete with each other via offering shorter settlement for their trades, including among counterparties who are willing to contract for expedited settlement, to the extent that 15% of bank loan interests held by open-end funds [510] is a substantial enough share of the bank loan market for funds to have bargaining power in this market. To the extent that settlement times do not improve as a result of this amendment, bank loan interests with longer settlement times may become less competitive with loan interests that have shorter settlement times. Third, to the extent that open-end fund investors would substitute funds that hold bank loans for funds that hold close alternatives, such as high-yield bond funds, as a result of the proposal, demand for funds holding these instruments may increase. In addition, to the extent that open-end funds become more limited in how much of bank loan interests they can hold directly, open-end funds may increase their holdings of CLOs, which in turn could increase demand for CLOs and competition among CLOs. Finally, to the extent that the demand for bank loan interests decreases as a result of the proposal, these instruments would become less competitive overall.

3. Capital Formation

The proposed amendments may affect capital formation. First, to the extent that the above efficiency and competition effects result in investor outflows from the mutual fund sector, capital formation within the sector may be reduced, while capital formation via banks and trust companies, ETFs, or other vehicles may increase. Second, to the extent that open-end funds would demand more liquid investments, the capital formation for issuers of these investments may increase. On the other hand, to the extent that funds would become more limited in the amount of investments with lower liquidity profiles they are able to make (such as investments that are valued using unobservable inputs that are significant to the overall measurement and investments that are currently classified as less liquid and illiquid), the capital formation for issuers of investments that are currently classified in less liquid categories may decrease.

For example, a recent paper [511] shows that, although CLOs (the largest lender of leveraged loans) increase their purchases of outstanding bank loan interests in the secondary market at times when bank loan funds face outflows, they reduce their lending in primary market at the same time; which highlights the externality imposed by bank loan fund redemptions on capital formation for non-investment grade firms. Therefore, to the extent that open-end funds would hold fewer bank loans in their portfolios as a result of this amendment, the externality discussed above may be reduced and capital formation for non-investment grade firms could improve. On the other hand, to the extent that market settlement processes do not change, and to the extent that open-end bank loan funds are not converted to closed-end funds, the demand for bank loan interests may decrease, reducing capital formation for non-investment grade firms. This effect may be more pronounced for smaller issuers, to the extent that their securities are classified into less liquid categories more frequently compared to larger issuers.

Finally, the proposed amendments are expected to decrease the risk of fire sales of funds' underlying investments that may occur as a result of an increased selling pressure experienced by open-end funds during periods of high redemptions. This, in turn may increase confidence in markets for investments held in open-end funds' portfolios, thereby aiding capital formation for these investments.

E. Alternatives

1. Liquidity Risk Management

a. Stressed Trade Size and Significant Changes in Market Value

Although tightening of inputs would reduce fund discretion in the methodology for liquidity classification relative to the baseline, funds would still have discretion in the use of models to calculate price impact under the proposal. One alternative that could alleviate this concern would be to define a list of investments that qualify as highly liquid investments explicitly, as well as the list of illiquid investments or to define liquidity of each security, regardless of its amount held by a fund. For example, we could define highly liquid investments similarly to the way Federal banking agencies define high quality liquid assets (''HQLA'') for the purposes of liquidity coverage ratio rules.[512] This approach would simplify funds' compliance and may eliminate the need to calculate reasonably anticipated trade size or stressed trade size. As a result, an investment would be more consistently classified across funds, regardless of the amounts of this investment held by each fund. However, this approach would put the Commission in the position of determining the liquidity of each investment or investment type in the market, which may be difficult to

[510] *See* note 422 and accompanying text.

[511] Thomas Mählmann, *Negative Externalities of Mutual Fund Instability: Evidence from Leveraged Loan Funds,* 134 J. Banking & Fin. (2022).

[512] *See* 12 CFR 50.20 (Office of the Comptroller of the Currency); 12 CFR 249.20 (Federal Reserve Board); 12 CFR 329.20 (Federal Deposit Insurance Corporation). HQLA are composed of Level 1 and Level 2 assets. Level 1 assets generally include cash, central bank reserves, Treasuries, certain agency securities, and certain marketable securities backed by sovereigns and central banks, among others. Level 2 assets are composed of Level 2A and Level 2B assets. Level 2A assets include, for example, certain debt guaranteed by a government sponsored entity or by a sovereign entity. Level 2B assets include, for example, investment grade corporate bonds, and publicly traded common equities that meet certain conditions, and investment grade municipal obligations. *See also* Bank for International Settlements (BIS), *Basel Committee on Banking Supervision, LCR30 High-Quality Liquid Assets* (final report, Dec. 31, 2019), *available at* https://www.bis.org/basel_framework/chapter/LCR/30.htm?tldate=20191231&inforce=20191215.

maintain over time and may over- or under-include securities that may demonstrate equal liquidity characteristics, as this alternative regime only covers HQLA and not all investments that could be held by a fund.

As an alternative, we could have proposed a higher level of STS. For example, an STS that is equal to 100% would assume a full liquidation of a position. Under this alternative, the classification of an investment would depend on the absolute value of the whole position rather than a percentage of a position. This approach may more accurately reflect liquidity needs during the times of increased redemptions, to the extent that funds sell their most liquid holdings first in order to meet redemptions.[513] An STS that is higher than 10% but lower than 100% would have the effect that is similar but lower in magnitude. While a higher STS might better reflect that funds may need to sell a higher fraction of a particular investment than 10%, it nonetheless could be the case that a 10% STS is a better measure for determining liquidity under the proposed requirement for vertical slice assumption.

As another alternative, we could have proposed a lower level of STS. To the extent that some funds currently set their reasonably anticipated trade size lower than 10%, these funds may experience less changes in the classifications of their investments, which may result in less portfolio adjustments in order to comply with the 15% limit on illiquid investments and the highly liquid investments minimum. However, we believe that the 10% STS has the advantage of simulating a stress event and would better prepare funds to accommodate redemptions during such events. We seek comment on whether a level of STS lower than 10% would be a more appropriate STS that would ensure funds classify their investments in a way that would safeguard the fund and its shareholders during stressed times.

As another alternative, we could have proposed an STS that would depend on an individual fund's flows. For example, each fund could be required to use an STS that is equal to a certain percentile (*e.g.,* 99th percentile) of the fund's highest week of absolute flows or net outflows over a specified period of time (*e.g.,* 3, 5, or 10 years).[514] Under this alternative, funds would have a liquidity classification approach that is more tailored to their strategy and investor base. This approach would be less discretionary compared to the baseline but more discretionary compared to the proposal. To the extent that some funds may never experience net outflows that amount to 10% of their net assets, this alternative could be more appropriate for such funds. However, this alternative may result in inconsistent classifications among funds that have similar holdings. For example, if an established fund and a new fund have identical portfolios, the new fund would not have the same level of historical flows as the established fund, to the extent that the established fund existed during periods of stress and the new fund did not. This would result in two different STSs for identical funds.

As another alternative, we could have proposed an STS that would differ for funds with different investment strategies. For example, because during times of stress certain investments generally remain relatively liquid, we could have proposed a lower STS for funds with strategies that generally invest in more liquid assets, such as certain equities or government securities. However, under certain circumstances, large concentrations of any asset type (including those assets that are generally very liquid) held by a fund may weaken the fund's ability to dispose of such assets without a significant cost imposed on the fund's investors.[515] Therefore, we believe that requiring funds with different types of strategies to have the same STS would appropriately prepare all funds for stress events. In addition, although this approach would be more tailored to net flows trends specific to particular types of funds, this alternative may result in inconsistent application of the STS because there is no single taxonomy of fund types and there would be limited utility in proposing a new taxonomy given the previously noted concerns about an approach that differs by fund type.

For determining whether a sale or disposition would significantly change the market value of an investment, we could have proposed a higher or lower value impact standard. For example, we could have proposed that a sale or disposition of less than or more than 20% of a security listed on a national securities exchange or foreign exchange, or a decrease in sale price of less than or more than 1% for other investments, would result in a significant change in market value. Setting a stricter test for what would constitute a significant change in market value may lead funds to classify investments as less liquid than under the proposed rule, and correspondingly, setting a more lenient test would lead to more liquid classifications. Because funds currently use different value impact standards today, increasing or reducing the thresholds in the rule may align with some funds' current practices, while the proposed rule may align with other funds' current practices. Therefore, any approach to defining the value impact standard would require some funds to change their current methodologies.

b. Amendments to Liquidity Classification Categories and Definitions

As an alternative, we could have proposed an approach that provides additional time, beyond seven calendar days, for a sale to settle and convert to U.S. dollars before a fund must classify the investment as illiquid. For example, we could have proposed to define moderately liquid investments as those that a fund reasonably expects to be able to sell within seven days without a significant change in market value and to be convertible to U.S. dollars within an additional seven days. Under this alternative, all the economic effects of removing the less liquid investment category discussed above would still be present, however, their magnitude may be reduced. As a result, not as many bank loan funds would have to rebalance their portfolios towards shorter-settlement loans and other investments, contract for expedited settlement, or restructure as a different investment vehicle. At the same time, the potential need to arrange expedited settlement to meet redemptions in the midst of market stress, as well as the potential borrowing costs a fund incurs to meet redemptions and the resulting dilution of fund investors, would not be reduced by as much as it would under the proposal. Therefore, we believe that aligning the time it takes to receive proceeds from the trade with the statutory requirement to meet investor redemptions within seven days would be a more economically sound step towards helping to ensure funds can meet redemptions within seven days and reducing investor dilution.

We could have proposed that a fund start measuring the number of days in

[513] For example, if a fund experiences net outflows equal to 10% of its net assets, and the fund's highly liquid assets comprise 20% of its portfolio, the fund would be able to fund all outflows with the proceeds from highly liquid assets. On the other hand, a 10% STS would test whether $10\% \times 20\% = 2\%$ of the fund's holdings could be sold without significantly changing the price of these holdings in order to meet redemptions. In this scenario, the fund may need to sell additional holdings that may be more costly to trade due to their lower liquidity classification.

[514] Basing the calculation on absolute, rather than net, flows would be designed to reflect that large inflows have the possibility of translating to similarly large outflows.

[515] For example, during Mar. 2020, the U.S. Treasury market became less liquid than usual.

which it reasonably expects a stressed trade size would be convertible to U.S. dollars without significantly changing its market value after the date of classification, instead of on the date of classification as proposed. Under this alternative, funds' liquidity classifications would be marginally less liquid. We understand some funds are using this method of counting the number of days currently and would not have to make any changes to their methodology; however, those funds that begin counting on the date after classification would need to make changes and their classifications would be more liquid than they are currently. We believe that funds should measure days consistently in order to help funds meet redemptions within seven days without significant trading costs.

c. Frequency of Liquidity Classifications

As an alternative, we could have proposed to require classification on a less frequent basis, for example, weekly. Under this alternative, funds would have less operational burden relative to the proposed daily classification requirement. In addition, to the extent that portfolio allocations of funds are noisy on a daily basis due to, for example, trading related to tracking errors or inability to invest newly incoming cash from investors immediately, weekly classifications may be more appropriate from an operational perspective. However, weekly classifications could reduce the effectiveness of the rule by delaying the identification of significant liquidity issues, such as a rise in illiquid investments or a drop in highly liquid investments, particularly at the onset of market stress when a fund might begin to face increasing levels of redemptions. Therefore, we believe daily classifications would promote better monitoring of a fund's liquidity and ability to more rapidly understand and respond to changes that affect the liquidity of the fund's portfolio.

d. Definition and Calculation of Highly Liquid Investment Minimum and Proposed Limit on Illiquid Investments

As an alternative, we could have proposed different highly liquid investment minimums for different type of funds, with lower highly liquid investment minimums for funds with strategies that generally invest in more liquid assets, such as equities or government securities. However, under certain circumstances, large concentrations of any asset type (including those assets that are generally very liquid) held by a fund may weaken the fund's ability to dispose of such assets without a significant cost imposed on the fund's investors.[516] Therefore, we believe that requiring funds with different types of strategies to have a highly liquid investment minimum of at least 10% would appropriately prepare all funds for stress events. In addition, although this approach would be more tailored to net flows trends specific to particular types of funds, this alternative may result in the inconsistent application of highly liquid investment minimums because there is no single taxonomy of fund types and there would be limited utility in proposing a new taxonomy given the previously noted concerns about an approach that differs by fund type.

As another alternative, we could have proposed to require funds to maintain a highly liquid investment minimum that is lower or higher than the proposed 10% minimum, such as a minimum of at least 5% or 15%. A lower required threshold would require fewer changes to some funds' portfolios and would be less likely to affect performance. However, a lower minimum would result in funds being less prepared to meet redemptions in stressed periods. A higher highly liquid investment minimum would better ensure that a fund can meet redemptions in stressed periods, but would require more significant changes to some funds' portfolios and would likely have a larger effect on fund performance. Further, to the extent that certain funds would benefit from a highly liquid investment minimum that is greater than 10% because, for example, they have a concentrated shareholder base, such funds could establish a higher minimum under the proposal. Similarly, we considered a lower limit on a fund's illiquid investments, such as a 5% or 10% limit. The alternatives would further limit a fund's ability to acquire illiquid investments, which would limit the mismatch between the time a fund must pay redemptions and the time it can sell its investments without significant dilution. However, lowering the limit on illiquid investments while also expanding the definition of illiquid investment would more significantly affect funds that currently invest in less liquid investments.

As another alternative, we could have proposed to define investments used for collateral and margin purposes of moderately liquid and illiquid investments as moderately liquid and illiquid respectively. However, by reducing the fund's highly liquid investments by the value of amounts posted as margin or collateral, the proposed approach would avoid burdens associated with tracking specific securities posted as margin or collateral and reclassifying investments as they are posted as margin or collateral and recalled. The proposed approach also would not understate the liquidity of securities that are posted as margin or collateral because each security would continue to be classified based on its own characteristics rather than based on the characteristics of the derivative it is tied to, and instead the adjustments would only be made at the aggregate level.

2. Swing Pricing

This section discusses alternatives to the proposed swing pricing requirements. These alternatives include variations on the swing pricing requirements, variations on the thresholds used to determine the swing factor, and tools other than swing pricing that may achieve some of the same anti-dilutive goals of the proposed rule. These alternatives could be used independently or in combination with each other, and also could be paired with a hard close or the alternatives to the hard close we discuss in the next section, depending on the degree to which a given alternative does or does not require a fund to have complete order flow information at the time a fund strikes its NAV.

a. Alternative Approaches Within the Swing Pricing Framework

As an alternative, we could have proposed different thresholds for net redemptions, net subscriptions, and inclusion of market impact. For example, we could have required funds to adjust the NAV only when net redemptions exceed a specified swing threshold, allowing funds to not adjust the NAV at all when redemptions are low in magnitude, as the proposal does for net subscriptions. To the extent that determining a swing factor is costly, only requiring funds to do so when net redemptions exceeded a threshold would limit the frequency with which funds incur such costs. However, because net redemptions are likely to dilute fund shareholders by a larger magnitude compared to net subscriptions, such an alternative may forego some of the benefits non-transacting fund shareholders would be expected to receive under the proposal.

The proposal also could have used a different market impact threshold, or no threshold, requiring that funds always include market impact in their swing factor calculations. A higher (lower) market impact threshold would reduce (increase) the number of days for which

[516] *See* note 515.

affected funds must calculate market impact costs for their portfolio investments, reducing (increasing) any related costs and operational challenges. However, a higher (lower) market impact threshold would also reduce (increase) the amount of dilution from redemptions that is recaptured by funds and accrued to non-transacting shareholders, assuming some funds do not opt to set lower market impact thresholds, as permitted under the proposal.

Similarly, the proposal could have used a different swing threshold for net subscriptions, or no threshold, requiring that funds always adjust their NAV in response to net subscriptions. A higher (lower) threshold for net subscriptions would reduce (increase) the number of days for which affected funds must calculate swing factors, reducing (increasing) any related costs and operational challenges. However, a higher (lower) threshold for net subscriptions would also reduce (increase) the amount of dilution from subscriptions that is recaptured by open-end funds and accrue to non-transacting shareholders, assuming some funds do not opt to set lower threshold for net subscriptions, as permitted under the proposal.

As another alternative, we could have required that funds only apply a swing factor when they experience net redemptions rather than requiring that they also apply a swing factor when net subscriptions exceed 2%. Removing the requirement that funds apply a swing factor for net subscriptions would remove any operational costs funds may incur in implementing swing pricing for net subscriptions and may reduce the uncertainty that subscribing investors face regarding the share price at which their subscription orders will ultimately transact. However, while we recognize that subscriptions tend to be less dilutive than redemptions, the trading costs incurred by funds to accommodate subscriptions can still be dilutive. Therefore, non-transacting investors would be exposed to more dilution risk under this alternative.

As an alternative, the proposal could have also permitted funds to use a default swing factor (*e.g.,* 2% or 3%) when estimating trading costs accurately may be more difficult, such as in times of market stress. A fund's swing pricing administrator, adviser, or a majority of the fund's independent directors could be permitted to determine whether market conditions are sufficiently stressed to invoke this default swing factor. This alternative could benefit investors by mitigating shareholder dilution during periods of increased market uncertainty when standard analyses that funds use to estimate trading costs may fail to capture these costs accurately, to the extent that the standard analyses result in underestimation of trading costs. However, this alternative would provide funds with more discretion in determining when their swing factor applies in a way that is less transparent and consistent for fund shareholders, which increases the chance that funds may take advantage of such discretion in order to boost the performance of a fund. In addition, a default swing factor may not be a good approximation of the actual trading costs a fund will incur during the periods it is applied, which could either overcharge transacting investors relative to the trading costs they impost on a fund or undercharge transacting investors, limiting the extent to which non-transacting shareholder dilution is mitigated.

As another alternative, the proposal could have defined the market impact threshold or inflow swing threshold on a fund-by-fund basis, with a reference to a fund's historical flows. For example, each fund could have been required to determine the trading days for which it had its highest outflows over a set time period, and set its market impact threshold based on the 1–5% of trading days with the highest redemptions. Similarly, each fund could have been required to determine the trading days for which it had its highest inflows or outflows over a set time period, and set its inflow or outflow swing threshold based on the 1–5% of trading days with the highest redemptions or subscriptions. While this alternative could allow funds to customize their swing thresholds to their historical flows, such an alternative may create strategic incentives for fund complexes to open and close funds depending on historical transaction activity. For example, to the degree that the estimation of market impact factors or other trading costs may be costly, or to the extent that investors prefer funds that do not apply swing factors as frequently, fund families may choose to close funds that experienced high redemptions to avoid the application of market impact factors. In addition, allowing funds to determine their own thresholds based on historical data may lead to less comparability across funds with respect to when investors expect funds to incorporate market impact or swing their NAV in response to net subscriptions or net redemptions.

b. Alternatives to Swing Pricing

i. Liquidity Fees [517]

As an alternative to the proposed swing pricing requirement, we could have proposed to require funds to charge liquidity fees to transacting investors. There are various types of fees that we considered, which are discussed below.

(a) Dynamic Liquidity Fee

As an alternative, we could have proposed a dynamic liquidity fee that could, in principle, be equivalent to swing pricing from the point of view of the transacting investor. For example, this alternative could charge transacting investors the estimated trading, spread, and, in some cases, market impact costs associated with their subscription or redemption activity, allowing remaining shareholders to recoup these costs and mitigate dilution. Under this alternative, like under the proposed swing pricing framework, a fund would be required to determine a given day's liquidity fee for subscribers or redeemers based on the fund's net flows. Specifically, on a day with net redemptions (subscriptions), the fund would determine a liquidity fee that reflects the costs redeeming (subscribing) investors are expected to impose on the fund and would only charge redeeming (subscribing) investors the fee.

From an economic (namely non-operational) perspective, the difference between a liquidity fee and swing pricing is the effect on subscribing (redeeming) investors when a fund experiences net redemptions (subscriptions) and how the anti-dilution benefit is shared among transacting and non-transacting fund investors. Specifically, under swing pricing, in the case of net redemptions, subscribing investors would purchase fund shares at a discount relative to the NAV because there will be only one transaction price for fund shares determined by swing pricing. Similarly, in the case of net subscriptions, redeeming investors would receive a premium for their redeemed shares because the transaction price for fund shares would be adjusted above the NAV. As a result, some of the recouped dilution costs from net redemptions (subscriptions) are diverted to other transacting investors—subscribers (redeemers)—rather than to non-transacting fund investors.[518] If the fund

[517] *See also* section II.D.1.a for additional discussion of liquidity fee alternatives.

[518] Under the proposed swing pricing requirement, a fund would still recoup the full dilution costs associated with net redemptions by charging redeemers for both the dilution cost of

charges a liquidity fee, on the other hand, subscribing (redeeming) investors would not be purchasing (selling) fund shares at a discount (premium) in the case of net redemptions (subscriptions). Instead, the fee would be borne by redeemers (subscribers) without the commensurate benefit to subscribers (redeemers) and would fully accrue to the fund instead.[519] From this perspective, a liquidity fee may be fairer to redeeming (subscribing) fund investors in the case of net redemptions (subscriptions) compared to swing pricing. In addition, relative to swing pricing, liquidity fees would be more transparent regarding the liquidity costs transacting investors are charged and would not change day-to day fund returns that investors observe.[520]

However, liquidity fees may be more operationally challenging to implement relative to the proposed swing pricing requirement. With swing pricing, a fund can pass liquidity costs on to redeeming or purchasing investors via downward or upward adjustments in the NAV to determine the transaction price for fund shares, with intermediaries receiving this price at the end of the trading day. With a liquidity fee, however, a fund would have to rely on intermediaries to pass the liquidity costs on to transacting investors, which may involve greater operational complexity for intermediaries compared to swing pricing. While we recognize that some funds and their intermediaries are currently able to apply redemption fees under rule 22c–2, applying dynamic liquidity fees that may change in size from day-to-day may involve greater operational complexity and costs. For instance, liquidity fees may require more coordination with a fund's intermediaries because these fees need to be imposed on a transaction-by-transaction basis by each intermediary involved—which may be difficult with respect to omnibus accounts that intermediaries may create to aggregate all customer activity and holdings in a fund. We could instead require intermediaries to submit purchase and redemption orders separately to transact in a fund's shares, as some intermediaries already do. This could allow funds or their transfer agents to apply fees directly, but this type of requirement would also require some intermediaries to make operational changes because they would no longer be able to net otherwise offsetting customer purchases and redemptions.

As noted above, this type of dynamic fee would depend on fund flow information. A dynamic fee could be applied at the time of an investor transaction, in which case a hard close would still be required so that a fund has complete flow information by the time the NAV is struck, allowing the fund to determine the corresponding dynamic fee. Alternatively, the fee could be processed separately and applied to an investor's account on a delayed basis, obviating the need for a hard close because funds would no longer need complete flow information at the time of the initial investor transaction.[521] Delayed application of the fee, however, may raise complications related to collecting fee amounts from investors, particularly when an investor has otherwise redeemed the full amount of its holdings. Follow-on fees also significantly increase the number of transactions to process, and may complicate reporting for custodians and advisers in situations where a transaction may occur in one reporting period but the fee related to the transaction is not applied until the next reporting period. In addition, an intermediary may face difficulties projecting upcoming cash balances in its client accounts if there are upcoming fees to be charged, but the amounts of those fees are unknown. The fund itself may also have challenges with projecting its own cash balance if it cannot predict when accrued fees will be received from each intermediary.

(b) Set Fee

Another alternative could be a simple fee framework that would require funds to charge a set fee of a specified percentage of the transaction (*e.g.,* 1%). This fee could be designed to either apply for all investor transactions, apply if redemptions or subscriptions exceed certain thresholds, or apply only on the redemption side or only on the purchase side. Such an alternative could reduce the operational burdens imposed on funds with respect to estimating trading costs and market impact and, in the case of a fee that is always charged, also would not require that a fund receive full order flow data before its NAV is struck. However, this alternative could also lead funds to over- or under-charge transacting investors because the trading costs a fund experiences for a given level of net redemptions or subscriptions may vary nonlinearly with the size of net redemptions or net subscriptions. For example, a fund trading to accommodate relatively small redemptions or subscriptions would most likely not result in market impact costs, while accommodating substantial redemption or subscription activity might result in market impact costs. As a result, a fund might undercharge transacting investors relative to the trading costs their activity imposes on a fund in cases when the set fee is lower than the trading costs implied by the fund's aggregate investor activity. Therefore, in such instances this alternative may be less effective than swing pricing at mitigating dilution. Similarly, a fund might overcharge transacting investors relative to the trading costs their activity imposes on a fund in cases when the set fee is higher than the trading costs implied by the fund's aggregate investor activity, non-transacting investors are enriched at the expense of transacting investors. If such a set fee could be calibrated correctly, the effects of under- or over-charging transacting investors might offset each other. However, perfectly calibrating a fee would require that a fund correctly forecast the likelihood and magnitude of net redemptions and net subscriptions, as well as the corresponding trading costs associated with such flows, which may not be feasible.

(c) Fee Adjusted for Bid-Ask Spreads or Other Transaction Costs

Relatedly, another simpler liquidity fee alternative could still use fees that are dynamic in the sense that they respond to market conditions such as bid-ask spreads or other known transaction costs associated with trading underlying investments, but are not tailored to the order flow a fund receives on a given day. For example, a fund could charge a liquidity fee on both subscriptions and redemptions on a given day that reflects the estimated costs of buying and selling the fund's underlying assets, respectively, excluding factors that depend on order flow, such as market impact. Such an alternative would still require funds to estimate trading costs, but would not require that a fund receive full order flow data before its NAV is struck. Economically, this alternative is equivalent to dual pricing, discussed

redemptions as well as the cost of allowing subscribers to fund shares at a discount when the fund experiences net redemptions. Similarly, a fund would still recoup the full dilution costs associated with net subscriptions by charging subscribers for both the dilution cost of subscriptions as well as the cost of allowing redeemers to sell shares at a premium when the fund experiences net subscriptions in excess of 2%.

[519] *See e.g.,* Eaton Vance Comment Letter at *https://www.sec.gov/comments/s7-16-15/s71615-151.pdf* for a description of mechanics and an assertion that fees are economically superior.

[520] We recognize that while swing pricing may change the returns that investors see on a daily basis, it would not change monthly returns and returns reported on a fund's statement relative to a fee.

[521] *See also* section II.D.1.a for additional discussion of delayed fee application.

below, which instead charges these costs by establishing separate transaction prices for subscriptions and redemptions.

(d) Liquidity Fee When Trading Costs Significantly Increase [522]

As another alternative, we could have proposed a liquidity fee that would only apply under certain conditions, such as when trading costs are significantly above those typically experienced. Under this approach, either the Commission could define the circumstances that would trigger the fee or funds could define the conditions under which the fee would apply. In the latter case, a fund would establish written policies and procedures designed to mitigate dilution and recoup the costs the fund reasonably expects to incur as a result of shareholder redemptions.

In both scenarios, this alternative may be less costly for funds relative to the above alternatives, to the extent that applying the fee less frequently is less operationally burdensome. Under this alternative, funds would be able to recoup trading costs when these costs significantly increase (*e.g.,* during periods of market stress), without increasing the costs of operation during other times. The benefits of this approach to investors would depend on the relative magnitude of dilution realized during normal periods when trading costs are not significantly increasing versus the cost of applying an anti-dilution tool on a daily basis. To the extent that dilution during normal times is negligible while the operational burden of applying the fee is not, a fee that applies only when trading costs increase significantly may benefit fund investors. However, to the extent that dilution during normal times can accumulate to a significant amount over time, fund investors would not be protected against it. The benefit of this alternative would also depend on whether the specified conditions that trigger the fee could be anticipated by investors prior to the fund imposing the fee. To the extent that investors would be able to forecast that a fund is moving closer to the fee trigger, they may decide to preemptively redeem their shares before the fee is initiated, potentially exacerbating the first-mover advantage and contributing to further fund stress.

The economic tradeoffs of this alternative would also depend on whether a fund defines the circumstances under which the fee would apply or the Commission would define such circumstances. Under the first scenario, funds would be able to tailor the triggers to their specific circumstances, such as the fund size, the portfolio characteristics, and investor base composition, as well as the historically observed dilution. As a result, funds may be better equipped to protect their investors during times of increased trading costs. However, under this scenario, fund discretion over the fee triggers may result in some funds defining triggers in a suboptimal way in order to compete with similar funds for investors. Under the second scenario, funds would not have such discretion, which could better protect investors from dilution. However, because mutual funds vary significantly in their portfolios and sizes, it would be challenging to establish a trigger that is not dependent on timely flow information and would equally protect investors of all funds from dilution.

(e) Liquidity Fee for Funds That Are Not Primarily Highly Liquid When Trading Costs Increase Significantly

As another alternative, we could have proposed a liquidity fee only for certain types of funds. For example, we could have proposed a fee that funds that are not primarily highly liquid (*e.g.,* funds that hold less than an identified percentage of their portfolio in highly liquid assets, such as less than 50%, 66%, or 75%) would be required to impose during periods of increased trading costs. Under this alternative, affected funds and their investors would experience similar benefits and costs as in the alternative above. However, the aggregate magnitude of these effects would be smaller because it would not affect all mutual funds. To the extent that funds that invest primarily in highly liquid investments do not experience trading cost increases that are as substantial as all other funds during periods of market stress, this alternative may benefit investors in primarily highly liquid funds by not imposing additional costs related to establishing policies and procedures related to the liquidity fee. However, all funds would have to establish procedures for monitoring whether they hold primarily highly liquid investments or not.

The cost savings of this alternative relative to the alternative that would require a fee for all funds during periods of increased trading costs would depend on how often highly liquid investments may become temporarily less liquid. To the extent that funds expect certain investments that are highly liquid during normal times to become less liquid during stress periods, these funds may have to preemptively establish compliance around the liquidity fee implementation. This effect would be more pronounced for funds that are near the 50% threshold.

This alternative may also affect competition in the mutual fund sector, to the extent it could make investment in mutual funds that are not primarily highly liquid less attractive to investors. In addition, some funds may exit some of their moderately liquid and illiquid investments in order to fall under the definition of primarily highly liquid. This, in turn, may make markets for moderately liquid and illiquid investments more illiquid and negatively affect capital formation for these investments.

ii. Dual Pricing [523]

As an alternative to the proposed swing pricing requirement, we could have required that funds implement dual pricing, which is used in some other jurisdictions. Dual pricing would effectively set two transaction prices for a fund: one price for purchases and another for redemptions. The price adjustments for the funds' shares could either be constant or calculated to reflect the estimated costs of buying and selling the fund's underlying investments, excluding factors that depend on order flow, such as market impact. The first approach would be similar to one of the set fee alternative discussed above, as it would be less reliant on fund flow information than the proposed swing pricing requirement, but the charge imposed on transacting investors would also less accurately reflect the specific liquidity features of the fund's current investments in light of the size of the redemptions the fund is experiencing. As an example of the second approach, a fund would set its purchase price to be the fund's NAV on that day plus an amount that reflects the potential trading costs such as bid-ask spreads that subscriptions impose on a fund given current market conditions, and exclude factors such as market impact that may require knowledge of the fund's order flow on that day. Similarly, the redemption price of a fund share would be the fund's NAV minus an amount that reflects the potential trading costs redemptions would impose on a fund given current market conditions. Operationally, dual pricing would not require that funds receive complete order flow data prior to determining their dual transaction prices, removing the need for a hard

[522] *See also* section II.D.3.b for additional discussion of this alternative.

[523] *See also* section II.D.1.b for additional discussion of this alternative.

close. However, dual pricing would require intermediaries and other market participants to update their processes to handle two potential transaction prices rather than a single NAV, which would impose costs on such intermediaries. In addition, intermediaries that currently submit a single net order (*e.g.,* using omnibus accounting) would need to separately submit aggregate purchases and aggregate redemptions to a fund, which would impose costs on such intermediaries.

iii. Spread Cost Adjustment on Days With Estimated Net Outflows [524]

Another alternative to the proposed swing pricing requirement would be to require that funds use estimated flows to determine whether they expect to have net redemptions on a given day and, if so, to require that the fund adjust its current NAV to reflect good faith estimates of spread costs.[525] This alternative would not require funds to assess market impact, nor would it require that funds use swing pricing on days when a fund estimates that there will be net subscriptions. By setting the price for fund shares to reflect good faith estimates of spread costs on days when a fund estimates it will have net outflows, the fund would protect non-transacting investors from dilution due to the spread costs, to the extent that the fund correctly estimates the direction of the net flows. This approach could ameliorate first-mover advantage because redeeming shareholders would be required to pay at least the spread component of transaction costs imposed on the fund by their redemptions on days where the fund accurately predicts that it will experience net redemptions. As a result, this alternative may help to mitigate run risk and potential fire sales of funds' portfolio holdings. However, basing the decision to apply a spread cost adjustment on estimated flows may reduce the effectiveness of this alternative by possibly causing the fund to adjust its share price down on days where transacting investors ultimately do not dilute remaining fund shareholders. While applying a spread cost adjustment on days when a fund incorrectly predicts net redemptions could result in more shareholder dilution than if an adjustment had not been applied, this possibility would not impede the effectiveness of the alternative to mitigate first-mover advantage.

The alternative would impose lower costs on funds and intermediaries relative to the proposed swing pricing requirement because there would be no requirement for a hard close and no requirement to estimate market impact factors or other transaction costs. By limiting the adjustment of the share price to a step function (*i.e.,* share price is either adjusted to reflect spread costs or not at all), the alternative avoids any imprecision that may be introduced by having the size of the fund's share price adjustment also depend on the size of predicted net outflows. To the extent that funds currently do not implement swing pricing because of existing operational challenges or any stigma that may be associated with the use of that tool, this alternative would likely overcome these challenges by prescribing an approach that is mandatory and that could be implemented more easily under existing operational structures compared to the proposed swing pricing requirement that would rely on a hard close while still providing some anti-dilution benefits to mutual fund investors.

iv. A Choice of an Anti-Dilution Tool

As another alternative to the proposed swing pricing requirement, we could have proposed to require all funds to implement an anti-dilution tool, while allowing them to choose among several tools, such as swing pricing, liquidity fees, or other alternative approaches discussed above. This alternative may benefit funds and their investors, to the extent that certain anti-dilution tools are better suited for certain types of funds in reducing investor dilution. For example, funds that have infrequent subscriptions or redemptions may find a liquidity fee less operationally costly to implement compared to other tools. Similarly, funds that have more volatile flows on a day-to-day basis may find that swing pricing would be a more effective approach to combat dilution because the trading costs would be recouped instantaneously with investors' trading activity, compared to liquidity fees that would not be recouped by a fund until a later date. Further, funds that have de minimis transaction costs for prolonged periods of time may find a liquidity fee that would only apply during stressed conditions more appropriate from the operational prospective. This alternative may benefit mutual fund investors by increasing investor choice relative to the proposal. To the extent that different investors have varying preferences for anti-dilution tools, they would be able to invest in the mutual fund sector according to their preferences. As such, this alternative may increase competition in the mutual fund sector. However, this alternative could be more costly relative to the proposal and other alternatives discussed above because fund intermediaries and service providers would need to establish systems that accommodate all the anti-dilution options that would exist across mutual funds.

3. Hard Close Requirement

The proposal would require a hard close, meaning that an order may be executed at the current day's price only if the fund or its designated parties receive the order before 4 p.m. ET. As discussed in section III.B.3, funds and intermediaries are likely to incur significant costs in order to comply with the hard close requirement. Therefore, we have considered alternative approaches to the hard close requirement.

a. Indicative Flows [526]

One alternative to the proposed hard close requirement would be to require that funds receive indicative flow information from intermediaries by an established time. This approach would be less likely to affect investors who place orders near the 4 p.m. ET pricing time, as intermediaries may not necessarily need to establish earlier cut-off times. While intermediaries would incur one-time costs to update their systems and processes to calculate indicative flow information, as well as ongoing costs related to the transmission of the indicative flow information to funds or their designated parties, these costs would be lower than the costs intermediaries would incur under the proposed hard close requirement. The proposed hard close requirement, however, would likely not result in the same ongoing costs for intermediaries that this alternative would require. For example, intermediaries may need to develop a process for estimating indicative flows and sending them to funds, separate from the process of submitting orders to fund transfer agents and Fund/SERV.

[524] *See also* section II.D.3.a for additional discussion of this alternative.

[525] U.S. GAAP states that if an asset measured at fair value has a bid price and an ask price (for example, an input from a dealer market), the price within the bid-ask spread that is most representative of fair value in the circumstances shall be used to measure fair value, and that the use of bid prices for asset positions is permitted but not required for these purposes. *See* FASB ASC 820–10–35–36C. Therefore, we recognize that requiring a fund's share price to be determined using bid-side values for the underlying investments would introduce inconsistency in instances where the fund does not use bid prices to value securities for purposes of U.S. GAAP. As a result, funds needing to apply different pricing for these different purposes could experience incremental effort and cost.

[526] *See also* section II.D.2.a for additional discussion of this alternative.

Likewise, funds would need to develop processes for receiving the indicative flow information and monitoring whether each intermediary has provided indicative flow information in a timely manner. Moreover, indicative flow information likely would be less accurate and complete than the flow information funds would receive under the proposed hard close requirement. As a result, funds' swing pricing determinations may be less accurate than under the proposal (*e.g.,* a fund may not adjust its NAV when it should have, or vice versa, due to incomplete flow information), which would limit a fund's ability to mitigate dilution through swing pricing.

b. Estimated Flows [527]

Another alternative approach to a hard close would be to continue allowing funds to use reasonable estimates of their flows in determining transaction costs from investors' trading activity and to provide them with a safe harbor in cases where the produced estimates of the funds' net flows are different from realized net flows. This approach would have limited effect on intermediaries, as funds would base their estimates on models incorporating available information. However, because funds would base anti-dilution decisions on less precise flow data, this alternative could reduce the effectiveness of a fund's swing pricing by possibly causing it to adjust its NAV on days where transacting investors ultimately do not dilute remaining fund shareholders. On days where a fund estimates the direction of flows incorrectly, *e.g.,* if a fund forecasts that it will experience net subscriptions but actually experiences net redemptions, applying a swing factor could result in more shareholder dilution than if a swing factor had not been applied. This may make mutual funds less attractive to investors. However, the success of this approach would depend on how well funds can predict the additional flows that they receive after their NAV has been determined.

c. Later Cut-Off Times for Intermediaries [528]

Another alternative is to establish later cut-off times for intermediaries to submit order flow information, for example, two or three hours after the fund's pricing time (*e.g.,* 6 or 7 p.m. ET if the fund's pricing time is 4 p.m. ET). Under this alternative, intermediaries would have more time to submit their orders to funds and may not need to impose a cut-off time for investor orders earlier than the pricing time. To the extent that investors would not be subjected to an earlier cut-off time under this alternative, investors that use affected intermediaries would not experience disadvantage over investors that trade with the fund directly in terms of different degree of market risk described above. However, although this alternative may be more beneficial to investors compared to the proposed hard close requirement, it would require similar operational changes and impose similar costs. For example, retirement plan recordkeepers would still need to submit orders before receiving funds' prices. This alternative, however, may be less disruptive than the proposed hard close requirement for intermediaries that typically provide orders by around 6 or 7 p.m. ET, which we understand is the case for many broker-dealers. Under this approach, funds would likely need to publish their prices later than current practice to provide time to make swing pricing decisions. This could delay the distribution of pricing information to the public and to intermediaries. However, because intermediaries would no longer be revising orders contingent on the fund's share price to the same extent, this may not be as disruptive as a later NAV publication would be under the status quo.

4. Commission Reporting and Public Disclosure

As an alternative, we could have proposed public disclosure of position-level liquidity classifications. This alternative may provide more information about a fund's liquidity risk profile to investors, thereby improving their portfolio allocation decisions. While funds may have gained some insight into how other funds manage liquidity risk via their narrative disclosures, to the extent those disclosures tended to be boilerplate, observing other funds' liquidity profiles might provide some information that is useful in a fund's own liquidity classification process. Although the process for funds' liquidity classifications will be more uniform across funds under the proposal, we recognize that the same investment may still be classified differently by different funds due to classifications being position-dependent (*i.e.,* the more of a security is held by a fund, the less liquid its classification would be). Therefore, even if position-level liquidity classifications are disclosed, the comparison of classifications across funds may still not be as meaningful for investors in all cases. Position-level disclosure also could potentially reveal additional information about a fund's trading strategy if, for example, a security was classified as illiquid solely because the fund had material non-public information about the security. In addition, investors also may find the proposed aggregate liquidity information more useful, to the extent that they are focused on a fund's overall liquidity profile rather than the liquidity of any particular investment.

We also could have proposed filings would become public when they are filed as opposed to keeping the filings confidential until 30 days after they are filed (60 days after the end of the reporting period). This could take several forms. For example, we could maintain the proposed filing deadline, which would mean that a fund's filing would be due and become public 30 days after the end of the reporting period. Alternatively, we could pair a publication-upon-filing framework with lengthening the delay between the end of the reporting period (for example, to 45 days after the end of the period). Making filings public immediately upon filing could improve investor understanding of fund portfolios because they would be able to review the information closer to real time (though still with a substantial delay), assuming that the filing deadline was 30 days after each month end as proposed. This would enhance the ability of investors to choose the right fund that suits their portfolio construction goals. Many funds already make portfolio information public with a 30-day delay on a voluntary basis, but this alternative would result in a consistent framework across the entire open-end fund industry. This approach would also reduce the amount of information the Commission would be required to keep confidential.[529] On the other hand, to the extent funds are at risk of predatory trading or copy-catting when their portfolios become public sooner, this approach could serve to increase those risks.[530]

We could have taken the inverse approach as well. Instead of providing for publication at the same time information is filed, we could have provided for a longer period between the time information is filed and when

[527] *See also* section II.D.2.b for additional discussion of this alternative.

[528] *See also* section II.D.2.c for additional discussion of this alternative.

[529] Certain data would remain confidential, such as the composition of the fund's ''miscellaneous securities.'' *See supra* section II.E.1.d.

[530] *See supra* note 287 (comment letter from major industry participant citing research showing that risk of predatory trading or copycatting as a result of increased publication frequency is overstated).

it is made public, and also could have extended the deadline for filing. The benefits and costs of this alternative would likewise be the reverse of the publication-upon-filing alternative. Namely, this alternative could reduce the risks of predatory trading or copy-catting because by the time the information became public, it would be more likely to be stale. On the other hand, it would also be less useful to investors seeking to understand their funds and, if we paired a delay in publication with a delay in the deadline for filing with the Commission, it would be less useful to the Commission as well.

F. Request for Comment

We request comment on all aspects of the economic analysis of the proposed amendments. To the extent possible, we request that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendments or any reasonable alternatives. In particular, we ask commenters to consider the following questions:

234. What additional qualitative or quantitative information should be considered as part of the baseline for the economic analysis of these amendments?

235. Are the benefits and costs of proposed amendments accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs. What additional considerations can be used to estimate the benefits and costs of the proposed amendments?

236. Are the benefits and costs of the proposed swing pricing amendments accurately characterized? If not, why not? What, if any, other costs or benefits should be taken into account? If possible, please offer ways of estimating these benefits and costs.

237. Are the effects on competition, efficiency, and capital formation arising from the proposed amendments accurately characterized? If not, why not?

238. Are the economic effects of the above alternatives accurately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account?

239. Are the economic effects of the alternative approaches to implementing swing pricing adequately characterized? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should be taken into account?

240. Are there other reasonable alternatives to the proposed amendments that should be considered? What are the costs, benefits, and effects on competition, efficiency, and capital formation of any other alternatives?

241. What effects would the proposed changes have on (1) investment options available to investors if certain asset classes are not available or are less available in open-end vehicles (including UITs); and (2) the markets for those underlying assets, including, but not limited to, the market for bank loan interests.

242. How likely is it that open-end fund managers will choose to offer their products via different structures, such as ETFs, closed-end funds, or CITs, rather than comply with the proposed requirements? Relatedly, how likely is it that investors will move assets from open-end funds to other types of funds in response to the proposed requirements?

243. Are there data sources or data sets that can help refine the estimates of the benefits and costs associated with the proposed amendments? If so, please identify them.

244. Are there data sources that can help us estimate the aggregate number and value of transactions in mutual fund shares with more accuracy? If so, please identify them.

245. Which third-party service providers would be affected the most by the proposed amendments? Please explain why. If possible, please provide data on the number and size of such entities.

246. Would these amendments cause a fund or any third-party service providers assessing liquidity to have new or unforeseen burdens? Would this increase the cost of third-party services?

247. Would certain types of funds have to substantially rebalance their portfolios as a result of the proposed changes to the liquidity risk management program? Provide a list of specific investments that funds would have to hold in limited amounts under the proposed amendments. Are there close alternatives to these investments that funds would be able to hold? For example, can bank loan interests be substituted with CLOs? If no, please explain why.

248. Can the vertical slice assumption for the purposes of calculation of stressed trade size be implemented for all types of fund investments? For example, are there indivisible minimum trade units for any investments for which 10% of such an investment would not be possible to sell due to such indivisibility? How do funds currently operationalize the calculation of the reasonably anticipated trade size: via a vertical slice assumption or in any other way for indivisible investments?

249. What price impact models do funds currently use for liquidity classifications of their investments? Are there advantages of using one model over another? Are there price impact models available to use only through certain third-party service providers assessing liquidity? Do service providers assessing liquidity vary in costs for their services?

250. What would be the costs of obtaining daily pricing and liquidity information for the purposes of daily liquidity classifications? What are the current costs related to obtaining such information?

251. Do funds currently monitor their liquidity classifications on a daily basis? Are there specific types of funds that do not currently evaluate their classifications more frequently than monthly?

252. To what extent would funds implement swing pricing if it were optional, rather than mandatory, as long as funds received complete order flow data prior to determining their NAVs on a given day?

253. How dilutive are fund purchases relative to fund sales? How do the benefits of swing pricing in response to purchases compare to the benefits of swing pricing in response to sales?

254. Which components of trading costs contribute the most to fund dilution? How significant are market impact costs? If we adopted an alternative that excluded market impact from swing factor calculations, would the rule's effectiveness at mitigating dilution be significantly reduced?

255. Of the alternatives to swing pricing discussed above, which strikes the most appropriate balance of investor benefits and implementation costs? Is it more operationally complex and costly to charge fund investors a liquidity fee, or to use dual pricing?

256. What are the benefits of processing trade information via omnibus accounts? How costly would transmitting individual investor order information to funds be for intermediaries? Are per-trade costs the same for all intermediaries? Would there be other ancillary benefits associated with a move away from omnibus account and order netting?

257. What other costs or impediments beyond system switching costs would the proposed hard close requirement impose? Will these costs be different for different types of intermediaries? If so,

what is the differential? How do these costs compare to the potential future benefits of the hard close, such as more efficient order processing?

258. Will certain intermediaries be unable to bear the costs of the proposed hard close requirement? If yes, please explain why. Would the costs differ, depending on whether an intermediary or a service provider is affiliated with a fund family or not?

259. What effect will a hard close requirement have on the availability of certain transaction types offered to investors? Please list the types of transactions that would become unavailable under the proposed hard close requirement?

260. Would investors and other data users benefit significantly from the proposed monthly N–PORT disclosures? Would the quality and availability of mutual funds' portfolio data available to investors and other users improve significantly under the proposed amendments?

261. Would the proposed aggregate liquidity disclosure benefit investors? What are the benefits and costs of such disclosure relative to investment-by-investment liquidity classification disclosure? Are there any substantial burdens that funds would experience with the detailed liquidity classification disclosure beyond the costs associated with the disclosure process itself?

IV. Paperwork Reduction Act

A. Introduction

Certain provisions of the proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[531] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[532] The proposed amendments would have an effect on the current collection of information burdens of rules 22e–4 and 22c–1 under the Investment Company Act, as well as Forms N–PORT and N–CEN under the Investment Company Act and Form N–1A under the Investment Company Act and the Securities Act.

The titles for the existing collections of information we are amending are: (1) ''Rule 22e–4 (17 CFR 270.22e–4) under the Investment Company Act of 1940, Investment Company Liquidity Risk Management Programs'' (OMB control number 3235–0737); (2) ''Rule 22c–1 Under the Investment Company Act of 1940, Pricing of redeemable securities for distribution, redemption and repurchase'' (OMB control number 3235–0734); (3) ''Rule 30b1–9 and Form N–PORT'' (OMB control number 3235–0730); (4) ''Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Open-End Management Investment Companies'' (OMB control number 3235–0307); and (5) ''Form N–CEN'' (OMB control number 3235–0729).

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 funds manage liquidity, mitigate dilution of shareholders' interests, and provide information to the Commission and investors. The Commission staff would also use the collection of information in its examination and oversight program in identifying patterns and trends across registrants. We discuss below the collection of information burdens associated with the proposed rule and form amendments.

B. Rule 22e–4

Rule 22e–4 requires funds to establish a written liquidity risk management program that is reasonably designed to assess and manage liquidity risk. Several of the proposed amendments to rule 22e–4 would modify existing collection of information requirements. These amendments include:

- Changing the framework for classifying the liquidity of a fund's portfolio investments, including requiring use of a stressed trade size, defining the value impact standard, and requiring daily reviews of the fund's liquidity classifications. We believe funds would update their policies and procedures that incorporate liquidity risk management program elements to reflect these proposed amendments.
- Expanding the scope of funds that must determine and maintain a highly liquid investment minimum. As a result of this proposed change, additional funds would be required to comply with the current rule's collection of information requirements related to highly liquid investment minimums. These collection of information requirements include:
  - The fund's investment adviser or officers designated to administer the liquidity risk management program must provide a written report to the fund's board at least annually that describes a review of the adequacy and effectiveness of the fund's liquidity risk management program, including the operation of the highly liquid investment minimum.
  - The fund must adopt and implement policies and procedures for responding to a shortfall of the fund's assets that are highly liquid investments below its highly liquid investment minimum, which must include reporting to the fund's board of directors with a brief explanation of the causes of the shortfall, the extent of the shortfall, and any actions taken in response, and, if the shortfall lasts more than 7 consecutive calendar days, an explanation of how the fund plans to come back into compliance with its minimum within a reasonable period of time.
  - A fund must maintain a written record of how its highly liquid investment minimum and any adjustments to the minimum were determined, as well as any reports to the board regarding a shortfall in the fund's highly liquid investment minimum, for five years, the first two years in an easily accessible place.

The respondents to rule 22e–4 are open-end management investment companies, including, under certain circumstances, in-kind ETFs and the principal underwriters or depositors of unit investment trusts, but excluding money market funds. None of the proposed amendments would affect the rule's collection of information requirements for unit investment trusts or in-kind ETFs. Compliance with rule 22e–4 is mandatory for funds. Information provided to the Commission in connection with staff examinations or investigations is kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 22e–4 is reviewed by the Commission's examination staff, it is accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

In our most recent Paperwork Reduction Act submission for rule 22e–4, we estimated a total aggregate annual hour burden of 28,150 hours, and a total aggregate annual external cost burden of $0.[533] Based on filing data as of

[531] 44 U.S.C. 3501 through 3521.

[532] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[533] The most recent rule 22e–4 PRA submission was approved in 2020 (OMB Control No. 3235–0737). That PRA estimated that 846 fund complexes were subject to rule 22e–4. We continue to believe that funds within the same fund complex would experience certain efficiencies in responding to the collection of information requirements and, depending on the size of the fund complex, per

December 2021, we estimate that 11,488 funds would be subject to these proposed amendments.[534] The proposed collections of information are designed to help increase the likelihood that funds are better prepared to manage liquidity during stressed conditions, and help protect investors from dilution. These collections would also help facilitate the Commission's inspection and enforcement capabilities.

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 22e–4. The following estimates of average burden hours and costs are made for purposes of the Paperwork Reduction Act.

fund costs may be higher or lower than our estimated averages; however, we are changing from a fund complex to a per fund estimate based on staff experience with per fund burdens and to improve the quality of this estimate.

[534] As of Dec. 2021, we estimate 11,488 open-end funds, excluding money market funds.

Table 8: Rule 22e-4 PRA Estimates

	Internal initial burden hours	Internal annual burden hours[1]	Wage rate[2]	Internal time costs	Annual external cost burden
RULE 22e-4 PRA ESTIMATES					
Adopting and implementing revised policies and procedures	9 hours	4 hours[3]	$463[4]	$1,852	$1,000[5]
	3 hours	1 hour	$3,313[6]	$3,313	$0
Board reporting		1 hour[7]	$319[8]	$319	$531[9]
Recordkeeping		1 hour	$86[10]	$86	$0
Total new annual burden per fund		7 hours		$5,570	$1,531
Number of funds		× 11,488 funds[11]		× 11,488 funds	× 11,488 funds
Total new aggregate annual burden		80,416 hours		$63,988,160	$17,588,128
TOTAL ESTIMATED BURDENS INCLUDING AMENDMENTS					
Current aggregate annual burden estimates		+ 28,150 hours			+ $0
Revised aggregate annual burden estimates		108,566 hours			$17,588,128

Notes:

1. Includes initial burden estimates annualized over a 3-year period.

2. The Commission's estimates of the relevant wage rates are based on the salary information for the securities industry compiled by Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013, as modified by Commission staff ("SIFMA Wage Report"). The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

3. Reflects 9 hours of initial internal burden hours of amending existing policies and procedures, annualized over a 3-year period, and 1 hour of ongoing annual internal burden to maintain the policies and procedures.

4. This blended rate is based on the following: $360 (hourly rate for a senior portfolio manager); $510 (hourly rate for an assistant general counsel); $580 (hourly rate for a chief compliance officer); and $400 (hourly rate for a compliance attorney).

5. We estimate that the average cost of external services is $1,000 per fund. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation. The cost of external services for rule 22e-4 has not been previously estimated. We estimate this cost for external services for the proposed amendments to rule 22e-4 taking into account staff experience and outreach on liquidity classification vendors.

6. This blended rate is based on the following estimates: 2 hours of time for a board of directors at an average cost per hour of $4,770 and 1 hour of time for a compliance attorney to prepare materials for the board's review at an average cost per hour of $400. This estimated cost for a board of directors assumes an average of 9 board members and has been adjusted for inflation.

7. Although the average reporting burden per fund may be greater than 1 hour when a fund has to report a highly liquid investment minimum shortfall to its board, we estimate that not all funds would experience a highly liquid investment minimum shortfall each year.

8. This blended rate is based on the following: $360 (hourly rate for a senior portfolio manager); $339 (hourly rate for a compliance manager); $510 (hourly rate for an assistant general counsel); and $68 (hourly rate for a general clerk).

9. This estimated burden is based on the estimated wage rate of $531/hour, for 1 hour, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

10. This blended rate is based on the following: $104 (hourly rate for a senior computer operator); and $68 (hourly rate for a general clerk).

11. Includes open-end funds, excluding money market funds, as reported on Form N-CEN as of Dec. 2021. The internal and external burdens in the table represent per fund estimates. The most recent rule 22e-4 PRA submission approved in 2020 (OMB Control No. 3235-0737) used per fund complex estimates. We continue to believe that funds within the same fund complex would experience certain efficiencies in responding to the collection of information requirements and, depending on the size of the fund complex, per fund costs may be higher or lower than our estimated averages.

C. Rule 22c–1

Rule 22c–1 enables funds to use swing pricing as a tool to mitigate shareholder dilution. Swing pricing is currently optional for certain open-end funds. The proposed amendments would amend rule 22c–1 to make swing pricing for open-end funds (other than ETFs or money market funds) mandatory instead of optional. Funds that would be required to implement swing pricing under our amendments must establish and implement swing pricing policies and procedures.[535] The policies and procedures must: (1) provide that the fund will adjust its net asset value if the fund has net redemptions or if it has net purchases exceeding the inflow swing threshold; and (2) specify the process for determining the swing factor. The rule also would require a fund to retain a written copy of the periodic report provided to the board prepared by the swing pricing administrator that describes, among other things, the swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation. The retention of these records is necessary to allow the staff during examinations of funds to determine whether a fund is in compliance with its swing pricing policies and procedures and with rule 22c–1.

Compliance with rule 22c–1(b) would be mandatory for funds subject to the proposed swing pricing requirements. Based on filing data as of December 2021, we estimate that 9,043 funds would be subject to these proposed amendments.[536] Information provided to the Commission in connection with staff examinations or investigations is kept confidential subject to the provisions of applicable law. If information collected pursuant to rule 22c–1 is reviewed by the Commission's examination staff, it is accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The most recent PRA submission estimated that 5 fund complexes had funds that might adopt swing pricing policies and procedures under the optional rule.[537] The current estimated hour burdens and time costs associated with rule 22c–1, including the burden associated with the requirements that funds adopt policies and procedures and obtain board approval of them, provide periodic written reports by the swing pricing administrator to the board, and retain certain records and written reports related to swing pricing, are an average aggregate annual burden of 113 hours and average aggregate time costs of $73,803.[538]

The table below summarizes our PRA initial and ongoing annual burden estimates associated with the proposed amendments to rule 22c–1. The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act.

BILLING CODE 8011–01–P

[535] *See* proposed rule 22c–1(b).

[536] As of Dec. 2021, we estimate 9,043 open-end funds, excluding money market funds and ETFs.

[537] The most recent rule 22c–1 PRA submission was approved in 2020 (OMB Control No. 3235–0734). We continue to believe that funds within the same fund complex would experience certain efficiencies in responding to the collection of information requirements and, depending on the size of the fund complex, per fund costs may be higher or lower than our estimated averages; however, we are changing from a fund complex to a per fund estimate based on staff experience with per fund burdens and to improve the quality of this estimate.

[538] The estimated burden hours include 280 total hours (or 56 hours per fund complex) to initially prepare and approve swing pricing policies and procedures, amortized over 3 years, and 20 total hours (or 4 hours per fund complex) to retain swing pricing records under rule 22c–1 each year.

Table 9: Rule 22c-1 PRA Estimates

	Initial internal burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
Swing Pricing Policies and Procedures	12 hours	5 hours[3]	x	$409[4]	$2,045	$1,000[5]
	3 hours	1 hour		$3,313[6]	$3,313	$0
Swing Pricing Board Reporting		2 hours		$400[7]	$800	$531[8]
Swing Pricing Recordkeeping		1 hour	x	$86[9]	$86	$0
Total new annual burden per fund		9 hours			$6,244	$1,531
Number of funds		× 9,043 funds[10]			× 9,043 funds[10]	× 9,043 funds[10]
Total new annual burden		81,387 hours			$56,464,492	$13,844,833
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS						
Current burden estimates		113 hours			$73,803	
Revised burden estimates		**81,387 hours**			**$56,464,492**	**$13,844,833**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. *See supra* Table 8, at note 2.
3. We estimate that each fund would spend 1 hour each year, on average, to update its swing pricing policies and procedures.
4. The $409 wage rate reflects current estimates of the blended hourly rate for a senior accountant ($237) and a chief compliance officer ($580).
5. We estimate that the average cost of external services is $1,000 per fund. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
6. This blended rate is based on the following estimates: 2 hours of time for a board of directors at an average cost per hour of $4,770 and 1 hour of time for a compliance attorney to prepare materials for the board's review at an average cost per hour of $400. This estimated cost for a board of directors assumes an average of 9 board members and has been adjusted for inflation.
7. Reflects an estimated wage rate of $400 per hour for a compliance attorney.
8. This estimated burden is based on the estimated wage rate of $531/hour, for 1 hour, for outside legal services. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, take into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
9. The $86 wage rate reflects current estimates of the blended hourly rate for a senior computer operator ($104) and a general clerk ($68).
10. Includes open-end funds, excluding money market funds and ETFs, as reported on Form N-CEN as of Dec. 2021. The internal and external burdens in the table represent per fund estimates. The most recent rule 22c-1 PRA submission approved in 2019 (OMB Control No. 3235-0734) used fund complex estimates. We continue to believe, however, that funds within the same fund complex would experience certain efficiencies in responding to the collection of information requirements and, depending on the size of the fund complex, per fund costs may be higher or lower than our estimated averages.

BILLING CODE 8011–01–C

D. Form N–PORT

Form N–PORT requires registered management investment companies (except for money market funds and small business investment companies) and ETFs that are organized as unit investment trusts to report portfolio holdings information in a structured, XML format. The form is filed electronically using the Commission's electronic filing system, EDGAR. We propose the following amendments to Form N–PORT:

- The proposed amendments to Form N–PORT would require filing Form N–PORT on a monthly basis, within 30 days after the end of each month. Currently, a fund must maintain in its records the information that is required to be included on Form N–PORT not later than 30 days after the end of each month, but is only required to file that information within 60 days after the end of every third month. We are not proposing to adjust the estimated collection of information burden in connection with this change, in part because we believe the reduced recordkeeping burden is commensurate with the increased burden associated with filing the information that previously would have been preserved as a record. The Commission similarly did not adjust the PRA burden estimate when it amended Form N–PORT to move from a requirement to file reports monthly to a requirement to prepare the information monthly but file it quarterly.[539]
- We are proposing to require each open-end fund (other than money market funds and in-kind ETFs) to report the aggregate percentage of its portfolio represented in each of the three proposed liquidity categories, which would be publicly available. These funds would be required to adjust the reported amounts to account for the amounts of margin or collateral posted in connection with certain derivatives transactions as well as outstanding liabilities, and to report information about the value of these adjustments. Currently, these funds are required to report position-level liquidity information on a non-public section of Form N–PORT, meaning the amendments would require aggregating that information, making the required adjustments, and reporting the adjusted aggregate information as well as information about the adjustments that were made.
- For open-end funds that would be subject to the swing pricing requirement under the proposal, we are proposing to provide enhanced transparency into the frequency and amount of each fund's swing pricing adjustments. Specifically, the proposal would require these funds to report information about the number of days a fund applied a swing factor during the month and the amount of each swing factor applied.
- We also propose conforming amendments to certain existing items to account for other aspects of the proposal, including amendments to the filing frequency of unstructured portfolio information on Part F of Form N–PORT and miscellaneous holdings disclosure to account for the proposal to make monthly Form N–PORT information available to the public, amendments to reflect the proposed amendments to rule 22e–4, and amendments to certain entity identifiers.

The respondents to these collections of information will be management investment companies (other than money market funds and small business investment companies) and ETFs that are organized as unit investment trusts. We estimate that there are 12,153 such funds required to file on Form N–PORT, although certain of the proposed new collections of information would apply to subsets of these funds, as reflected in the below table.[540] The proposed collections of information are mandatory for the identified types of funds. Certain information reported on the form is kept confidential, and we propose that this would continue to be the case.[541] We propose that all other responses to Form N–PORT reporting requirements would not be kept confidential, and instead would be made public 60 days after the end of the month to which they relate (30 days after they are filed); currently, only the report for every third month is made public. The proposed amendments are designed to assist the Commission in its regulatory, disclosure review, inspection, and policymaking roles, and to help investors and other market participants better assess different fund products.

In our most recent PRA submission for Form N–PORT, we estimated the annual aggregate compliance burden to comply with the current collection of information requirements in Form N–PORT is 1,839,903 burden hours with an internal cost burden of $654,658,288 and an external cost burden estimate of $113,858,133. We estimate that funds prepare and file their reports on Form N–PORT either by (1) licensing a software solution and preparing and filing the reports in house, or (2) retaining a service provider to provide data aggregation, validation, and/or filing services as part of the preparation and filing of reports on behalf of the fund. We estimate that 35% of funds subject to the N–PORT filing requirements will license a software solution and file reports on Form N–PORT in house, and the remaining 65% will retain a service provider to file reports on behalf of the fund.

Table 10 below summarizes our initial and ongoing annual burden estimates associated with the proposed amendments to Form N–PORT. The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act.

BILLING CODE 8011–01–P

[539] *See* 2018 Liquidity Disclosure Adopting Release, *supra* note 22, at section IV.B.

[540] The most recent Form N–PORT PRA submission was approved in 2022 (OMB Control No. 3235–0730). That PRA submission estimated that 11,980 funds were required to file on Form N–PORT. Our current estimate has increased due to changes in the numbers of funds.

[541] *See* General Instruction F of Form N–PORT; General Instruction F of proposed Form N–PORT.

Table 10: Form N-PORT PRA Estimates

	Initial internal burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
PROPOSED AMENDMENTS TO FORM N-PORT						
Aggregate Liquidity Classification Reporting						
Funds that license a software solution to prepare Form N-PORT	3 hours	2 hours[3]	x	$381[4]	$762	$250[5]
Number of funds		× 4,021 funds[6]			× 4,021 funds[6]	× 4,021 funds[6]
Funds that retain the services of a third-party vendor to prepare Form N-PORT	3 hours	2 hours[3]		$381[b]	$762	$286[7]
Number of funds		× 7,467 funds[6]			× 7,467 funds[6]	× 7,467 funds[6]
Subtotal: Aggregate Liquidity Classification		22,976 hours			$8,753,856	$3,140,819
Swing Pricing Reporting						
Funds that license a software solution to prepare Form N-PORT	9 hours	4 hours	x	$381[5]	$1,524	$250[6]
Number of funds		× 3,165 funds[8]			× 3,165 funds[8]	× 3,165 funds[8]
Funds that retain the services of a third-party vendor to prepare Form N-PORT	9 hours	4 hours	x	$381[5]	$1,524	$286[7]
Number of funds		× 5,878 funds[8]			× 5,878 funds[8]	× 5,878 funds[8]
Subtotal: Swing Pricing Reporting		36,172 hours			$13,781,532	$2,472,356
Other Proposed Amendments to Form N-PORT						
Funds that license a software solution to prepare Form N-PORT		1 hours	x	$381[b]	$381	
Number of funds		× 4,254 funds[9]			× 4,254 funds[9]	
Funds that retain the services of a third-party vendor to prepare Form N-PORT		1 hours	x	$381[5]	$381	
Number of funds		× 7,899 funds[9]			× 7,899 funds[9]	
Subtotal: Other Proposed Amendments		12,153 hours			$4,630,293	
Total estimated burdens for proposed amendments						
Total new annual burden		71,301 hours			$27,165,681	$5,613,175
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS						
Current burden estimates		1,848,326 hours				$108,457,536
Revised burden estimates		**1,919,627 hours**				**$114,070,711**

Certain products and sums do not tie due to rounding.
Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. *See supra* Table 8, at note 2.
3. Reflects estimated initial internal burden of 3 hours, annualized over 3 years, as well as an estimated ongoing annual internal burden of 1 hour.
4. The $381 wage rate reflects current estimates of the blended hourly rate for a senior programmer ($362) and a compliance attorney ($400).
5. Represents additional licensing fees that may be incurred as a result of required new functionality.
6. Based on Commission filings, we estimate that there are 11,488 open-end funds that would be required to report aggregate liquidity classification information. We estimate that 35% of these funds (or 4,021) would license a software solution to prepare Form N-PORT while 65% (7,467) would rely on a third-party vendor.
7. Represents an assumed 2.5% increase in the current $11,440 external cost associated with the proposed collection of information (5% in aggregate for liquidity classification and swing pricing reporting).
8. Based on Commission filings, we estimate that there are 9,043 open-end funds that would be required to report swing pricing information. We estimate that 35% of these funds (or 3,165) would license a software solution to prepare Form N-PORT while 65% (5,878) would rely on a third-party vendor.
9. Based on Commission filings, we estimate that there are 12,153 funds that file reports on Form N-PORT. We estimate that 35% of these funds (or 4,254) would license a software solution to prepare Form N-PORT while 65% (7,899) would rely on a third-party vendor.

BILLING CODE 8011–01–C

E. Form N–1A

Form N–1A is used by registered open-end management investment companies (except insurance company separate accounts and small business investment companies licensed under the United States Small Business Administration), to register under the Investment Company Act and to offer their shares under the Securities Act. Unlike many other Federal information collections, which are primarily for the use and benefit of the collecting agency, this information collection is primarily for the use and benefit of investors. The information filed with the Commission also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information. In our most recent Paperwork Reduction Act submission for Form N–1A, we estimated for Form N–1A a total annual aggregate ongoing hour burden of 1,672,077 hours, and the total annual aggregate external cost burden is $132,940,008.[542] Compliance with the disclosure requirements of Form N–1A is mandatory, and the responses to the disclosure requirements will not be kept confidential.

We propose to amend Item 11(a) of Form N–1A to require, if applicable, that funds disclose that if an investor places an order with a financial intermediary, the financial intermediary may require the investor to submit its order earlier to receive the next calculated NAV. In addition, as a result of the proposed amendments to rule 22c–1 to require that certain funds use swing pricing, we estimate that additional funds would be required to disclose information about swing pricing in response to certain existing items in the form.[543] The Commission previously estimated that 474 funds would choose to use swing pricing under the optional framework.[544] We now estimate that 9,043 funds would be required to use swing pricing and to disclose relevant information on Form N–1A.[545] We also propose to remove the requirement to provide an upper limit on the swing factor from Item 6(d).

Table 11 below summarizes our initial and ongoing annual burden estimates associated with the proposed amendments to Form N–1A. The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act.

[542] The most recent Form N–1A PRA submission was approved in 2021 (OMB Control No. 3235–0307).

[543] *See* Items 6(d), 4(b)(2)(ii), 4(b)(2)(iv)(E), and 13(a) of Form N–1A.

[544] *See* Swing Pricing Adopting Release, *supra* note 11, at n.544 and accompanying text.

[545] This estimate, which is as of Dec. 2021, is based on Form N–CEN filings received through May 2022.

Table 11: Form N-1A PRA Estimates

	Initial internal burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
Hard Close						
Disclosure of Information Related to Hard Close	3 hours	1.5 hours[3]	x	$381[4]	$572	
Number of funds		× 9,043 funds			× 9,043 funds	× 9,043 funds
Subtotal: Hard Close		13,565 hours			$5,168,075	$0
Swing Pricing Reporting						
Swing Pricing Disclosure	2 hours	1.67 hours[5]	x	$381[4]	$635	
Number of funds		× 8,569 funds[6]			× 8,569 funds[6]	× 8,569 funds[6]
Subtotal: Swing Pricing		14,282 hours			$5,441,315	$0
Total estimated burdens for proposed amendments						
Total new annual burden		27,846 hours			$10,609,390	
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS						
Current burden estimates		1,672,102 hours				$132,940,008
Revised burden estimates		**1,699,948 hours**				$132,940,008

Certain products and sums do not tie due to rounding.
Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. *See supra* Table 8, at note 2.
3. Reflects estimated initial internal burden of 3 hours, annualized over 3 years, as well as an estimated ongoing annual internal burden of 0.5 hours.
4. Reflects current estimates of the blended hourly rate of a compliance attorney and a senior programmer.
5. Reflects estimated initial internal burden of 2 hours, annualized over 3 years, as well as an estimated ongoing annual internal burden of 1 hour.
6. Reflects the number of registered open-end funds (other than money market funds and ETFs) minus 474 funds. While all registered open-end funds (other than money market funds and ETFs) would be required to provide the swing pricing disclosure, the Commission previously estimated that 474 funds would opt to provide optional swing pricing disclosure on Form N-1A and has already accounted for the filing burden of such funds in its PRA estimates for Form N-1A. *See* Swing Pricing Adopting Release, *supra* note 9, at Section VI.

F. Form N–CEN

Form N–CEN requires registered investment companies, other than face-amount certificate companies to report annual, census-type information. Filers must submit this report electronically using the Commission's EDGAR system in XML format. We propose the following amendments to Form N–CEN:

- Adding a requirement that an open-end fund that uses a liquidity service provider report: (a) the name each liquidity service provider; (b) identifying information, including the legal entity identifier and location, for each liquidity service provider; (c) if the liquidity service provider is affiliated with the fund or its investment adviser; (d) the asset classes for which that liquidity service provider provided classifications; and (e) whether the service provider was hired or terminated during the reporting period;
- Removing requirements that a filer report certain information regarding its use of swing pricing; and
- Revising the approach to certain entity identifiers.[546]

The respondents to these collections of information will be registered investment companies with the exception of face amount certificate companies. We estimate that there are 2,754 such registrants required to file on Form N–CEN.[547] The proposed collections of information are mandatory. Responses are not kept confidential. The purpose of Form N–CEN is to satisfy the filing and disclosure requirements of section 30 of the Investment Company Act, and of rule 30a–1 thereunder. The proposed amendments are designed to facilitate the Commission's oversight of registered funds and its ability to assess trends and risks.

In our most recent PRA submission for Form N–CEN, we estimated the annual aggregate compliance burden to comply with the current collection of information requirements in Form N–CEN is 54,890 burden hours with an internal cost burden of $19,267,461 and an external cost burden estimate of $1,344,981.[548]

[546] We do not believe that the proposed amendments to separate the concepts of LEI and RSSD ID more clearly in the form would change the burdens of the current form, as the form already requires a fund to report the RSSD ID, if any, if a financial institution does not have an assigned LEI.

[547] This estimate, which is as of Dec. 2021, is based on Form N–CEN filings received through May 2022.

[548] The most recent Form N–CEN PRA submission was approved in 2021 (OMB Control No. 3235–0729). The previous PRA submission estimated that 2,835 registrants were required to file on Form N–CEN. Our current estimate has decreased due to changes in the numbers of registrants.

Table 12 below summarizes our initial and ongoing annual burden estimates associated with the proposed amendments to Form N–CEN. The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act.

Table 12: Form N-CEN PRA Estimates

	Initial internal burden hours	Internal annual burden hours[1]		Wage rate[2]	Internal time costs	Annual external cost burden
Liquidity Service Provider Reporting	1.5 hours	1 hour[3]	x	$381[4]	$381	
Number of registrants		x 2,754 registrants			x 2,754 registrants	
Subtotal: Liquidity Service Provider Reporting		2,754 hours			$1,049,274	
Removal of Swing Pricing Reporting		(0.5) hours[5]	x	$351[5]	$(175.5)	
Number of funds		x 9,854 funds[5]			x 9,854 funds[5]	
Subtotal: Removal of Swing Pricing Reporting		(4,927 hours)			($1,729,377)	
Total new annual burden		(2,173 hours)			($680,103)	
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS						
Current burden estimates		54,890 hours				$1,344,981
Revised burden estimates		**52,718 hours**				**$1,344,981**

Notes:
1. Includes initial burden estimates annualized over a 3-year period.
2. *See supra* Table 8, at note 2.
3. Reflects an initial burden of 1.5 hours, annualized over a 3-year period, with an estimated ongoing annual burden of 0.5 hours.
4. The $381 wage rate reflects current estimates of the blended hourly rate for 15 minutes each from a senior programmer ($362) and a compliance attorney ($400).
5. In the most recent PRA submission for Form N-CEN, we estimated that 9,854 funds would incur an additional burden of 0.5 hours per fund at an internal cost of $351 per hour to report use of swing pricing. The estimated reduced burden on Form N-CEN differs from the increased burden we are estimating for Form N-PORT due to the differing requirements. In addition, because it is reversing a previously estimated increase, the estimated reduced burden on Form N-CEN uses the same estimated wage rate as the previous estimate, even though we estimate that wage rates have increased.

G. 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. S7–26–22. 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. S7–26–22, 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 Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[549] It relates to: (1) the proposed amendments concerning funds' liquidity risk management programs under rule 22e–4; (2) the proposed swing pricing amendments under rule 22c–1(b); (3) the proposed hard close requirement under rule 22c–1(a); and (4) the proposed disclosure amendments to Form N–1A, Form N–PORT, and Form N–CEN.

A. Reasons for and Objectives of the Proposed Actions

The Commission is proposing amendments to its current rules for open-end funds regarding liquidity risk management programs and swing pricing. The proposed amendments would provide additional standards for making liquidity determinations, amend certain aspects of the liquidity categories, and require more frequent liquidity classifications. The objectives of the proposed liquidity amendments are to improve liquidity risk management programs to better prepare these funds for stressed conditions and improve transparency in liquidity classifications. The proposed amendments also require any open-end fund, other than a money market fund or exchange-traded fund, to use swing pricing. The objectives of swing pricing are to more fairly allocate costs, reduce the potential for dilution of investors who are not currently transacting in the fund's shares, and reduce any potential first-mover advantages. In addition, the Commission is proposing a ''hard close'' requirement for these funds. The proposed hard close amendments would serve multiple objectives, including facilitating funds' ability to operationalize swing pricing by ensuring that funds receive timely flow information and to modernize order processing generally. Finally, the Commission is proposing amendments to reporting requirements that apply to certain registered investment companies, including registered open-end funds (other than money market funds), registered closed-end funds, and unit investment trusts. These proposed amendments seek to improve fund disclosure by requiring more timely reporting of monthly portfolio holdings and related information to the Commission and the public, amend certain reported identifiers, and make other amendments to require additional information about open-end funds' liquidity risk management and use of swing pricing. Each of these objectives is discussed in detail in section II above.

B. Legal Basis

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in the Investment Company Act, particularly sections 6, 8, 22, 24, 30, 31, 34, 38, and 45 thereof [15 U.S.C. 80a–1 *et seq.*], the Investment Advisers Act, particularly section 206 thereof [15 U.S.C. 80b–1 *et seq.*], the Exchange Act, particularly sections 10, 13, 15, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Securities Act, particularly sections 7, 10, 17, and 19 thereof [15 U.S.C. 77a *et seq.*], and the Trust Indenture Act, particularly section 319 thereof [15 U.S.C. 77aaa *et seq.*].

C. Small Entities Subject to the Amendments

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[550] Commission staff estimates that, as of June 2022, there were 46 open-end management investment companies that would be considered small entities; this number includes 2 money market funds and 11 open-end ETFs. Commission staff also estimates that, as of June 2022, there were 31 closed-end investment management companies and 5 unit investment trusts that would be considered small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Liquidity Risk Management Programs

The proposed amendments to rule 22e–4 would provide additional standards for making liquidity determinations, amend certain aspects of the liquidity categories, and require more frequent liquidity classifications. Specifically, the proposal would provide objective minimum standards that funds would use to classify investments, including by: (1) requiring funds to assume the sale of a stressed trade size, rather than the rule's current approach of assuming the sale of a reasonably anticipated trade size in current market conditions; (2) defining the value impact standard with more specificity on when a sale or disposition would significantly change the market value of an investment; and (3) removing classification by asset class. The proposed amendments would also remove the less liquid investment category, which would reduce the number of liquidity categories from four to three, and expand the scope of the illiquid investment category. In addition, the proposed amendments would extend the requirement to maintain a highly liquid investment minimum to a broader scope of funds and would change how the highly liquid investment minimum calculation and the calculation of the 15% limit on illiquid investments take into account the amount of assets that are posted as margin or collateral for certain derivatives transactions. Finally, the proposal would require daily classifications.

We estimate that approximately 44 funds are small entities that would be required to comply with the proposed amendments to the liquidity risk management program requirement.[551] The proposed amendments would impose burdens on all open-end funds subjected to the rule, including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with this aspect of the proposal would require. While we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to the proposed liquidity rule amendments in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund 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 fund complex's economies of scale. For example, larger fund complexes would have economies of scale in amending existing liquidity risk management policies and procedures

[549] 5 U.S.C. 603(a).

[550] *See* 17 CFR 270.0–10(a).

[551] *See* text following *supra* note 550. Money market funds are excluded from the proposed liquidity risk management program requirement. In addition, in-kind ETFs are not subject to the current rule's classification requirements or highly liquid investment minimum requirements and, therefore, would not be subject to the proposed amendments to these provisions. Because in-kind ETFs are subject to certain of the proposed amendments, such as amendments to the calculation of the 15% limit on illiquid investments, we include all 11 of the small funds that are open-end ETFs in the estimated number of small entities affected.

and in revising their frameworks for classifying the liquidity of investments.

2. Swing Pricing

Under the proposal, every open-end fund other than an excluded fund would be required to establish and implement swing pricing policies and procedures that adjust the fund's current NAV per share by a swing factor either if the fund has net redemptions or if it has net purchases of more than 2% of the fund's net assets. The swing pricing administrator would be required to review investor flow information to determine: (1) if the fund experiences net purchases or net redemptions; and (2) the amount of net purchases or net redemptions. In determining the swing factor, the proposed rule would require a fund's swing pricing administrator to make good faith estimates, supported by data, of the costs the fund would incur if it purchased or sold a pro rata amount of each investment in its portfolio to satisfy the amount of net purchases or net redemptions (*i.e.,* a vertical slice). Additionally, under the proposed rule, the fund's board of directors would be required to: (1) approve the fund's swing pricing policies and procedures; (2) designate the fund's swing pricing administrator; and (3) review, no less frequently than annually, a written report prepared by the swing pricing administrator. Finally, under the proposed rule the fund would be required to maintain the swing pricing policies and procedures and a copy of the written report in an easily accessible place.

We estimate that approximately 33 funds are small entities that would be required to comply with the proposed swing pricing requirement.[552] The proposed requirement would impose burdens on all open-end funds (other than money market funds and ETFs), including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with this aspect of the proposal would require. While we would expect larger funds or funds that are part of a large fund complex to incur higher costs related to the proposed swing pricing requirement in absolute terms relative to a smaller fund or a fund that is part of a smaller fund complex, we would expect a smaller fund to find it more costly, per dollar managed, to comply with the proposed requirement because it would not be able to benefit from a larger fund complex's economies of scale. For example, a larger fund complex would have economies of scale in developing and adopting swing pricing policies and procedures. This is particularly true for larger fund complexes that currently employ swing pricing in their operations in a foreign jurisdiction, such as in Europe.

3. Hard Close

We are proposing amendments to rule 22c–1 to require a hard close for funds that are subject to the proposed swing pricing requirement. The hard close would provide that a request to redeem or purchase a fund's shares may be executed at the current day's price only if the fund, its designated transfer agent, or a registered securities clearing agency receives the eligible order before the pricing time as of which the fund calculates its NAV. Orders received after the fund's established pricing time would receive the next day's price.

We estimate that approximately 33 funds are small entities that would be required to comply with the proposed hard close requirement.[553] The proposed amendments would impose burdens on all open-end funds (except for money market funds and ETFs), including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis section above. The proposed hard close may involve costs to change business practices, operations, and computer systems, including integration of new technologies, for funds, including small entities, which may require specialized operational and technology skills. We would expect that the burdens of these changes would be greater for smaller entities relative to the size of their business than for larger entities, which would benefit from economies of scale.

We estimate that the proposed hard close would also affect 8 small transfer agents.[554] Intermediaries that are small entities would also be affected; however, we lack data for accurately estimating the number of these other intermediaries that are small entities that service open-end fund shareholders and would be affected by the proposed hard close amendments. Those other intermediaries may include a subset of: 471 small advisers,[555] 731 small broker-dealers,[556] 1,280 small recordkeepers,[557] 3,529 small bank entities,[558] and small insurance companies.[559] Furthermore, how much these proposed amendments would affect these intermediaries would be determined largely by the importance these intermediaries and their clients place on receiving the NAV calculated on the day a client places an order.

[552] *See* text following *supra* note 550. ETFs and money market funds are excluded from the proposed swing pricing requirement.

[553] *See* text following *supra* note 550. ETFs and money market funds are excluded from the proposed hard close requirement.

[554] A ''small transfer agent'' is a transfer agent that: (1) received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed small businesses or small organizations; and (3) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not a small business or small organization. *See* rule 0–10(h) under the Exchange Act. We estimate 8 affected small transfer agents, based on the number of small transfer agents reporting mutual fund activity in their filings on Form TA–2 as of Mar. 31, 2022.

[555] A ''small adviser'' is a SEC-registered investment adviser that: (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. We estimate 471 small advisers, based on filings on Form ADV as of Dec. 2021.

[556] A ''small broker-dealer'' is a broker or dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to rule 17a–5(d) under the Exchange Act or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization. *See* rule 0–10(c) under the Exchange Act. We estimate 731 small broker-dealers, based on filings of FOCUS Reports as of Dec. 2021.

[557] *See* Pension Benefit Statements—Lifetime Income Illustrations [85 FR 59132 (Sept. 18, 2020)], at n.71 and accompanying text. We estimate 1,280 small recordkeepers, based on filings of Form 5500 as reported by the Department of Labor, in the 2017 plan year. According to that data, there were 1,725 recordkeepers servicing defined contribution plans. The 445 largest recordkeepers serviced plans holding approximately 99% of total plan assets, while the remaining 1,280 (small recordkeepers) serviced plans holding a mere 1%. The Department of Labor considered other thresholds for recordkeepers and selected the 99 percent threshold for recordkeepers to include more recordkeepers in cost estimates, and thus avoid underestimating costs.

[558] *See* Rules Regarding Availability of Information [85 FR 57616 (Sept. 15, 2020)], at n.7 and accompanying text (stating that as of Mar. 2020, there were approximately 2,925 small bank holding companies, 132 small savings and loan holding companies, and 472 small State member banks). We estimate a total of 3,529 small banks supervised by the Federal Reserve as of Mar. 2020.

[559] We lack data for estimating the number of small insurance companies.

4. Reporting Requirements

a. Form N–1A

Form N–1A is the form used by certain open-end management investment companies to register under the Investment Company Act and to register their securities under the Securities Act. We propose to amend Item 11(a) of Form N–1A to require, if applicable, that funds disclose that if an investor places an order with a financial intermediary, the financial intermediary may require the investor to submit its order earlier to receive the next calculated NAV. We also propose to remove the requirement to provide an upper limit on the swing factor from Item 6(d).

We estimate that approximately 33 funds are small entities that would be required to comply with our proposed amendments for Form N–1A.[560] The proposed amendments would impose burdens on all open-end funds (other than money market funds and ETFs), including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with this aspect of the proposal would require. We recognize that, due to economies of scale, the costs associated with the proposed amendments to Form N–1A may be more easily borne by larger fund complexes than smaller ones, and that costs borne by funds would be passed along to investors in the form of higher fees and expenses.

b. Form N–PORT

Form N–PORT requires open-end and closed-end funds, as well as ETFs organized as UITs, to report monthly portfolio holdings information on a quarterly basis in a structured, XML format. We propose the following amendments to Form N–PORT: (1) require funds to file Form N–PORT on a monthly basis, within 30 days after the end of each month; (2) require open-end funds to report the aggregate percentage of a fund's portfolio represented in each of the three proposed liquidity categories, which would be publicly available; (3) provide enhanced transparency into the frequency and amount of a fund's swing pricing adjustments; and (4) changes to entity identifiers.

We estimate that approximately 75 open-end and closed-end funds are small entities that would be required to comply with our proposed amendments for Form N–PORT.[561] The proposed amendments would impose burdens on all Form N–PORT filers, including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with this aspect of the proposal would require. We recognize that, due to economies of scale, the costs associated with the proposed amendments to Form N–PORT may be more easily borne by larger fund complexes than smaller ones, and that costs borne by funds would be passed along to investors in the form of higher fees and expenses.

c. Form N–CEN

Form N–CEN is used to collect annual, census-type information for all registered investment companies, other than face-amount certificate companies. Filers must submit this report electronically using the Commission's EDGAR system in XML format. We propose amendments to Form N–CEN that would identify liquidity service providers and certain related information, as well as remove the requirements that a filer report information regarding its use of swing pricing, which is being moved to Form N–PORT. We also propose amendments related to entity identifiers.

We estimate that approximately 82 funds are small entities that would be required to comply with our proposed amendments for Form N–CEN.[562] The proposed amendments would impose burdens on all Form N–CEN filers, including those that are small entities. We discuss the specifics of these burdens in the Economic Analysis and Paperwork Reduction Act sections above. These sections also discuss the professional skills that we believe compliance with this aspect of the proposal would require. We recognize that, due to economies of scale, the costs associated with the proposed amendments to Form N–CEN may be more easily borne by larger fund complexes than smaller ones, and that costs borne by funds would be passed along to investors in the form of higher fees and expenses.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We do not believe that the proposed amendments would duplicate, overlap, or conflict with other existing Federal rules.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant economic impact on small entities. We considered the following alternatives for small entities in relation to the proposed amendments to rules 22e–4 and 22c–1, as well as the proposed disclosure and reporting requirements: (1) establishing different requirements that take into account the resources available to small entities; (2) exempting small entities from all or part of the requirements; (3) clarifying, consolidating, or simplifying requirements under the rules for small entities; and (4) using performance rather than design standards.

We do not believe that establishing different requirements for, or exempting, any subset of funds, including funds that are small entities, from the proposed amendments to rule 22e–4 would permit us to achieve our stated objectives. As discussed above, we believe that the proposed liquidity amendments would improve liquidity risk management programs to better prepare funds for stressed conditions and improve transparency in liquidity classifications. Small funds do not entail less liquidity risk than larger funds, and investors in small funds would benefit from improvements in the liquidity risk management programs and more transparent liquidity classifications just as investors in larger funds would. We therefore do not believe it would be appropriate to establish different requirements for, or exempt, funds that are small entities from the proposed liquidity risk management amendments to rule 22e–4. Similarly, our objectives would not be served by clarifying, consolidating, or simplifying the liquidity requirements for small entities. With respect to using performance rather than design standards, the proposed amendments primarily use design rather than performance standards to better prepare funds for stressed market conditions, prevent funds from over-estimating the

[560] *See* text following *supra* note 550. ETFs and money market funds file reports on Form N–1A but would not be impacted by our proposed amendments.

[561] *See* text following *supra* note 550. Money market funds do not file Form N–PORT. While exchange-traded funds organized as unit investment trusts file Form N–PORT, there are no such funds that would be considered small entities.

[562] *See* text following *supra* note 550. In-kind ETFs would not be affected by the proposed amendments to report information about liquidity classification vendors but, to avoid under-estimating the number of small entities, we assume that the 11 small entity ETFs are not in-kind ETFs and would be affected by the change. We similarly assume that all 44 funds that are small entities would use a liquidity classification vendor, although this may not be the case. If a fund does not use a liquidity classification vendor, it would not be required to report information about a vendor on Form N–CEN.

liquidity of their investments, and improve transparency of fund liquidity.

Regarding the proposed changes to the liquidity classification framework, we acknowledge that to the extent that small funds would experience a more substantial operational burden compared to larger fund complexes that exhibit economies of scale, smaller funds may become less competitive than larger funds. However, we believe there are no significant alternatives for smaller funds other than exemption, and providing an exemption from the proposed liquidity classification changes could subject investors in small funds to greater liquidity risk and would create diverging liquidity frameworks among funds, as small funds are already subject to the current rule's liquidity classification requirements.

Additionally, we are not establishing different requirements for, or exempting, funds that are small entities from the swing pricing requirement, because we believe that all funds should be required to use swing pricing as a tool to mitigate potential shareholder dilution. We do not believe that the potential dilution that proposed rule 22c–1(b) is meant to prevent would affect large funds and their shareholders more significantly than small funds and their shareholders. We acknowledge that a fund that is a small entity would need to incur the costs of compliance with the proposed amendments to the rule, which may constitute a greater percentage of the small fund's net assets than with a larger fund. We also acknowledge that certain larger fund groups with both U.S. and European operations may already have experience with swing pricing that smaller funds would not, which could result in greater costs, relative to a fund's net assets, for smaller funds than larger ones. However, despite these considerations, we do not believe that investors in small funds should be afforded less protection against the risk of dilution than investors in large funds.

We therefore do not believe it would be appropriate to establish different requirements for, or to exempt, funds that are small entities from the proposed swing pricing requirement. For example, we are not allowing funds that are small entities to use a different inflow swing threshold or market impact threshold than those the proposed rule identifies. As discussed above, we do not believe the potential dilution that the proposed swing pricing requirement is meant to prevent would affect large funds and their shareholders more significantly than small funds and their shareholders. Permitting funds that are small entities to use higher thresholds could subject small funds to greater dilution than larger funds, and we believe all investors should be afforded the same protection against the risk of dilution.[563] Similarly, our objectives would not be served by clarifying, consolidating, or simplifying the swing pricing requirements for small entities. With respect to using performance rather than design standards, the proposed amendments primarily use design rather than performance standards to promote more consistent and uniform standards for all funds. We are also not establishing different requirements for, or exempting, funds that are small entities from the proposed hard close requirement because we believe the requirement is important to every fund's ability to operationalize swing pricing. Our hard close proposal is designed to support the proposed swing pricing amendments by facilitating the more timely receipt of fund order flow information. We believe that requiring a hard close would reduce a fund's reliance on estimates, providing more accurate swing factor determinations. We do not believe investors in smaller funds would benefit from a greater use of estimates than investors in larger funds. We therefore do not believe it would be appropriate to establish different requirements for, or exempt, funds that are small entities from the proposed hard close requirement in rule 22c–1. Similarly, our objectives would not be served by clarifying, consolidating, or simplifying the hard close requirement for small entities. With respect to using performance rather than design standards, the proposed amendments primarily use design rather than performance standards to promote more consistent and uniform standards for all funds.

Finally, we do not believe that the interest of investors would be served by establishing different requirements for, or exempting, funds that are small entities from the proposed disclosure and reporting amendments, or subjecting these funds to different disclosure and reporting requirements than larger funds. We believe that all fund investors, including investors in funds that are small entities, would benefit from disclosure and reporting requirements that would permit them to make investment choices that better match their risk tolerances.

[563] While we recognize that smaller funds may be less likely than larger funds to have market impact costs at the 1% threshold for net redemptions or the 2% threshold for net purchases, as discussed above, we believe uniform thresholds for all funds would provide a consistent and objective threshold for all funds to consider market impacts.

Furthermore, we note that the current disclosure requirements on Form N–1A, Form N–PORT, and Form N–CEN do not distinguish between small entities and other funds. Similarly, our objectives would not be served by clarifying, consolidating or simplifying the proposed disclosure and reporting requirements for small entities. With respect to using performance rather than design standards, the proposed amendments primarily use design rather than performance standards to promote more consistent and uniform standards for all funds.

We recognize that, due to economies of scale, the costs associated with the proposed amendments to these forms may be more easily borne by larger fund complexes than smaller ones, and that costs borne by funds would be passed along to investors in the form of higher fees and expenses. However, we believe there are no significant alternatives for smaller funds other than exemption, and providing exemptions for smaller funds from the proposed reporting and disclosure requirements would disadvantage investors in smaller funds by creating a lack of information about these funds' use of swing pricing or aggregate liquidity classifications.

G. General Request for Comment

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed amendments, including for the affected small intermediaries that we lack data to quantify with accuracy, and whether the proposed amendments would have any effects not considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the rules and forms, and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [564] 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

[564] 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).

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 impact of the proposed rule on the 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.

Statutory Authority

The Commission is proposing the rule and form amendments contained in this document under the authority set forth in the Investment Company Act, particularly sections 6, 8, 22, 24, 30, 31, 34, 38, and 45 thereof [15 U.S.C. 80a–1 *et seq.*], the Investment Advisers Act, particularly section 206 thereof [15 U.S.C. 80b–1 *et seq.*], the Exchange Act, particularly sections 10, 13, 15, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Securities Act, particularly sections 7, 10, 17, and 19 thereof [15 U.S.C. 77a *et seq.*], the Trust Indenture Act, particularly section 319 thereof [15 U.S.C. 77aaa *et seq.*], and 44 U.S.C. 3506–3507.

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Rule and Form Amendments

For the reasons set forth in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

Section 270.22c–1 also issued under secs. 6(c), 22(c), and 38(a) (15 U.S.C. 80a–6(c), 80a–22(c), and 80a–37(a));

* * * * *

Section 270.31a–2 is also issued under 15 U.S.C. 80a–30.

■ 2. Amend § 270.22c–1 by revising it to read as follows:

§ 270.22c–1 Pricing of redeemable securities for distribution, redemption and repurchase.

(a) *Forward pricing required.* No registered investment company issuing any redeemable security, no person designated in such issuer's prospectus as authorized to consummate transactions in any such security, no principal underwriter of, or dealer in, any such security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security established for the next pricing time after receipt of a direction to purchase or redeem such security.

(1) The investment company's board of directors must initially set the pricing time(s), and must make and approve any changes to the pricing time(s).

(2) The investment company must calculate the current net asset value of any redeemable security at least once daily, Monday through Friday, at the pricing time(s) its board of directors set, except on:

(i) Days during which the investment company receives no direction to purchase or redeem its redeemable securities; or

(ii) Customary national business holidays described or listed in the prospectus and local and regional business holidays listed in the prospectus.

(3) For an investment company that is required to implement swing pricing under paragraph (b) of this section:

(i) A direction to purchase or redeem the investment company's redeemable securities is eligible to receive the price established for a pricing time solely if the investment company, its designated transfer agent, or a registered clearing agency receives an eligible order before that pricing time; and

(ii) The price an eligible order receives is based on the current net asset value as of the pricing time and includes any adjustment to the current net asset value required by paragraph (b) of this section.

(b) *Swing pricing requirement.* A registered open-end management investment company (but not a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or an exchange-traded fund as defined in paragraph (d) of this section) (a ''fund'') must establish and implement swing pricing policies and procedures as described in paragraphs (b)(1) through (5) of this section in order to adjust its current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase or redemption activity.

(1) The fund's swing pricing policies and procedures must:

(i) Provide that the fund must adjust its net asset value per share by a swing factor if the fund has net redemptions or if the fund has net purchases exceeding its inflow swing threshold. The swing pricing administrator must review investor flow information to determine if the fund has net purchases or net redemptions and the amount of net purchases or net redemptions. The swing pricing administrator is permitted to make such determination based on reasonable, high confidence estimates; and

(ii) Specify the process for determining the swing factor, in accordance with paragraph (b)(2) of this section.

(2) In determining the swing factor, the swing pricing administrator must make good faith estimates, supported by data, of the costs the fund would incur if it purchased or sold a pro rata amount of each investment in its portfolio equal to the amount of net purchases or net redemptions.

(i) If the fund has net redemptions, the good faith estimates must include, for selling the pro rata amount of each investment in the fund's portfolio:

(A) Spread costs;

(B) Brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio investment sales; and

(C) If the amount of the fund's net redemptions exceeds the market impact threshold, the market impact, as described in paragraph (b)(2)(iii) of this section.

(ii) If the amount of the fund's net purchases exceeds the inflow swing threshold, the good faith estimates must include, for purchasing the pro rata amount of each investment in the fund's portfolio:

(A) Spread costs;

(B) Brokerage commissions, custody fees, and any other charges, fees, and taxes associated with portfolio investment purchases; and

(C) The market impact, as described in paragraph (b)(2)(iii) of this section.

(iii) A fund must determine market impact by:

(A) Establishing a market impact factor for each investment, which is an estimate of the percentage change in the value of the investment if it were purchased or sold, per dollar of the amount of the investment that would be purchased or sold; and

(B) Multiplying the market impact factor for each investment by the dollar amount of the investment that would be

purchased or sold if the fund purchased or sold a pro rata amount of each investment in its portfolio to invest the net purchases or meet the net redemptions.

(iv) The swing pricing administrator may estimate costs and market impact factors for each type of investment with the same or substantially similar characteristics and apply those estimates to all investments of that type rather than analyze each investment separately.

(3) The fund's board of directors, including a majority of directors who are not interested persons of the fund, must:

(i) Approve the fund's swing pricing policies and procedures;

(ii) Designate the fund's swing pricing administrator. The administration of swing pricing must be reasonably segregated from portfolio management of the fund and may not include portfolio managers; and

(iii) Review, no less frequently than annually, a written report prepared by the swing pricing administrator that describes:

(A) The swing pricing administrator's review of the adequacy of the fund's swing pricing policies and procedures and the effectiveness of their implementation, including their effectiveness at mitigating dilution;

(B) Any material changes to the fund's swing pricing policies and procedures since the date of the last report; and

(C) The swing pricing administrator's review and assessment of the fund's swing factors, considering the requirements of paragraph (b)(2) of this section, including the information and data supporting the determination of the swing factors and, if the swing pricing administrator implements either an inflow swing threshold lower than 2 percent of the fund's net assets or a market impact threshold lower than 1 percent of the fund's net assets, the information and data supporting the determination of such threshold.

(4) The fund must maintain the policies and procedures adopted by the fund under this paragraph (b) that are in effect, or at any time within the past six years were in effect, in an easily accessible place, and must maintain a written copy of the report provided to the board under paragraph (b)(3)(iii) of this section for six years, the first two in an easily accessible place.

(5) Any fund (a ''feeder fund'') that invests, pursuant to section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)), in another fund (a ''master fund'') may not use swing pricing to adjust the feeder fund's net asset value per share; however, a master fund must use swing pricing to adjust the master fund's net asset value per share, pursuant to the requirements set forth in this paragraph (b).

(6) Notwithstanding section 18(f)(1) of the Act (15 U.S.C. 80a–18(f)(1)), a fund with a share class that is an exchange-traded fund is subject to the swing pricing requirement only with respect to any share classes that are not exchange-traded funds.

(c) *Exceptions permitted.* Notwithstanding paragraph (a) of this section:

(1) Secondary market transactions. A sponsor of a unit investment trust (''trust'') engaged exclusively in the business of investing in eligible trust securities (as defined in § 270.14a–3(b)) may sell or repurchase trust units in a secondary market at a price based on the offering side evaluation of the eligible trust securities in the trust's portfolio, determined at any time on the last business day of each week, effective for all sales made during the following week, if on the days that such sales or repurchases are made the sponsor receives a letter from a qualified evaluator stating, in its opinion, that:

(i) In the case of repurchases, the current bid price is not higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) In the case of resales, the offering side evaluation, computed as of the last business day of the previous week, is not more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

(2) Notwithstanding the provisions above, any registered separate account offering variable annuity contracts, any person designated in such account's prospectus as authorized to consummate transactions in such contracts, and any principal underwriter of or dealer in such contracts must be permitted to apply the initial purchase payment for any such contract at a price based on the current net asset value of such contract which is next computed:

(i) Not later than two business days after receipt of the direction to purchase by the insurance company sponsoring the separate account (''insurer''), if the contract application and other information necessary for processing the direction to purchase (collectively, ''application'') are complete upon receipt; or

(ii) Not later than two business days after an application which is incomplete upon receipt by the insurer is made complete, provided that, if an incomplete application is not made complete within five business days after receipt,

(A) The prospective purchaser is informed of the reasons for the delay; and

(B) The initial purchase payment is returned immediately and in full, unless the prospective purchaser specifically consents to the insurer retaining the purchase payment until the application is made complete.

(3) This paragraph does not prevent any registered investment company from adjusting the price of its redeemable securities sold pursuant to a merger, consolidation or purchase of substantially all of the assets of a company that meets the conditions specified in § 270.17a–8.

(d) *Definitions.* For the purposes of this section:

Designated transfer agent means a registered transfer agent (as defined in section 3(a)(25) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(25))) that is designated in the fund's registration statement filed with the Commission.

Eligible order means a direction, which is irrevocable as of the next pricing time after receipt, to:

(i) Purchase or redeem a specific number of fund shares or an indeterminate number of fund shares of a specific value; or

(ii) Purchase the fund's shares using the proceeds of a contemporaneous order to redeem a specific number of shares of another registered investment company (an exchange).

Exchange-traded fund means an open-end management investment company (or series or class thereof), the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on § 270.6c–11.

Inflow swing threshold means an amount of net purchases equal to 2 percent of a fund's net assets, or such smaller amount of net purchases as the swing pricing administrator determines is appropriate to mitigate dilution.

Initial purchase payment means the first purchase payment submitted to the insurer by, or on behalf of, a prospective purchaser.

Investor flow information means information about the fund investors' daily purchase and redemption activity, which may consist of individual, aggregated, or netted eligible orders, and which excludes any purchases or redemptions that are made in kind and not in cash.

Market impact threshold means an amount of net redemptions equal to 1

percent of a fund's net assets, or such smaller amount of net redemptions as the swing pricing administrator determines is appropriate to mitigate dilution.

Pricing time means the time or times of day as of which the investment company calculates the current net asset value of its redeemable securities pursuant to paragraph (a) of this section.

Prospective purchaser means either an individual contract owner or an individual participant in a group contract.

Qualified evaluator means any evaluator that represents it is in a position to determine, on the basis of an informal evaluation of the eligible trust securities held in a unit investment trust's portfolio, whether:

(i) The current bid price is higher than the offering side evaluation, computed on the last business day of the previous week; and

(ii) The offering side evaluation, computed as of the last business day of the previous week, is more than one-half of one percent ($5.00 on a unit representing $1,000 principal amount of eligible trust securities) greater than the current offering price.

Swing factor means the amount, expressed as a percentage of the fund's net asset value and determined pursuant to the fund's swing pricing policies and procedures, by which a fund adjusts its net asset value per share.

Swing pricing means the process of adjusting a fund's current net asset value per share to mitigate dilution of the value of its outstanding redeemable securities as a result of shareholder purchase and redemption activity, pursuant to the requirements set forth in paragraph (b) of this section.

Swing pricing administrator means the fund's investment adviser, officer, or officers responsible for administering the swing pricing policies and procedures. The swing pricing administrator may consist of a group of persons.

■ 3. Amend § 270.22e–4 by:

■ a. Removing paragraphs (a)(3) and (10);

■ b. Removing the designations for paragraphs (a)(1) and (2) and (a)(4) through (14) and placing in alphabetical order;

■ c. Adding, in alphabetical order, a definition for ''Convertible to U.S. dollars'';

■ d. Revising the definitions for ''Exchange-traded fund'', ''Highly liquid investment'', ''Illiquid investment'', ''In-Kind Exchange Traded Fund or In-Kind ETF'', ''Liquidity risk'', ''Moderately liquid investment'', and ''Person(s) designated to administer the program'';

■ e. Adding, in alphabetical order, a definition for ''Significantly changing the market value of an investment''; and

■ f. Revising paragraphs (b)(1)(i)(C), (b)(1)(ii) and (iii), (b)(1)(iv) introductory text, and (b)(3)(iii).

The revisions read as follows:

§ 270.22e–4 Liquidity risk management programs.

(a) * * *

Convertible to U.S. dollars means the ability to be sold or disposed of, with the sale or disposition settled in U.S. dollars.

Exchange-traded fund or *ETF* means an open-end management investment company (or series or class thereof), the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on § 270.6c–11.

* * * * *

Highly liquid investment means any U.S. dollars held by a fund and any investment that the fund reasonably expects to be convertible to U.S. dollars in current market conditions in three business days or less without significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section.

* * * * *

Illiquid investment means any investment that the fund reasonably expects not to be convertible to U.S. dollars in current market conditions in seven calendar days or less without significantly changing the market value of the investment, as determined pursuant to the provisions of paragraph (b)(1)(ii) of this section. Any investment whose fair value is measured using an unobservable input that is significant to the overall measurement is an illiquid investment.

In-Kind Exchange Traded Fund or *In-Kind ETF* means an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a *de minimis* amount of U.S. dollars and that publishes its portfolio holdings daily.

Liquidity risk means the risk that the fund could not meet requests to redeem shares issued by the fund without significant dilution of remaining investors' interests in the fund.

Moderately liquid investment means any investment that is neither a highly liquid investment nor an illiquid investment.

Person(s) designated to administer the program means the fund or In-Kind ETF's investment adviser, officer, or officers (which may not be solely portfolio managers of the fund or In-Kind ETF) responsible for administering the program and its policies and procedures pursuant to paragraph (b)(2)(ii) of this section.

Significantly changing the market value of an investment means:

(i) For shares listed on a national securities exchange or a foreign exchange, any sale or disposition of more than 20% of the average daily trading volume of those shares, as measured over the preceding 20 business days.

(ii) For any other investment, any sale or disposition that the fund reasonably expects would result in a decrease in sale price of more than 1%.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) Holdings of U.S. dollars and cash equivalents, as well as borrowing arrangements and other funding sources; and

* * * * *

(ii) *Classification.* Each fund must, using information obtained after reasonable inquiry and taking into account relevant market, trading, and investment-specific considerations, classify daily each of the fund's portfolio investments (including each of the fund's derivatives transactions) as a highly liquid investment, moderately liquid investment, or illiquid investment. To determine the liquidity classification of each investment, the fund must:

(A) Measure the number of days in which the investment is reasonably expected to be convertible to U.S. dollars without significantly changing the market value of the investment, and include the day on which the liquidity classification is made in that measurement; and

(B) Assume the sale of 10% of the fund's net assets by reducing each investment by 10%.

(iii) *Highly liquid investment minimum.* A fund must determine and maintain a highly liquid investment minimum that is equal to or higher than 10% of the fund's net assets.

(A) When determining a highly liquid investment minimum, a fund must consider the factors specified in paragraphs (b)(1)(i)(A) through (D) of this section, as applicable (but considering those factors specified in paragraphs (b)(1)(i)(A) and (B) only as they apply during normal conditions, and during stressed conditions only to the extent they are reasonably foreseeable during the period until the next review of the highly liquid investment minimum).

(B) For purposes of determining compliance with its highly liquid investment minimum, the fund must reduce the value of its highly liquid investments that are assets otherwise eligible to meet the fund's highly liquid investment minimum by an amount equal to:

(*1*) The value of any highly liquid investments that are assets posted as margin or collateral in connection with any derivatives transaction that the fund has classified as a moderately liquid investment or illiquid investment; and

Note 1 to paragraph (b)(1)(iii)(B)(*1*): A fund that has posted highly liquid investments and non-highly liquid investments as margin or collateral in connection with derivatives transactions classified as moderately liquid or illiquid investments first should apply posted assets that are highly liquid investments in connection with these transactions, unless it has specifically identified non-highly liquid investments as margin or collateral in connection with such derivatives transactions.

(*2*) Any fund liabilities.

(C) The highly liquid investment minimum determined pursuant to paragraph (b)(1)(iii) of this section may not be changed during any period of time that a fund's assets that are highly liquid investments are below the determined minimum without approval from the fund's board of directors, including a majority of directors who are not interested persons of the fund;

(D) A fund must periodically review, no less frequently than annually, the highly liquid investment minimum; and

(E) A fund must adopt and implement policies and procedures for responding to a shortfall of the fund's highly liquid investments below its highly liquid investment minimum, which must include requiring the person(s) designated to administer the program to report to the fund's board of directors no later than its next regularly scheduled meeting with a brief explanation of the causes of the shortfall, the extent of the shortfall, and any actions taken in response, and if the shortfall lasts more than 7 consecutive calendar days, must include requiring the person(s) designated to administer the program to report to the board within one business day thereafter with an explanation of how the fund plans to restore its minimum within a reasonable period of time.

(iv) *Illiquid investments.* No fund or In-Kind ETF may acquire any illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15% of its net assets in illiquid investments that are assets. In determining its compliance with this paragraph, in addition to the value of a fund's illiquid investments that are assets, where a fund has posted margin or collateral in connection with a derivatives transaction that is classified as an illiquid investment, the fund also must include as illiquid investments that are assets the value of margin or collateral posted in connection with the derivatives transaction that the fund would receive if it exited the transaction. If a fund or In-Kind ETF holds more than 15% of its net assets in illiquid investments that are assets:

* * * * *

(3) * * *

(iii) If applicable, a written record of the policies and procedures related to how the highly liquid investment minimum, and any adjustments thereto, were determined, including assessment of the factors incorporated in paragraph (b)(1)(iii)(A) of this section and any materials provided to the board pursuant to paragraph (b)(1)(iii)(E) of this section, for a period of not less than five years (the first two years in an easily accessible place) following the determination of, and each change to, the highly liquid investment minimum.

* * * * *

■ 4. Amend § 270.30b1–9 by revising it to read as follows:

§ 270.30b1–9 Monthly report.

Each registered management investment company or exchange-traded fund organized as a unit investment trust, or series thereof, other than a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must file a monthly report of portfolio holdings on Form N–PORT (§ 274.150 of this chapter), current as of the last business day, or last calendar day, of the month. A registered investment company that has filed a registration statement with the Commission registering an offering of its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. Reports on Form N–PORT must be filed with the Commission no later than 30 days after the end of each month.

■ 5. Amend § 270.31a–2 by revising paragraph (a)(2) to read as follows:

§ 270.31a–2 Records to be preserved by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies.

(a) * * *

(2) Preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, all books and records required to be made pursuant to paragraphs (b)(5) through (12) of § 270.31a–1 and all vouchers, memoranda, correspondence, checkbooks, bank statements, cancelled checks, cash reconciliations, cancelled stock certificates, and all schedules evidencing and supporting each computation of net asset value of the investment company shares, including schedules evidencing and supporting each computation of an adjustment to net asset value of the investment company shares based on swing pricing policies and procedures established and implemented pursuant to § 270.22c–1(b), and other documents required to be maintained by § 270.31a–1(a) and not enumerated in § 270.31a–1(b).

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 6. The general authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l,* 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and 80a–37, unless otherwise noted.

* * * * *

■ 7. Amend Form N–1A (referenced in §§ 239.15A and 274.11A) by revising Item 6(d) and Item 11(a)(2). The revisions read as follows:

Note: The text of Form N–1A does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–1A

* * * * *

Item 6. Purchase and Sale of Fund Shares

* * * * *

(d) If the Fund uses swing pricing, explain the Fund's use of swing pricing; including what swing pricing is, the circumstances under which the Fund will use it, and the effects of swing pricing on the Fund and investors. With respect to any portion of a Fund's assets that is invested in one or more open-end management investment companies that are registered under the Investment Company Act, the Fund shall include a statement that the Fund's net asset value is calculated based upon the net asset

values of the registered open-end management companies in which the Fund invests, and, if applicable, state that the prospectuses for those companies explain the circumstances under which they will use swing pricing and the effects of using swing pricing.

* * * * *

Item 11. Shareholder Information

(a) * * *

(2) A statement as to when calculations of net asset value are made and that the price at which a purchase or redemption is effected is based on the next calculation of net asset value after the order is placed. If applicable, explain that if an investor places an order with a financial intermediary, the financial intermediary may require the investor to submit its order earlier to receive the next calculated net asset value.

* * * * *

■ 8. Amend § 274.150(a) by revising it to read as follows:

§ 274.150 Form N–PORT, Monthly portfolios holdings report.

(a) Except as provided in paragraph (b) of this section, this form shall be used by registered management investment companies or exchange-traded funds organized as unit investment trusts, or series thereof, to file reports pursuant to § 270.30b1–9 of this chapter not later than 30 days after the end of each month.

* * * * *

■ 9. Amend Form N–PORT (referenced in § 274.150) by:

■ a. Revising General Instructions A, E, and F and Items B.4, B.5, B.6, B.7, B.8, C.1, C.7, C.10, C.11, Part D, and Part F; and

■ b. Adding Items B.11 and B.12.

The revisions and addition read as follows:

Note: The text of Form N–PORT does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–PORT

* * * * *

General Instructions

A. Rule as to Use of Form N–PORT

Form N–PORT is the reporting form that is to be used for monthly reports of Funds other than money market funds and SBICs under section 30(b) of the Act, as required by rule 30b1–9 under the Act (17 CFR 270.30b1–9). Funds must report information about their portfolios and each of their portfolio holdings as of the last business day, or last calendar day, of each month. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

Reports on Form N–PORT must disclose portfolio information as calculated by the fund for the reporting period's ending net asset value (commonly, and as permitted by rule 2a–4, the first business day following the trade date). Reports on Form N–PORT for each month must be filed with the Commission no later than 30 days after the end of such month. If the due date falls on a weekend or holiday, the filing deadline will be the next business day.

A Fund may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A Fund that files an amendment to a previously filed report must provide information in response to all items of Form N–PORT, regardless of why the amendment is filed.

* * * * *

E. Definitions

References to sections and rules in this Form N–PORT are to the Act, unless otherwise indicated. Terms used in this Form N–PORT have the same meanings as in the Act or related rules (including rule 18f–4 solely for Items B.9 and 10 of the Form), unless otherwise indicated.

As used in this Form N–PORT, the terms set out below have the following meanings:

''Absolute VaR Test'' has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)].

''Class'' means a class of shares issued by a Fund that has more than one class that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Fund from provisions of section 18 of the Act [15 U.S.C. 80a–18].

''Controlled Foreign Corporation'' has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

''Derivatives Exposure'' has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)].

''Designated Index'' has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)].

''Designated Reference Portfolio'' has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)]

''Exchange-Traded Fund'' means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on rule 6c–11 [17 CFR 270.6c–11].

''Fund'' means the Registrant or a separate Series of the Registrant. When an item of Form N–PORT specifically applies to a Registrant or a Series, those terms will be used.

''Highly Liquid Investment Minimum'' has the meaning defined in rule 22e–4 [17 CFR 270.22e–4].

''Illiquid Investment'' has the meaning defined in rule 22e–4 [17 CFR 270.22e–4].

''ISIN'' means, with respect to any security, the ''international securities identification number'' assigned by a national numbering agency, partner, or substitute agency that is coordinated by the Association of National Numbering Agencies.

''LEI'' means, with respect to any company, the ''legal entity identifier'' as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

''Multiple Class Fund'' means a Fund that has more than one Class.

''Registrant'' means a management investment company, or an Exchange-Traded Fund organized as a unit investment trust, registered under the Act.

''Relative VaR Test'' has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)].

''Restricted Security'' has the meaning defined in rule 144(a)(3) under the Securities Act of 1933 [17 CFR 230.144(a)(3)].

''RSSD ID'' means the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System.

''Securities Portfolio'' has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)].

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

''Swap'' means either a ''security-based swap'' or a ''swap'' as defined in sections 3(a)(68) and (69) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68) and (69)] and any

rules, regulations, or interpretations of the Commission with respect to such instruments.

''Swing Factor'' has the meaning defined in rule 22c–1 [17 CFR 270.22c–1].

''Value-at-Risk'' or VaR has the meaning defined in rule 18f–4(a) [17 CFR 270.18f–4(a)].

''VaR Ratio'' means the value of the Fund's portfolio VaR divided by the VaR of the Designated Reference Portfolio.

F. Public Availability

Information reported on Form N–PORT will be made publicly available 60 days after the end of the reporting period.

The SEC does not intend to make public the information reported on Form N–PORT with respect to a Fund's Highly Liquid Investment Minimum (Item B.7), derivatives transactions (Item B.8), Derivatives Exposure for limited derivatives users (Item B.9), median daily VaR (Item B.10.a), median VaR Ratio (Item B.10.b.iii), VaR backtesting results (Item B.10.c), country of risk and economic exposure (Item C.5.b), delta (Items C.9.f.v, C.11.c.vii, or C.11.g.iv), liquidity classification for individual portfolio investments (Item C.7), or miscellaneous securities (Part D), or explanatory notes related to any of those topics (Part E) that is identifiable to any particular fund or adviser. However, the SEC may use information reported on this Form in its regulatory programs, including examinations, investigations, and enforcement actions.

* * * * *

Item B.4. Securities Lending.

a. * * *

iii. If the borrower does not have an LEI, provide the borrower's RSSD ID, if any.

iv. Aggregate value of all securities on loan to the borrower.

* * * * *

Item B.5. Return Information.

a. Total return of the Fund during the reporting period. If the Fund is a Multiple Class Fund, report the return for each Class. Such return(s) shall be calculated in accordance with the methodologies outlined in Item 26(b)(1) of Form N–1A, Instruction 13 to sub-Item 1 of Item 4 of Form N–2, or Item 26(b)(i) of Form N–3, as applicable.

* * * * *

c. Net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to derivatives for each of the following asset categories during the reporting period: commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other contracts. Within each such asset category, further report the same information for each of the following types of derivatives instrument: forward, future, option, swaption, swap, warrant, and other. Report in U.S. dollars. Losses and depreciation shall be reported as negative numbers.

d. Net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to investments other than derivatives during the reporting period. Report in U.S. dollars. Losses and depreciation shall be reported as negative numbers.

Item B.6. Flow information. Provide the aggregate dollar amounts for sales and redemptions/repurchases of Fund shares during the reporting period. If shares of the Fund are held in omnibus accounts, for purposes of calculating the Fund's sales, redemptions, and repurchases, use net sales or redemptions/repurchases from such omnibus accounts. The amounts to be reported under this Item should be after any front-end sales load has been deducted and before any deferred or contingent deferred sales load or charge has been deducted. Shares sold shall include shares sold by the Fund to a registered unit investment trust. For mergers and other acquisitions, include in the value of shares sold any transaction in which the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares. For liquidations, include in the value of shares redeemed any transaction in which the Fund liquidated all or part of its assets. Exchanges are defined as the redemption or repurchase of shares of one Fund or series and the investment of all or part of the proceeds in shares of another Fund or series in the same family of investment companies.

* * * * *

Item B.7. Highly Liquid Investment Minimum information.

* * * * *

b. If applicable, provide the number of days that the eligible value of the Fund's holdings in highly liquid investments fell below the Fund's Highly Liquid Investment Minimum during the reporting period.

* * * * *

Item B.8. Derivatives Transactions. For portfolio investments of open-end management investment companies, provide:

a. The value of the Fund's highly liquid investments that are assets that it has posted as margin or collateral in connection with derivatives transactions that are classified as moderately liquid investments or illiquid investments under rule 22e–4 [17 CFR 270.22e–4].

b. The value of any margin or collateral posted in connection with any derivatives transaction that is classified as an illiquid investment under rule 22e–4 [17 CFR 270.22e–4] where the fund would receive the value of the margin or collateral if it exited the derivatives transaction.

* * * * *

Item B.11. Swing Factor.

a. Provide the number of times the Fund applied a Swing Factor during the reporting period.

b. For each business day during the reporting period, provide the amount of any Swing Factor applied by the Fund. Indicate whether each Swing Factor applied is positive (reflecting net purchases) or negative (reflecting net redemptions) with the appropriate sign (+ or −). Report N/A for any business day on which the fund did not apply a Swing Factor.

Item B.12. Liquidity aggregate classification information. For portfolio investments of open-end management investment companies:

a. Provide the aggregate percentage of investments that are assets (excluding any investments that are reflected as liabilities on the Fund's balance sheet) compared to total investments that are assets of the Fund for each of the following categories as specified in rule 22e–4:

1. Highly Liquid Investments.
2. Moderately Liquid Investments.
3. Illiquid Investments.

b. To calculate the aggregate percentages under Item B.12.a, reduce the amount of the Fund's assets that are classified as highly liquid investments by the amount reported under Item B.8.a and by the amount of the fund's liabilities. Increase the amount of the Fund's assets that are classified as illiquid investments by the amount reported under Item B.8.b. To the extent these adjustments result in the sum of the Fund's investments in each category not equaling 100% of the Fund's total investments that are assets, the Fund may adjust the percentage of investments attributed to the moderately liquid investment category so that the sum of the Fund's investments in each category equals 100% of the Fund's total investments that are assets.

Item C.1. Identification of investment.

* * * * *

c. If the issuer does not have an LEI, provide the issuer's RSSD ID, if any.

d. Title of the issue or description of the investment.

e. CUSIP (if any).

f. At least one of the following other identifiers:

i. ISIN.

ii. Ticker (if ISIN is not available).

iii. Other unique identifier (if ticker and ISIN are not available). Indicate the type of identifier used.

* * * * *

Item C.7. Liquidity classification information.

a. For portfolio investments of open-end management investment companies, provide the liquidity classification(s) for each portfolio investment among the following categories as specified in rule 22e–4 [17 CFR 270.22e–4]. For portfolio investments with multiple liquidity classifications, indicate the percentage amount attributable to each classification.

i. Highly Liquid Investments

ii. Moderately Liquid Investments

iii. Illiquid Investments

* * * * *

Instructions to Item C.7. Funds may choose to indicate the percentage amount of a holding attributable to multiple classification categories only in the following circumstances: (1) if portions of the position have differing liquidity features that justify treating the portions separately; (2) if a fund has multiple sub-advisers with differing liquidity views; or (3) if the fund chooses to classify the position through evaluation of how long it would take to liquidate the entire position. In (1) and (2), a fund would classify by treating each portion of the position as a separate investment to arrive at an assumed sale size that is equal to 10% of the fund's net assets by reducing each investment by 10%.

* * * * *

Item C.10. For repurchase and reverse repurchase agreements, also provide:

* * * * *

b. * * *

iii. If the counterparty does not have an LEI, provide the counterparty's RSSD ID, if any.

* * * * *

Item C.11. For derivatives, also provide:

* * * * *

b. * * *

ii. If the counterparty does not have an LEI, provide the counterparty's RSSD ID, if any.

* * * * *

Part D: Miscellaneous Securities

Report miscellaneous securities, if any, using the same Item numbers and reporting the same information that would be reported for each investment in Part C if it were not a miscellaneous security. Information reported in this Item will be nonpublic.

* * * * *

Part F: Exhibits

Attach no later than 60 days after the end of the reporting period the Fund's complete portfolio holdings as of the close of the period covered by the report, except for reports covering the last month of the Fund's second and fourth fiscal quarters. These portfolio holdings must be presented in accordance with the schedules set forth in §§ 210.12–12—210.12–14 of Regulation S–X [17 CFR 210.12–12—210.12–14].

* * * * *

■ 10. Amend Form N–CEN (referenced in § 274.101) by revising General Instruction E and Items B.16, B.17, C.5, C.6, C.9, C.10, C.11, C.12, C.13, C.14, C.15, C.16, C.17, C.21, D.12, D.13, D.14, E.2, F.1, F.2, F.4, and Instructions to Item G.1 to read as follows:

Note: The text of Form N–CEN does not, and these amendments will not, appear in the *Code of Federal Regulations.*

Form N–CEN

* * * * *

General Instructions

* * * * *

E. Definitions

Except as defined below or where the context clearly indicates the contrary, terms used in Form N–CEN have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

''Class'' means a class of shares issued by a Fund that has more than one class that represents interest in the same portfolio of securities under rule 18f–3 under the Act (17 CFR 270.18f–3) or under an order exempting the Fund from provisions of section 18 of the Act (15 U.S.C. 80a–18).

''CRD number'' means a central licensing and registration system number issued by the Financial Industry Regulatory Authority.

''Exchange-Traded Fund'' means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on rule 6c–11 under the Act (17 CFR 270.6c–11).

''Exchange-Traded Managed Fund'' means an open-end management investment company (or Series or Class thereof) or unit investment trust (or series thereof), the shares of which are listed and traded on a national securities exchange at net asset value-based prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

''Fund'' means the Registrant or a separate Series of the Registrant. When an item of Form N–CEN specifically applies to a Registrant or Series, those terms will be used.

''LEI'' means, with respect to any company, the ''legal entity identifier'' as assigned by a utility endorsed by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

''Money Market Fund'' means an open-end management investment company registered under the Act, or Series thereof, that is regulated as a money market fund pursuant to rule 2a–7 under the Act (17 CFR 270.2a–7).

''PCAOB number'' means the registration number issued to an independent public accountant registered with the Public Company Accounting Oversight Board.

''Registrant'' means the investment company filing this report or on whose behalf the report is filed.

''RSSD ID'' means the identifier assigned by the National Information Center of the Board of Governors of the Federal Reserve System.

''SEC File number'' means the number assigned to an entity by the Commission when that entity registered with the Commission in the capacity in which it is named in Form N–CEN.

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other Series of shares for assets specifically allocated to that Series in accordance with rule 18f–2(a) (17 CFR 270.18f–2(a)).

* * * * *

Item B.16. Principal underwriters.

a. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Is the principal underwriter an affiliated person of the Registrant, or its

investment adviser(s) or depositor? [Y/N]

* * * * *

Item B.17. Independent public accountant. Provide the following information about each independent public accountant:

* * * * *

d. If no LEI is provided, RSSD ID, if any:____

e. State, if applicable:____

f. Foreign country, if applicable:____

g. Has the independent public accountant changed since the last filing? [Y/N]

* * * * *

Item C.5. Investments in certain foreign corporations.

* * * * *

b. * * *

iii. If no LEI is provided, RSSD ID, if any:____

* * * * *

Item C.6. Securities lending.

* * * * *

c. * * *

iii. If no LEI is provided, RSSD ID, if any:____

iv. Is the securities lending agent an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

v. Does the securities lending agent or any other entity indemnify the fund against borrower default on loans administered by this agent? [Y/N]

vi. If the entity providing the indemnification is not the securities lending agent, provide the following information:

1. Name of person providing indemnification:____

2. LEI, if any, of person providing indemnification:____

3. If no LEI is provided, RSSD ID, if any:____

vii. Did the Fund exercise its indemnification rights during the reporting period? [Y/N]

d. * * *

iii. If no LEI is provided, RSSD ID, if any: ____

iv. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of a securities lending agent retained by the Fund? [Y/N]

v. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

* * * * *

Item C.9. Investment advisers.

a. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Was the investment adviser hired during the reporting period? [Y/N]

1. If the investment adviser was hired during the reporting period, indicate the investment adviser's start date: ____

b. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Termination date:____

c. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Is the sub-adviser an affiliated person of the Fund's investment adviser(s)? [Y/N]

ix. Was the sub-adviser hired during the reporting period? [Y/N]

1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date:____

d. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Termination date:

Item C.10. Transfer agents.

a. * * *

iv. If no LEI is provided, RSSD ID, if any:____

v. State, if applicable:____

vi. Foreign country, if applicable:____

vii. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]

viii. Is the transfer agent a sub-transfer agent? [Y/N]

* * * * *

Item C.11. Pricing services.

a. * * *

ii. LEI, if any, or RSSD ID, if any, or provide and describe other identifying number:____

* * * * *

Item C.12. Custodians.

a. * * *

iii. If no LEI is provided, RSSD ID, if any:____

iv. State, if applicable:____

v. Foreign country, if applicable:____

vi. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vii. Is the custodian a sub-custodian? [Y/N]

viii. With respect to the custodian, check below to indicate the type of custody:

1. Bank—section 17(f)(1) (15 U.S.C. 80a–17(f)(1)):____

2. Member national securities exchange—rule 17f–1 (17 CFR 270.17f–1):____

3. Self—rule 17f–2 (17 CFR 270.17f–2):____

4. Securities depository—rule 17f–4 (17 CFR 270.17f–4):____

5. Foreign custodian—rule 17f–5 (17 CFR 270.17f–5):____

6. Futures commission merchants and commodity clearing organizations—rule 17f–6 (17 CFR 270.17f–6):____

7. Foreign securities depository—rule 17f–7 (17 CFR 270.17f–7):____

8. Insurance company sponsor—rule 26a–2 (17 CFR 270.26a–2):____

9. Other:____ . If other, describe:____.

* * * * *

Item C.13. Shareholder servicing agents.

a. * * *

ii. LEI, if any, or RSSD ID, if any, or provide and describe other identifying number:____

* * * * *

Item C.14. Administrators.

a. * * *

ii. LEI, if any, or RSSD ID, if any, or provide and describe other identifying number:____

* * * * *

Item C.15. Affiliated broker-dealers. Provide the following information about each affiliated broker-dealer:

* * * * *

e. If no LEI is provided, RSSD ID, if any:____

f. State, if applicable:____

g. Foreign country, if applicable:____

h. Total commissions paid to the affiliated broker-dealer for the reporting period:____

Item C.16. Brokers.

a. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Gross commissions paid by the Fund for the reporting period:____

* * * * *

Item C.17. Principal transactions.

a. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Total value of purchases and sales (excluding maturing securities) with Fund:____

* * * * *

Item C.21. Liquidity classification services. For open-end management investment companies subject to rule 22e–4 (17 CFR 270.22e–4), respond to the following:

a. Provide the following information about each person that provided liquidity classification services to the Fund during the reporting period:

i. Full name:____

ii. LEI, if any, or RSSD ID, if any, or provide and describe other identifying number:____

iii. State, if applicable:____

iv. Foreign country, if applicable:____

v. Is the liquidity classification service an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vi. Asset class(es) for which liquidity classification services were provided to the Fund:____

b. Was a liquidity classification service hired or terminated during the reporting period? [Y/N]

* * * * *

Item D.12. Investment advisers (small business investment companies only).

a. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Was the investment adviser hired during the reporting period? [Y/N]

1. If the investment adviser was hired during the reporting period, indicate the investment adviser's start date:____

b. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Termination date:____

c. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Is the sub-adviser an affiliated person of the Fund's investment adviser(s)? [Y/N]

ix. Was the sub-adviser hired during the reporting period? [Y/N]

1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date:____

d. * * *

v. If no LEI is provided, RSSD ID, if any:____

vi. State, if applicable:____

vii. Foreign country, if applicable:____

viii. Termination date:____

Item D.13. Transfer agents (small business investment companies only).

a. * * *

iv. If no LEI is provided, RSSD ID, if any:____

v. State, if applicable:____

vi. Foreign country, if applicable:____

vii. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]

viii. Is the transfer agent a sub-transfer agent? [Y/N]

* * * * *

Item D.14. Custodians (small business investment companies only).

a. * * *

iii. If no LEI is provided, RSSD ID, if any:____

iv. State, if applicable:____

v. Foreign country, if applicable:____

vi. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vii. Is the custodian a sub-custodian? [Y/N]

viii. With respect to the custodian, check below to indicate the type of custody:

1. Bank—section 17(f)(1) (15 U.S.C. 80a–17(f)(1)):____

2. Member national securities exchange—rule 17f–1 (17 CFR 270.17f–1):____

3. Self—rule 17f–2 (17 CFR 270.17f–2):____

4. Securities depository—rule 17f–4 (17 CFR 270.17f–4):____

5. Foreign custodian—rule 17f–5 (17 CFR 270.17f–5):____

6. Futures commission merchants and commodity clearing organizations—rule 17f–6 (17 CFR 270.17f–6):____

7. Foreign securities depository—rule 17f–7 (17 CFR 270.17f–7):____

8. Insurance company sponsor—rule 26a–2 (17 CFR 270.26a–2): ____

9. Other:____. If other, describe:____.

* * * * *

Item E.2. Authorized participants. For each authorized participant of the Fund, provide the following information:

* * * * *

b. SEC file number:____

c. CRD number:____

d. LEI, if any:____

e. If no LEI is provided, RSSD ID, if any:____

f. The dollar value of the Fund shares the authorized participant purchased from the Fund during the reporting period:____

g. The dollar value of the Fund shares the authorized participant redeemed during the reporting period:____

h. Did the Fund require that an authorized participant post collateral to the Fund or any of its designated service providers in connection with the purchase or redemption of Fund shares during the reporting period? [Y/N]

Instruction. The term ''authorized participant'' means a member or participant of a clearing agency registered with the Commission, which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its service providers that allows the authorized participant to place orders for the purchase and redemption of creation units.

* * * * *

Item F.1. Depositor. Provide the following information about each depositor:

* * * * *

d. If no LEI is provided, RSSD ID, if any:____

e. State, if applicable:____

f. Foreign country, if applicable:____

g. Full name of ultimate parent of depositor:____

Item F.2. Administrators.

a. * * *

ii. LEI, if any, or RSSD ID, if any, or provide and describe other identifying number:____

* * * * *

Item F.4. Sponsor. Provide the following information about each sponsor:

* * * * *

d. If no LEI is provided, RSSD ID, if any:____

e. State, if applicable:____

f. Foreign country, if applicable:____

* * * * *

Item G.1. Attachments.

* * * * *

Instructions.

* * * * *

2. * * *

(f) Security supported (if applicable). Disclose the full name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.,* CIK, CUSIP, ISIN, LEI, RSSD ID).

* * * * *

By the Commission.

Dated: November 2, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–24376 Filed 12–15–22; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 87 Friday,

No. 241 December 16, 2022

Part III

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2017–BT–TP–0031]

RIN 1904–AE06

Energy Conservation Program: Test Procedure for Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') amends its test procedures for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour (''Btu/h'') and air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h to incorporate by reference the latest version of the relevant industry test standard. DOE adopts the seasonal energy efficiency ratio 2 (''SEER2'') and heating seasonal performance factor 2 (''HSPF2'') metrics specified by that industry test standard in the DOE test procedures for the three-phase equipment that is the subject of this final rule. Additionally, DOE amends certain provisions for representations and enforcement for this equipment to harmonize with single-phase products.

DATES: The effective date of this rule is January 17, 2023. The final rule changes will be mandatory for product testing starting December 11, 2023. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register on January 17, 2023. The incorporation by reference of certain other material listed in the rule was approved by the Director of the Federal Register on February 6, 2017.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-TP-0031.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.* Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–8145. Email: *Kristin.Koernig@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards as follows:

ANSI/AHRI Standard 210/240–2008, ''2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment'', approved 2011 and updated by addendum 1 in June 2011 and addendum 2 in March 2012 (''ANSI/AHRI 210/240–2008'')—into part 431.

AHRI Standard 210/240–2023, ''2023 Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment'', copyright 2020 (''AHRI 210/240–2023'')—into parts 429 and 431.

ANSI/AHRI Standard 1230–2010, ''2010 Standard for Performance Rating of Variable Refrigerant Flow Multi-Split Air-Conditioning and Heat Pump Equipment'', approved August 2, 2010 and updated by addendum 1 in March 2011 (''ANSI/AHRI 1230–2010'')—into part 431.

Copies of these standards can be obtained from the AHRI website by going to *www.ahrinet.org.*[1]

ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'', ASHRAE approved June 24, 2009 (''ANSI/ASHRAE 37–2009'')—into part 431.

Copies of ANSI/ASHRAE 37–2009 can be obtained from the American National Standards Institute, 25 W. 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at *webstore.ansi.org.*

See section IV.N of this document for further discussion of these standards.

Table of Contents

[1] AHRI 210/240–2008 is available at *www.ahrinet.org/app_content/ahri/files/standards%20pdfs/ansi%20standards%20pdfs/ansi.ahri%20standard%20210.240%20with%20addenda%201%20and%202.pdf.*

I. Authority and Background

Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which the U.S. Department of Energy (''DOE'' or the ''Department'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) Air-cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 British thermal units per hour (''Btu/h'') (''3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h'') [2] and air-cooled, three-phase, variable refrigerant flow (''VRF'' or ''VRF multi-split systems'') air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h (''3-phase VRF with cooling capacity of less than 65,000 Btu/h'') [3] are two separate categories of small commercial package air conditioning and heating equipment. DOE's test procedures and energy conservation standards for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h are currently prescribed at Title 10 of the Code of Federal Regulations (''CFR'') parts 431.96 and 431.97, respectively. The following sections discuss DOE's authority to establish test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[4] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317, as codified) Title III, Part C [5] of EPCA, added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This equipment includes 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, the subjects of this final rule. (42 U.S.C. 6311(1)(B))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a)–(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by the Secretary) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

As discussed, 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h are both categories of small commercial package air conditioning and heating equipment. EPCA requires that the test procedures for small commercial package air conditioning and heating equipment shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if that industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every 7 years, DOE shall evaluate test procedures for each type of covered equipment, including those addressed in this final rule, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, DOE must publish the proposed test procedure in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and comments on the proposed test procedure. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedure. (42 U.S.C. 6314(a)(1)(A)(ii)) DOE is publishing this final rule consistent with its obligations under EPCA.

B. Background

DOE's current test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling

[2] ACUACs and ACUHPs are ''air-cooled commercial unitary air conditioners'' and ''air-cooled commercial unitary heat pumps.'' These terms are consistent with those typically used for similar equipment with a cooling capacity of greater than or equal to 65,000 Btu/h.

[3] As used in this rulemaking, the term ''3-phase VRF with cooling capacity of less than 65,000 Btu/h'' refers only to air-cooled equipment.

[4] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[5] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

capacity of less than 65,000 Btu/h are codified at 10 CFR 431.96.

The Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h was last amended in a final rule published in the **Federal Register** on May 16, 2012, to incorporate by reference American National Standards Institute (''ANSI'')/AHRI Standard 210/240–2008, ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment'' (''ANSI/AHRI 210/240–2008''). 77 FR 28928 (''May 2012 final rule''). The May 2012 final rule also established additional testing requirements at 10 CFR 431.96(c) and (e) that provide an optional break-in period for testing and add specifications regarding the use of manufacturer instructions in set-up, respectively, applicable to measuring seasonal energy efficiency ratio (''SEER'') and heating seasonal performance factor (''HSPF'') for this equipment. *Id.* at 77 FR 28991.

The Federal test procedure for 3-phase VRF with cooling capacity of less than 65,000 Btu/h was also last amended in the May 2012 final rule and incorporated by reference ANSI/AHRI Standard 1230–2010, ''2010 Standard for Performance Rating of Variable Refrigerant Flow Multi-Split Air-Conditioning and Heat Pump Equipment'' (''ANSI/AHRI 1230–2010''). The testing requirements at 10 CFR 431.96(c) and (e) also apply to VRF multi-split systems. Additionally, the May 2012 final rule established additional testing requirements at 10 CFR 431.96(d) and (f) that provide for refrigerant line length corrections for tests conducted using ANSI/AHRI 1230–2010 and for manufacturer involvement in assessment or enforcement testing for VRF multi-split systems, respectively. *Id.*

In 2017, AHRI published an updated version of its standard ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment'' (''AHRI 210/240–2017''). AHRI 210/240–2017 includes a number of changes as compared to ANSI/AHRI 210/240–2008 that are relevant to DOE's current test procedure, and many of these changes were based on DOE's test procedure for single-phase, central air conditioners and central air conditioning heat pumps (collectively, ''CAC/HPs'') with a cooling capacity of less than 65,000 Btu/h.[6] DOE's current test procedures for single-phase CAC/HPs with a cooling capacity of less than 65,000 Btu/h are codified at 10 CFR part 430, subpart B, appendices M and M1 (''appendix M'' and ''appendix M1'', respectively). Prior to January 1, 2023, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of CAC/HPs must be based on the results of testing pursuant to appendix M. On or after January 1, 2023, any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of CAC/HPs must be based on the results of testing pursuant to appendix M1.

Following the publication of AHRI 210/240–2017, on October 2, 2018, DOE published in the **Federal Register** a request for information (''RFI'') seeking comments on whether DOE should align its test procedure (and certification and enforcement requirements) for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h with that of air-cooled, single-phase CAC/HPs with a cooling capacity of less than 65,000 Btu/h, consistent with the update to AHRI 210/240–2017. 83 FR 49501 (''October 2018 RFI'').

In April 2019, AHRI published ''Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment (with Addendum 1)'' (''AHRI 210/240–2017 with Addendum 1''), which incorporated minor revisions to definitions, testing requirements, and efficiency calculations.

On October 23, 2019, ASHRAE released ASHRAE Standard 90.1–2019, which maintained the reference to AHRI Standard 210/240 as the industry testing standard for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h but updated the editions referenced. For the period prior to January 1, 2023, ASHRAE Standard 90.1–2019 references AHRI 210/240–2017. For the period beginning January 1, 2023, ASHRAE Standard 90.1–2019 references AHRI Standard 210/240–2023, ''Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment'' (''AHRI 210/240–2023'') AHRI 210/240–2023 harmonizes with DOE's appendix M1 test procedure and provides for measuring energy efficiency using the SEER2 and HSPF2 metrics for CAC/HPs. ASHRAE Standard 90.1–2019 maintained the reference to AHRI Standard 1230 as the industry testing standard for all VRF multi-split systems, including air-cooled, three-phase units with a cooling capacity of less than 65,000 Btu/h, with an update to reference the most recently published version at the time, AHRI 1230–2014 with Addendum 1.[7]

In May 2020 and May 2021, AHRI published AHRI 210/240–2023 and AHRI 1230–2021, respectively. AHRI 1230–2021 excludes from its scope air-cooled, VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h. Both AHRI 210/240–2017 with Addendum 1 and AHRI 210/240–2023 exclude from their scope only VRF multi-split systems that have capacities greater than or equal to 65,000 Btu/h. Because AHRI 1230–2021 explicitly excludes VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h from scope, and the scope exclusion in AHRI 210/240–2023 applies only to VRF multi-split systems with a cooling capacity of 65,000 Btu/h or greater, 3-phase VRF with cooling capacity of less than 65,000 Btu/h are included within the scope of AHRI 210/240–2023.

As such, DOE has determined that AHRI 210/240–2023 is now the appropriate industry test standard for 3-phase VRF with cooling capacity of less than 65,000 Btu/h. 3-phase VRF with cooling capacity of less than 65,000 Btu/h do not currently exist on the market, but DOE expects that any such equipment introduced to the market in the future would likely be identical to air-cooled, single-phase, VRF multi-split systems (except for the components designed for three-phase power input). Therefore, DOE has determined that it is appropriate to align the test procedure for 3-phase VRF with cooling capacity of less than 65,000 Btu/h (AHRI 210/240–2023) with the test procedure for their single-phase counterparts (*i.e.,* appendix M1).

On December 8, 2021, DOE published a notice of proposed rulemaking (''NOPR'') (''December 2021 NOPR'') proposing, in relevant part, to update the references in the Federal test procedures to the most recent versions of the relevant industry test procedures as they relate to 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. 86 FR 70316, 70319. In addition, DOE proposed to update most of its representation and enforcement requirements for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h to be consistent with those of their consumer product counterparts (*i.e.,* air-cooled, single-phase CAC/HPs

[6] Three-phase equipment models generally are identical physically to their single-phase, residential counterparts except for the electrical systems and components designed for three-phase power input.

[7] 3-phase VRF with cooling capacity of less than 65,000 Btu/h are not excluded from the scope of either AHRI 210/240 (2017 and 2023) or AHRI 1230–2014 with Addendum 1.

with a cooling capacity of less than 65,000 Btu/h (which include single-phase VRF multi-split systems)). *Id.* DOE held a public meeting on January 10, 2022, via a webinar, to present the proposed amendments and provide stakeholders with further opportunity to comment.[8]

DOE received comments in response to the December 2021 NOPR from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE DECEMBER 2021 NOPR

Commenter(s)	Reference in this final rule	Comment No. in the docket	Commenter type
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	16	Trade Association.
Appliance Standards Awareness Project (''ASAP''), American Council for an Energy-Efficient Economy (''ACEEE''), and Natural Resources Defense Council (''NRDC'').	Joint Advocates	17	Energy Efficiency Advocates.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	18	Utilities.
Carrier Corporation	Carrier	15	Manufacturer.
Lennox International	Lennox	14	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	20	Efficiency Advocate.
New York State Energy Research and Development Authority.	NYSERDA	13	State Government.
Trane Technologies	Trane	19	Manufacturer.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[9] To the extent that interested parties have provided written comments that are substantively consistent with any oral comments provided during the January 10, 2022, public meeting, DOE cites the written comments throughout this final rule. DOE did not identify any oral comments provided during the webinar that are not substantively addressed by written comments.

On March 30, 2022, DOE published in the **Federal Register** an energy conservation standards (''ECS'') NOPR (''March 2022 ECS NOPR'') that proposed amended energy conservation standards for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h in terms of the new cooling and heating metrics, SEER2 and HSPF2, respectively. 87 FR 18290.

II. Synopsis of the Final Rule

In this final rule, DOE is updating the references in the Federal test procedures to the most recent versions of the relevant industry test procedures as they relate to 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Specifically, DOE is updating its regulations at 10 CFR 431.96, ''Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps,'' as follows: (1) to incorporate by reference AHRI 210/240–2023 and ANSI/ASHRAE 37–2009; and (2) to establish provisions for determining SEER2 and HSPF2. The current DOE test procedures for all equipment addressed in this final rule are relocated to a new appendix F of subpart F to 10 CFR part 431 (''appendix F'') without change, and the new test procedure adopting AHRI 210/240–2023 is established in a new appendix F1 of subpart F to 10 CFR part 431 (''appendix F1'') for determining SEER2 and HSPF2. Use of appendix F1 is not required until such time as compliance is required with amended energy conservation standards that rely on SEER2 and HSPF2, should DOE adopt such standards.

In addition, DOE is updating most of its representation and enforcement requirements for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h to be consistent with those of their single-phase, consumer product counterparts (*i.e.,* air-cooled, single-phase CAC/HPs with a cooling capacity of less than 65,000 Btu/h (which include single-phase VRF multi-split systems).

As noted, the current DOE test procedures for all equipment addressed in this final rule are being relocated to appendix F without change. The adopted amendments for the revised test procedures at appendix F1 are summarized in Table II.1 and are compared to the test procedure provisions in place prior to these amendments, as well as the reason for each adopted change.

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

DOE test procedures prior to amendment	Amended test procedures	Attribution
Incorporate by reference ANSI/AHRI 210/240–2008 (for equipment other than VRF multi-split systems) and ANSI/AHRI 1230–2010 (for VRF multi-split systems).	Incorporate by reference AHRI 210/240–2023 and ANSI/ASHRAE 37–2009 in a new appendix F1 for all three-phase equipment subject to this rulemaking.	EPCA requirement to harmonize with industry test procedure.

[8] The transcript of the public meeting is available at *https://www.regulations.gov/document/EERE-2017-BT-TP-0031-0012.*

[9] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. (Docket No. EERE–2017–BT–TP–0031, which is maintained at *www.regulations.gov.*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

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

DOE test procedures prior to amendment	Amended test procedures	Attribution
Applicable representation requirements are those specified at 10 CFR 429.43 and 10 CFR 429.70 for commercial heating, ventilating, and air conditioning (''HVAC'') equipment.	Amend representation requirements at new 10 CFR 429.67 and 10 CFR 429.70—including basic model definition, tested combination, determination of represented value, and alternative energy determination method (''AEDM'') requirements—largely consistent with requirements for single-phase consumer product counterparts. Amended representation requirements allow the use of an AEDM that is validated with testing of otherwise identical single-phase central air conditioners and heat pumps for rating three-phase, less than 65,000 Btu/h single package units and split systems.	Harmonization with single-phase consumer product counterparts and reduction of testing burden on manufacturers.

DOE has determined that the amendments described in section III of this document regarding the establishment of appendix F will not alter the measured efficiency of equipment addressed in this document or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedures. However, DOE has determined that the test procedures' amendments in appendix F1 will alter the measured efficiency of the affected equipment but that such amendments are consistent with the updated industry test procedures. Further, use of the test procedures in appendix F1 and the amendments to the representation requirements in 10 CFR 429.43 and 429.70 are not required until the compliance date of amended standards in terms of SEER2 and HSPF2, should DOE adopt such standards. Additionally, DOE has determined that the amendments will not increase the cost of testing relative to the updated industry test procedures.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Section III of this document discusses DOE's actions in detail.

III. Discussion

The discussion that follows details the specific changes that DOE is making to the current test procedure regulations affecting 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

A. Scope of Applicability

Three-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h are both categories of small commercial package air conditioning and heating equipment. Commercial package air-conditioning and heating equipment may be air cooled, water cooled, evaporatively cooled, or water source based (not including ground water source). This equipment is electrically operated and designed as unitary central air conditioners or central air conditioning heat pumps for use in commercial applications. 10 CFR 431.92.

As discussed in the December 2021 NOPR, 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h are typically nearly identical (and therefore typically have comparable efficiency) to single-phase CAC/HPs with rated cooling capacities of less than 65,000 Btu/h, which are consumer products also subject to EPCA and for which DOE has already established energy conservation standards (10 CFR 430.32(c)) and test procedures (appendices M and M1). 86 FR 70316, 70320. Based on this ''nearly identical'' relationship, while 3-phase VRF with cooling capacity of less than 65,000 Btu/h do not currently exist on the market, DOE stated in the December 2021 NOPR that it expects that any such equipment introduced to the market in the future is likely to be identical (except for the components designed for three-phase power input) to their single-phase counterparts, which are a subset of single-phase CAC/HPs, and, as such, are also rated using appendices M and M1. *Id.*

3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h are further disaggregated into four equipment classes: single-package air conditioners, single-package heat pumps, split-system air conditioners, and split-system heat pumps. [10] 10 CFR 431.97(b). This final rule amends the test procedure applicable to all four equipment classes but without amending its current scope. 3-phase VRF with cooling capacity of less than 65,000 Btu/h are further disaggregated into two equipment classes: air conditioners and heat pumps. 10 CFR 431.97(f). This final rule amends the test procedure applicable to both equipment categories but without amending its current scope.

B. Proposed Organization of the Test Procedure

In the December 2021 NOPR, DOE proposed to relocate and centralize the current test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h to a new appendix B to subpart F of part 431, such that the proposed appendix B would be consistent with the current test procedures at 10 CFR 431.96 (as applicable to the three-phase equipment addressed in this rulemaking) and would continue to reference ANSI/AHRI 210/240–2008 and ANSI/AHRI 1230–2010 and provide instructions for determining SEER and HSPF. 86 FR 70316, 70320–70321. DOE correspondingly proposed to update the existing incorporation by reference of ANSI/AHRI 210/240–2008 and ANSI/AHRI 1230–2010 at 10 CFR 431.95 to apply it to appendix B. The proposed appendix B would also centralize the additional test provisions currently applicable under 10 CFR 431.96, *i.e.,* 10 CFR 431.96(c) through (f). *Id.* As proposed, the three-phase equipment addressed in this rulemaking would be required to be tested according to

[10] The term ''single package unit'' means any central air conditioner or central air-conditioning heat pump in which all the major assemblies are enclosed in one cabinet. The term ''split system'' means any central air conditioner or central air-conditioning heat pump in which one or more of the major assemblies are separate from the others. 10 CFR 431.92.

appendix B until such time as compliance is required with amended energy conservation standards that rely on the SEER2 and HSPF2 metrics, should DOE adopt such standards. *Id.*

Similarly, DOE proposed to amend the test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h by adopting AHRI 210/240–2023 in a new appendix B1 to subpart F of part 431. *Id.* DOE proposed to adopt the updated version of AHRI Standard 210/240, *i.e.,* AHRI 210/240–2023, including the SEER2 and HSPF2 metrics. As proposed, the three-phase equipment addressed in this rulemaking would not be required to be tested using the test procedure in proposed appendix B1 until such time as compliance is required with amended energy conservation standards that rely on the SEER2 and HSPF2 metrics, should DOE adopt such standards. *Id.*

DOE did not receive any comments in response to the proposed organization of the test procedures. As discussed in the following sections of this final rule, DOE is adopting AHRI 210/240–2023, including the SEER2 and HSPF2 metrics. Accordingly, for the reasons discussed in the December 2021 NOPR and as discussed in the preceding paragraphs, DOE is finalizing the proposed organization of the test procedures by establishing appendices F and F1 [11] for testing 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

C. Metrics

As noted, for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h, the cooling metric and heating metric currently specified by DOE are the SEER and HSPF metrics, respectively. 10 CFR 431.96. As noted in the December 2021 NOPR, SEER is a seasonal efficiency metric that accounts for electricity consumption in active and standby cooling modes during the cooling season, while HSPF is a seasonal efficiency metric that accounts for electricity consumption in active and standby heating modes for heat pumps during the heating season. 86 FR 70316, 70320. These same metrics currently apply to single-phase CAC/HPs, including single-phase, air-cooled VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h (see appendix M). *Id.*

As discussed in the December 2021 NOPR, SEER2 and HSPF2 are metrics established in the amended test procedure for single-phase CAC/HPs (appendix M1) and have the same definitions as their counterpart metrics in appendix M (*i.e.,* SEER and HSPF) but reflect the amendments made to the test procedure in appendix M1, which change the measured efficiency values compared to appendix M. (*See* 82 FR 1426, 1437 (Jan. 5, 2017) explaining DOE's decision to adopt the new metrics SEER2 and HSPF2.) *Id.* at 86 FR 70321.

D. Updates to Industry Standards and Proposed Test Procedures for Three-Phase Equipment With Cooling Capacity of Less Than 65,000 Btu/h

As noted, the current DOE test procedure at 10 CFR 431.96 for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h incorporates by reference ANSI/AHRI 210/240–2008 with Addenda 1 and 2 (*i.e.,* ANSI/AHRI 210/240–2008, but omitting section 6.5). ANSI/AHRI 210/240–2008 includes as appendix C (which is designated as normative in the industry test standard [12]) the entirety of the text of appendix M as amended by a final rule published on October 22, 2007 (72 FR 59906). Appendix M provides the Federal test procedure for determining the efficiency of single-phase CAC/HPs with rated cooling capacities of less than 65,000 Btu/h, which are consumer products covered under 10 CFR part 430.

The current DOE test procedure at 10 CFR 431.96 for 3-phase VRF with cooling capacity of less than 65,000 Btu/h incorporates by reference ANSI/AHRI 1230–2010 with Addendum 1 (*i.e.,* ANSI/AHRI 1230–2010, but omitting sections 5.1.2 and 6.6).

As noted previously in this document, AHRI has published several updated industry standards: AHRI 210/240–2017 (published in December 2017); AHRI 210/240–2017 with Addendum 1 (published in April 2019); AHRI 210/240–2023 (published in May 2020); and AHRI 1230–2021 (published in May 2021).

As discussed in the following sections, DOE is incorporating by reference AHRI 210/240–2023 as the test procedure for the three-phase equipment addressed in this final rule. DOE is also incorporating by reference ANSI/ASHRAE 37–2009, which is referenced by AHRI 210/240–2023. Use of the amended test procedures incorporating AHRI 210/240–2023 will not be required until such time as compliance is required with amended standards in terms of the new metrics, SEER2 and HSPF2, should DOE adopt such energy conservation standards. These amended test procedures align with the test procedure and metrics for CAC/HPs specified at appendix M1.

1. Harmonization With Single-Phase Products

As discussed in the December 2021 NOPR, the three-phase equipment that is the subject of this final rule is often nearly identical to their single-phase counterparts. 86 FR 70316, 70322. Specifically, three-phase models generally are manufactured on the same production lines and are physically identical to their corresponding single-phase central air conditioner and central air conditioning heat pump models, except that the former have three-phase electrical systems and use components—primarily motors and compressors—that are designed for three-phase power input. *Id.* Other key operational components, such as heat exchangers and fans (excluding fan motors), are typically identical for three-phase and single-phase designs of a given model family. *Id.* In addition, most manufacturers' model numbers for single-phase products and three-phase equipment are interchangeable, and three-phase and single-phase versions of the same model typically have the same energy efficiency ratings. *See, e.g.,* 80 FR 42614, 42622 (July 17, 2015) and 83 FR 49501, 49504.

As discussed in the December 2021 NOPR, in response to the October 2018 RFI, stakeholders supported harmonizing the test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h with the test procedures for single-phase CAC/HPs with a cooling capacity of less than 65,000 Btu/h.[13] (CA IOUs, No. 2 at pp. 1–2; Ingersoll Rand, No. 3 at p. 2; AHRI, No. 4 at pp. 1–2; NRDC and ASAP, No. 5 at pp. 1–2; Lennox, No. 6 at pp. 1–2; Carrier, No. 7 at p. 1; Goodman, No. 8 at pp. 1–3). 86 FR 70316, 70322. In addition, several

[11] Although DOE proposed in the December 2021 NOPR to establish test procedures at appendices B and B1 for the three-phase equipment subject to this rulemaking, appendix B has since been established for direct-expansion dedicated outdoor air systems. Further, appendices C, D, and E have been designated for other categories of commercial air conditioning and heating equipment. As a result, in this final rule, DOE establishes appendices F and F1 for the equipment that is the subject of this final rule.

[12] The inclusion of appendix M in the normative appendix C of AHRI 210/240–2008 means that appendix M was required to be followed when testing in accordance with ANSI/AHRI 210/240–2008.

[13] All comments are available at *www.regulations.gov,* in Docket No. EERE–2017–BT–TP–0031.

stakeholders supported harmonizing with both appendix M and appendix M1 or at a minimum, with appendix M1 (Carrier, No. 7 at p. 2; Goodman, No. 8 at pp. 1–2; AHRI, No. 4 at p. 2; CA IOUs, No. 2 at p. 2; NRDC and ASAP, No. 5 at pp. 1–2; Lennox, No. 6 at p. 2). *Id.*

The following sections discuss DOE's consideration of harmonization with the relevant industry standards, including consideration of harmonization with appendices M and appendix M1.

2. AHRI 210/240–2017 and AHRI 210/240–2017 With Addendum 1

In the December 2021 NOPR, DOE considered whether to harmonize the current test procedures for the three-phase equipment addressed in this document with appendix M by adopting AHRI 210/240–2017 and AHRI 210/240–2017 with Addendum 1 for compliance prior to January 1, 2023. 86 FR 70316, 70321–70324. However, DOE noted that the required 360-day compliance lead-time period for test procedure final rules for ASHRAE equipment specified in EPCA (42 U.S.C. 6314(d)(1)) would result in little to no time between the compliance date of the final rule for this test procedure rulemaking and January 1, 2023–when appendix M1 is required for testing CAC/HPs (and when appendix M will no longer be used). *Id.* at 86 FR 70322. Therefore, DOE tentatively concluded that there would be little practical benefit to harmonizing the test procedures for the three-phase equipment addressed in this final rule with the current test procedures for CAC/HPs at appendix M. *Id.* Furthermore, DOE identified errors in AHRI 210/240–2017 with Addendum 1 that DOE tentatively determined would need to be corrected in regulatory text if DOE were to adopt AHRI 210/240–2017 with Addendum 1. *Id.* at 86 FR 70323. For these reasons, DOE tentatively concluded that adopting a revised test procedure (*i.e.,* referencing AHRI 210/240–2017 or AHRI 210/240–2017 with Addendum 1, along with the substantive corrections and deviations that would be required) for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h would be unduly burdensome to manufacturers. *Id.* at 86 FR 70324. DOE considered these reasons to constitute clear and convincing evidence that adopting AHRI 210/240–2017 or AHRI 210/240–2017 with Addendum 1 would not meet the requirements specified in 42 U.S.C. 6314(a)(2). *Id.*

As such, DOE proposed to maintain the current test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, which incorporates by reference ANSI/AHRI 210/240–2008, until such time as use of the amended test procedure referencing AHRI 210/240–2023 would be required. *Id.* Several commenters supported the proposal to maintain reference to ANSI/AHRI 210/240–2008 with Addenda 1 and 2 as the Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h, until such time as use of the amended test procedure referencing AHRI 210/240–2023 would be required. (AHRI, No. 16 at p. 2; CA IOUs, No. 18 at pp. 1–2; Carrier, No. 15 at p. 2; Lennox, No.14 at p. 2; NYSERDA, No. 13 at pp. 1–2; Trane, No. 19 at p. 1)

However, CA IOUs commented that because ANSI/AHRI 210/240–2008 with Addenda 1 and 2 references ANSI/ASHRAE 37–2005 (while appendix M and ANSI/AHRI Standard 1230–2010 reference ANSI/ASHRAE 37–2009), there is a discrepancy in the treatment of 3-phase ACUAC and ACUHP versus VRF equipment under the proposed appendix B.[14] (CA IOUs, No. 18 at p. 2) CA IOUs recommended that DOE consider adding an exception in section 1 of appendix B, such that ANSI/AHRI Standard 210/240–2008 is required in conjunction with ANSI/ASHRAE 37–2009, thereby making the incorporation by reference fully consistent with the approaches taken for single-speed products under appendix M and VRF equipment in ANSI/AHRI Standard 1230–2010. (*Id.*)

DOE acknowledges the concern raised by CA IOUs, but DOE notes that ANSI/AHRI 1230–2010 does not reference ANSI/ASHRAE 37–2009 as commented by CA IOUs (and erroneously mentioned by DOE in the December 2021 NOPR[15]), but instead references ANSI/ASHRAE 37–2005. Therefore, there is no discrepancy in the treatment of 3-phase ACUAC and ACUHP versus VRF equipment as proposed in appendix B in the December 2021 NOPR (and as adopted in appendix F in this final rule) because ANSI/AHRI 210/240–2008 and ANSI/AHRI 1230–2010 both reference ANSI/ASHRAE 37–2005. Additionally, DOE notes that appendix F is intended to reflect the test procedure as it is prescribed in the **Federal Register** currently—and the current test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h references ANSI/AHRI 210/240–2008, which in turn references ANSI/ASHRAE 37–2005. As such, referencing ANSI/ASHRAE 37–2009 in appendix F would lead to appendix F being incongruous with the current test procedure.

As a result, DOE is maintaining the reference to ANSI/AHRI 210/240–2008 with Addenda 1 and 2 as the Federal test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h in appendix F without an exception related to the version of ANSI/ASHRAE 37. DOE is also updating the existing incorporation by reference of ANSI/AHRI 210/240–2008 at 10 CFR 431.95 to apply to appendix F. As stated previously in this document, appendix F will serve as the Federal test procedure until such time as use of the amended test procedure referencing AHRI 210/240–2023, appendix F1, is required as discussed in the following section.

3. AHRI 210/240–2023

In the December 2021 NOPR, DOE noted that AHRI 210/240–2023 generally corrects the errors in AHRI 210/240–2017 with Addendum 1 and harmonizes with the updated Federal test method for single-phase CAC/HPs with rated cooling capacities of less than 65,000 Btu/h (*i.e.,* appendix M1, required for use beginning January 1, 2023), which includes single-phase, air-cooled, VRF multi-split systems with a cooling capacity of less than 65,000 Btu/h. 86 FR 70316, 70324. Additionally, DOE noted that the updates contained in AHRI 210/240–2023 provide for measuring energy efficiency using the SEER2 and HSPF2 metrics, which are the metrics adopted by ASHRAE Standard 90.1–2019 for the 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h standards beginning January 1, 2023.[16] *Id.* In response to this update to AHRI 210/240, DOE proposed to incorporate AHRI 210/240–2023 as the test procedure with which representations must be made beginning with the compliance date of any amended DOE standards for three-phase equipment relying on SEER2 and HSPF2 as the metrics.[17] *Id.*

[14] As noted, appendix B as proposed in the December 2021 NOPR corresponds to appendix F as finalized in this final rule.

[15] In the December 2021 NOPR, DOE mistakenly stated that ANSI/AHRI 1230–2010 references ANSI/ASHRAE 37–2009. 86 FR 70316, 70325–70326. This oversight did not impact any of the DOE analysis conducted in the December 2021 NOPR.

[16] ASHRAE 90.1–2019 did not update the metrics for 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Those metrics remain SEER and HSPF in ASHRAE Standard 90.1.

[17] The timing and implementation of any amended standards may be different for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h, depending on DOE rulemakings related to energy conservation standards for those separate categories of equipment.

In the December 2021 NOPR, DOE sought comment on its proposal to incorporate by reference AHRI 210/240–2023 in the DOE test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. *Id.* at 86 FR 70325. DOE also sought comment on its proposal to require compliance with these test procedures on the compliance date of any amended energy conservation standards that DOE may adopt later as part of a future rulemaking. *Id.*

Commenters generally supported the proposal to incorporate by reference AHRI 210/240–2023 in the DOE test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, with a compliance date aligning with the compliance date of any amended DOE standards for three-phase equipment relying on SEER2 and HSPF2 as the metrics. (AHRI, No. 16 at pp. 2–3; Carrier, No. 15 at pp. 2–3; Lennox, No. 14 at p. 2; NEEA, No. 20 at p. 1; NYSERDA, No. 13 at pp. 1–2; Trane, No. 19 at p. 1)

In summary, for the reasons discussed in the December 2021 NOPR and in this document, DOE is incorporating by reference AHRI 210/240–2023 in the DOE test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, with the amended test procedures required for use beginning on the compliance date of any amended energy conservation standards. Specifically, in appendix F1, DOE is referencing AHRI 210/240–2023 except for the following sections:

Section 6—Rating Requirements (these provisions are not related to the method of test, and DOE separately addresses these topics in 10 CFR part 429);

Sections 6.1.8, 6.4.1, 6.4.2, 6.4.3, and 6.4.4 (minimum testing and certification requirements);

Sections 6.2 and 6.4.6 (permits a given product to have multiple ratings of different values);

Section 6.5 (uncertainty allowances for testing, which are not relevant to the Federal test procedure);

Sections 7 through 10, Appendix C, and Appendix I (relevant only to AHRI's certification program);

Appendix F: Sections F15.2 and F17 (pertains to electrical measurements and cyclic tolerances, respectively; DOE proposed modifications as discussed in the December 2021 NOPR. 86 FR 70316, 70324–70325);

Appendix G (pertains to the exclusion of certain optional features for testing, as discussed in the subsequent subsection); and

Appendix H (pertains to off-mode testing, which is not required by DOE for three-phase equipment).

a. Appendix G of AHRI 210/240–2023

In Appendix G of AHRI 210/240–2023, AHRI included a list of components that must be present for testing (Section G1.2) and a list of features that are optional for testing (Section G2), which provides additional instruction to address certain of these features and additional details that are beyond the scope of the current Commercial HVAC Enforcement Policy.[18] Also, there are five features [19] that are included in the Commercial HVAC Enforcement Policy for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h that are not included in Section G2 of AHRI 210/240–2023. Currently, enforcement testing of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h falls under DOE's Commercial HVAC Enforcement Policy, which outlines how certain features of this equipment will be treated for compliance testing.

In the December 2021 NOPR, DOE found that certain optional features listed in Section G2 (as well as certain features that are included in DOE's current Commercial HVAC Enforcement Policy but not included in Section G2 of AHRI 210/240–2023) are present in models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h. 86 FR 70316, 70325. However, DOE found that these same features are also present in models of single-phase CAC/HPs with cooling capacity of less than 65,000 Btu/h. *Id.* DOE's Commercial HVAC Enforcement Policy does not apply to single-phase products and appendices M and M1 do not include any special treatment for these optional features within the test procedure. In addition, DOE has not received any waivers related to these features and DOE does not have technical justification to support differential treatment of such features for three-phase equipment as compared to single-phase products. As such, DOE tentatively determined that any of these features present in 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h can also be tested in accordance with the proposed test procedure and that, to maintain harmonization with single-phase products, it was not necessary to adopt Appendix G of AHRI 210/240–2023 in the proposed test procedure. *Id.* DOE further noted that if DOE adopted an amended test procedure for three-phase equipment that does not reference Appendix G, DOE would rescind the Commercial HVAC Enforcement Policy to the extent that it is applicable to 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. *Id.*

AHRI, Carrier, and Trane disagreed with DOE's tentative proposal to not adopt Appendix G of the AHRI 210/240–2023 standard, which outlines how certain features of this 3-phase equipment will be treated for compliance testing. (AHRI, No. 16 at p. 3; Carrier, No. 15 at pp. 2–3; Trane, No. 19 at p. 1) AHRI stated that not all three-phase equipment models are based on a single-phase platform and that even those that are face different codes and standards requirements than residential products. (AHRI, No. 16 at p. 3) AHRI and Carrier asserted that DOE's tentative determination that single-phase products sold in the market include some of the features included in Appendix G is insufficient justification to not adopt Appendix G for three-phase equipment. (AHRI, No. 16 at p. 3; Carrier, No. 15 at p. 2) AHRI and Carrier further commented that DOE did not clarify which single-phase product features DOE analyzed to conclude that there was no technical justification to support differential treatment of such features for three-phase equipment as compared to single-phase products. (AHRI, No. 16 at p. 3; Carrier, No. 15 at p. 2) AHRI and Carrier added that there was technical justification for testing exemptions outlined in Appendix G, such as three-phase power, which is exclusive to commercial buildings. *Id.* AHRI and Carrier further noted that building codes have exclusive requirements for commercial buildings, which create technical differences between three-phase models and their single-phase counterparts, as evidenced by California's energy code, Title 24–2022, which requires economizers on units down to 33,000 Btu/hr. (AHRI, No. 16 at p. 3; Carrier, No. 15 at pp. 2–3) AHRI and Carrier also commented that an appendix for ASHRAE Standard 90.1 is considering similar requirements for

[18] The enforcement policy for commercial HVAC equipment can be found at *www.energy.gov/gc/downloads/commercial-equipment-testing-enforcement-policies.*

[19] These five features are high-static indoor blower or oversized motor; desuperheaters; outdoor fan with Variable Frequency Drive (''VFD''); indoor fan with VFD; and compressor with VFD.

economizers on units down to 33,000 Btu/h. *Id.* AHRI and Carrier further commented that without the Commercial HVAC Enforcement Policy or Appendix G, manufacturers would not be able to factory install economizers. *Id.* In conclusion, AHRI, Carrier, and Trane recommended that DOE adopt Appendix G from AHRI 210/240–2023 as part of the test procedures to continue to permit the necessary flexibility for components. (AHRI, No. 16 at p. 3; Carrier, No. 15 at p. 3; Trane, No. 19 at p. 1)

In this final rule, DOE is adopting AHRI 210/240–2023 without Appendix G in its test procedures for the three-phase equipment subject to this final rule to align the test procedures for single-phase products and three-phase equipment. As discussed in the December 2021 NOPR, DOE has not identified any optional components specified in Appendix G that are included in three-phase equipment but not single-phase products. Therefore, while certain optional components (*e.g.,* economizers, as suggested by AHRI and Carrier) are offered as part of certain models of three-phase equipment, such components are also offered as part of certain models of single-phase products. DOE's test procedure for CAC/HPs does not include provisions excluding Appendix G components, such as economizers, and, as discussed, DOE has not received petitions for waivers with regard to testing CAC/HPs with such components.

Further, the commenters did not provide any justification for a testing exemption for the Appendix G components in three-phase equipment but not single-phase products—*i.e.,* commenters did not provide any information to suggest that testing a three-phase unit with a specific Appendix G component would present any complications that would not exist when testing an otherwise identical single-phase unit with the same Appendix G component.

While the vast majority of three-phase equipment on the market are otherwise identical to single-phase models, DOE acknowledges that there are a number of three-phase equipment model lines without a single-phase counterpart. However, per AHRI 210/240–2023, there is no difference in testing three-phase equipment with single-phase counterparts as compared to testing three-phase equipment without single-phase counterparts. Additionally, the commenters did not provide any justification as to why three-phase equipment without single-phase counterparts would warrant different treatment with regard to Appendix G components.

With regard to AHRI and Carrier's assertions that certain Appendix G components (such as economizers) may be installed more commonly in three-phase equipment than single-phase products (particularly because certain commercial building codes may require use of specific Appendix G components, such as economizers), the prevalence of the component in shipments of three-phase equipment is not a relevant consideration for whether test procedure provisions are warranted to exclude the component from testing. Regardless of whether Appendix G components are included more commonly in three-phase equipment than single-phase products, DOE has concluded that they are included in both three-phase equipment and single-phase products. DOE notes that commenters did not provide any information to suggest that any of the components specified in Appendix G are included in three-phase equipment but not single-phase products.

Additionally, DOE disagrees with the commenter's assertions that the use of three-phase power in commercial buildings provides a technical justification for exemption of Appendix G components. If building codes require certain Appendix G components for three-phase equipment, this requirement may increase the fraction of shipments of three-phase equipment with those components relative to single-phase products, but it does provide any technical justification for exempting the component from testing, given that the components are also included in single-phase products, albeit in a potentially lower fraction of shipments.

DOE disagrees with AHRI and Carrier's assertion that Appendix G would be necessary for manufacturers to be able to factory install economizers. DOE notes that manufacturers are able to factory install economizers in single-phase products even though there is no exemption of Appendix G components for testing such products, and the same will be true without any allowance for exempted components for three-phase equipment. DOE reiterates that, in this final rule, DOE is harmonizing the test procedures for three-phase equipment with that for single-phase products, and that commenters have not provided justification needed to support the assertion that three-phase equipment warrants exemption of components when those components are also included in single-phase products.

As such, DOE has determined that models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h that include components specified in Appendix G can be tested in accordance with the test procedure adopted in this final rule. To harmonize with the test procedure for single-phase products, DOE is not adopting Appendix G of AHRI 210/240–2023 as part of the amended test procedure adopted in this final rule. While no models of 3-phase VRF with cooling capacity of less than 65,000 Btu/h are currently on the market, DOE expects that if those models are on the market the same determination would apply for the same reasons. In conjunction with this final rule, DOE is rescinding the Commercial HVAC Enforcement Policy to the extent that it is applicable to 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

4. AHRI 1230

As discussed previously, AHRI 1230–2021 excludes from its scope 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Therefore, in this final rule, DOE is not adopting AHRI 1230–2021 because by its explicit terms AHRI 1230–2021 is not applicable to the equipment considered in this final rule.

As discussed previously in section III.D.2.b of this final rule, DOE is incorporating by reference AHRI 210/240–2023 for testing 3-phase VRF with cooling capacity less than 65,000 Btu/h. The current Federal test procedure for this equipment, now codified at appendix F, which references ANSI/AHRI 1230–2010, remains the required test procedure until such time as DOE adopts amended energy conservation standards for this equipment.

5. ASHRAE 37

As discussed in the December 2021 NOPR, ANSI/ASHRAE Standard 37, which provides a method of test for many categories of air conditioning and heating equipment, is referenced for testing by all versions of AHRI Standards 210/240 and 1230. 86 FR 70316, 70325. Appendix E of AHRI 210/240–2023 provides additional instruction and exceptions regarding the application of the test methods specified in ANSI/ASHRAE 37–2009. And ANSI/ASHRAE 37–2005 is referenced in ANSI/AHRI 1230–2010, which is currently the referenced industry test standard in the DOE test procedure for VRF multi-split systems. ANSI/ASHRAE 37–2005 is also referenced by ANSI/AHRI 210/240–2008, which is currently the referenced industry test standard in the DOE test procedure for

3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h. *Id.*

As such, given the use of ANSI/ASHRAE 37–2009 when testing according to AHRI 210/240–2023, DOE is directly referencing ANSI/ASHRAE 37–2009 in its test procedures for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Specifically, in appendix F1, DOE is referencing the applicable sections of ANSI/ASHRAE 37–2009—*i.e.,* all sections except Sections 1, 2, and 4.[20]

As noted in section III.B of this final rule, appendix F references AHRI 210/240–2008 (which in turn references ANSI/ASHRAE 37–2005) for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and references AHRI 1230–2010 (which in turn references ANSI/ASHRAE 37–2005) for 3-phase VRF with cooling capacity of less than 65,000 Btu/h. As discussed, appendix F is meant only as a new location for the current test procedures and, as a result, DOE is not changing the embedded references to ANSI/ASHRAE 37.

E. Certification, Compliance, and Enforcement Requirements

In the December 2021 NOPR, DOE proposed amendments to the basic model definition and product-specific enforcement provisions for the three-phase equipment specified at 10 CFR 431.92 and 10 CFR 429.134, respectively, to align with the provisions for single-phase products. 86 FR 70316, 70326. Comments received on DOE's proposals are discussed in the following subsections.

1. Representation Requirements

In the December 2021 NOPR, DOE proposed that the representation and certification requirements for the three-phase equipment subject to this rulemaking would be included in a new section at 10 CFR 429.64 [21] and excluded from the scope of 10 CFR 429.43. *Id.* DOE also proposed to establish a new section 10 CFR 429.70(i) [22] for alternative energy determination method (''AEDM'') requirements that would apply to the three-phase equipment addressed in this rulemaking. *Id.*

a. Use of Single-Phase AEDM for Rating Three-Phase Equipment

Through its newly proposed provisions in 10 CFR 429.64 and 420.70(i), DOE intended to mirror the representation requirements applicable to CAC/HPs in 10 CFR 429.16 and 429.70(e), except for the minimum testing requirements and certain AEDM validation requirements for each basic model of single-package units and single-split systems. *Id.* DOE tentatively determined that an AEDM validated pursuant to 10 CFR 429.70(e) would also be appropriate for rating basic models of three-phase, less than 65,000 Btu/h single-package units and single split-systems that have otherwise identical single-phase counterparts. *Id.* at 86 FR 70327. As such, for three-phase, less than 65,000 Btu/h single-package units and single-split systems, DOE proposed in 10 CFR 429.70(i)(2) to permit a manufacturer to rely on an AEDM for CAC/HPs that is validated in accordance with 10 CFR 429.70(e)(2) with testing of otherwise identical single-phase counterparts, without additional validation testing.[23] *Id.* DOE noted that if a manufacturer offers three-phase models that do not have otherwise identical single-phase counterparts, or the manufacturer has not validated an AEDM in accordance with 10 CFR 429.70(e)(2) with testing of the otherwise identical single-phase counterparts, the manufacturer would be required to test a single unit sample for each of two basic models to validate an AEDM, consistent with the existing requirements for all capacities of three-phase equipment. *Id.*

In conjunction with this proposal, DOE proposed also to specify in the newly proposed 10 CFR 429.70(i)(3) that ''otherwise identical'' means differing only in the phase of the electrical system and the phase of power input for which the motors and compressors are designed. *Id.*

DOE requested comment on the proposal to permit, for three-phase, less than 65,000 Btu/h single-package and single-split system basic models with otherwise identical single-phase counterparts, the use of ratings based on an AEDM validated using the test results from an otherwise identical CAC/HPs, rather than requiring validation using the test results with testing of three-phase models. *Id.* DOE further requested comment on its proposed specification of the term ''otherwise identical'' and whether the proposed AEDM requirements should include a provision to validate the correlation between single-phase and three-phase performance as determined using an AEDM. *Id.*

AHRI, Carrier, and Lennox expressed general support for DOE's proposals related to the representation requirements. (AHRI, No. 16 at p. 4; Carrier, No. 15 at p. 4; Lennox, No. 14 at p. 3) However, AHRI, Carrier, and Lennox recommended a modification regarding the term ''otherwise identical''—specifically recommending that, in addition to allowing AEDM use between similar single and three-phase equipment, DOE should also allow similar three-phase designs of different voltages to use AEDM data from an otherwise identical single-phase product, asserting that the performance differences between different voltages are similarly well known. *Id.* Lennox elaborated that while residential central air conditioners and heat pumps typically use 230V single-phase power sources, commercial three-phase equipment can use 230V, 460V, and 575V three-phase power sources. (Lennox, No. 14 at p. 3)

DOE acknowledges that three-phase equipment is often installed with voltages that are higher than the voltage typically used for their single-phase counterparts. Further, DOE has determined that, comparable to the differences between single- and three-phase power, the slight performance differences between models designed for use with multiple voltages (*e.g.,* minor differences in compressor performance depending on the supply voltage of the compressor motor; or minor differences from transformer losses if a transformer is used in the unit to change the voltage) are well understood and can be accounted for within an AEDM. Therefore, DOE considers the clarification suggested by AHRI, Carrier, and Lennox to be appropriate and is updating ''otherwise identical'' to mean differing only in the phase *or voltage* [emphasis added] of the electrical system and the phase *or voltage* [emphasis added] of power input for which the motors and compressors are designed.

Regarding the provision to validate the correlation between single-phase and three-phase performance, Carrier and Lennox agreed that this validation was not necessary. (Carrier, No. 15 at p. 4; Lennox, No. 14 at p. 3) Carrier commented that system validation

[20] DOE is excluding references to Section 1 (''Purpose''), Section 2 (''Scope''), and Section 4 (''Classifications'') in ANSI/ASHRAE 37–2009 to avoid any potentially contradictory requirements with DOE regulations.

[21] The provisions proposed in the December 2021 NOPR at 10 CFR 429.64 are being finalized at 10 CFR 429.67 in this final rule as 10 CFR 429.64 has since been established for electric motors.

[22] The provisions proposed in the December 2021 NOPR at 10 CFR 429.70(i) are being finalized at 10 CFR 429.70(l) in this final rule as 10 CFR 429.70(i) has since been established for consumer furnaces and consumer boilers.

[23] DOE proposed that while the AEDM would not need additional validation testing, it would need to reflect the slight difference in performance between single-phase and three-phase components. 86 FR 7016, 70327.

would increase test burden without providing a benefit and that an otherwise identical three-phase model generally outperforms the single-phase counterpart. (Carrier, No. 15 at p. 4) Lennox commented that the performance characteristics of single-phase and three-phase components are well known and already incorporated into manufacturer AEDMs and that further validation of the correlation between single-phase and three-phase performance is not needed. (Lennox, No. 14 at p. 3)

Conversely, CA IOUs and Joint Advocates expressed support for requiring some form of validation to correlate the performance between single-phase and three-phase performance as determined using an AEDM. (CA IOUs, No. 18 at p. 2; Joint Advocates, No. 17 at p. 2) CA IOUs recommended that DOE optionally allow manufacturers to submit supplemental information to DOE with the intent of demonstrating the efficiency increase via correlation data for three-phase basic models relative to their single-phase counterpart basic models. (CA IOUs, No. 18 at p. 2) Joint Advocates supported validating an AEDM based on the tested performance of a three-phase basic model and commented that it was their understanding that this validation would not be equivalent to developing and validating a new AEDM. Alternatively, Joint Advocates suggested that DOE could perform a crosswalk to develop ratings for three-phase equipment based on the output of a validated AEDM for otherwise identical single-phase equipment. (Joint Advocates, No. 17 at p. 2)

As noted in the December 2021 NOPR and as indicated by Lennox's comment, slight differences in performance between single-phase and three-phase models (*e.g.,* minor differences in compressor performance depending on the electrical phase of the compressor motor) are well understood and can be accounted for within an AEDM (*e.g.,* slightly different compressor coefficients used to model performance for single-phase vs. three-phase compressors), rather than requiring testing of three-phase models. 86 FR 70316, 70327; (Lennox, No. 14 at p. 3) Further, for other categories of commercial package air conditioning and heating equipment, DOE allows an AEDM to be used to develop ratings for all equipment within a validation class, which encompasses all models in an equipment category with a given heat rejection medium (*e.g.,* a single AEDM can be used to develop ratings for all basic models of air-cooled CUACs with cooling capacity greater than 65,000 Btu/h offered by a manufacturer). 10 CFR 429.70(c)(2)(iv) Therefore, for other equipment categories, current DOE regulations allow use of an AEDM to cover both single and three-phase equipment without a need for additional validation of the performance differences between single and three-phase equipment. DOE has concluded that such a validation requirement for the three-phase equipment subject to this rulemaking would not be needed to develop representative ratings and would impose unnecessary certification burden on manufacturers. Therefore, DOE is not requiring that manufacturers validate the correlation between single-phase and three-phase performance as determined using an AEDM.

DOE is adopting the AEDM provisions as proposed in the December 2021 NOPR. Specifically, at 10 CFR 429.70(l)(2)[24], DOE is permitting a manufacturer to rely on an AEDM for CAC/HPs that is validated in accordance with 10 CFR 429.70(e)(2) with testing of otherwise identical single-phase counterparts, without additional validation testing.

b. Use of AEDM for Certain Configurations of Three-Phase Equipment

As part of the harmonization with single-phase requirements, the proposal in 10 CFR 429.64, as presented in the December 2021 NOPR, required that all representations for outdoor units with no match and for multi-split systems, multi-circuit systems, and multi-head mini-split systems must be determined through testing or other specified means, rather than through an AEDM. 86 FR 70316, 70327. As currently specified, the requirements at 10 CFR 429.16(c)(2)–(3) do not permit AEDMs for single-phase products with these configurations; as such, there would not be any extensively validated AEDMs available for products and equipment with these configurations. DOE noted that it is not aware of any three-phase models on the market with these configurations (*i.e.,* outdoor units with no match or multi-split, multi-circuit, and multi-head mini-split systems), and, therefore, DOE tentatively concluded that this proposal would not result in increased testing burden or costs for any manufacturer. *Id.* In the December 2021 NOPR, DOE requested comment on the existence of three-phase, less than 65,000 Btu/h models of outdoor units with no match or multi-split, multi-circuit, and multi-head mini-split systems on the market. *Id.*

Carrier commented that it was not aware if the referenced models exist in the market today. (Carrier, No. 15 at p. 4) Joint Advocates expressed support for prohibiting the use of AEDMs for three-phase outdoor units with no match, multi-split, multi-circuit, and multi-head mini-split systems to align with the single-phase requirements. (Joint Advocates, No. 17, at p. 1) Lennox recommended that DOE implement the same requirements for the three-phase outdoor units with no match considered under DOE's proposal as apply for single-phase products per 10 CFR 429.16, including the provisions at 10 CFR 429.16(c)(2)–(3), which do not permit AEDM use. Lennox added that to ensure consistency and a level playing field between comparable products, the specific provisions for an outdoor unit with no match as outlined at 10 CFR 429.16(a)(1) and further test requirements at 10 CFR 429.16(b)(2)(i) should apply to the three-phase equipment. (Lennox, No. 14 at p. 4) AHRI recommended permitting AEDMs to rate any three-phase, less than 65,000 Btu/h models of outdoor units with no match or multi-split, multi-circuit, and multi-head mini-split systems on the market and aligning requirements with single-phase products. (AHRI, No. 16 at p. 5)

DOE notes that it is uncertain as to whether or not AHRI supported this proposal to not permit AEDM for the aforementioned configurations. AHRI expressed support for aligning the requirements for three-phase equipment with those for single-phase products—but contradictorily recommended permitting the use of AEDM for such configurations, which, if implemented, would lead to a misalignment between the treatment of three-phase and single-phase products.

No commenters identified any models on the market of outdoor units with no match and multi-split, multi-circuit, and multi-head mini-split systems. Therefore, DOE concludes that the proposed AEDM provisions that do not allow use of an AEDM for outdoor units with no match and multi-split, multi-circuit, and multi-head mini-split systems would not impose any burden on manufacturers. As such, DOE is adopting the provisions related to outdoor units with no match and multi-split, multi-circuit, and multi-head mini-split systems as proposed in the December 2021 NOPR.

[24] As noted, 10 CFR 429.70(i) as proposed in the December 2021 NOPR corresponds to 10 CFR 429.70(l) as finalized in this final rule.

c. Coil-only Ratings for Single-Split-System Air Conditioners

As DOE noted in the December 2021 NOPR, the proposal in 10 CFR 429.64 also required every individual combination of single-split-system air conditioner equipped with a single-stage or two-stage compressor distributed in commerce to be rated as a coil-only combination, with additional blower-coil representations allowed as applicable. 86 FR 70316, 70327. And as discussed in the December 2021 NOPR, the three-phase equipment category may include models that are part of a line of commercial three-phase equipment that includes equipment below DOE's 65,000 Btu/h capacity boundary (rather than models that are otherwise identical to single-phase central air conditioners). *Id.* DOE noted that, based on the review of models certified in DOE's Compliance Certification Database, DOE expected almost all of these models to be packaged units, which are not impacted by the proposal in the December 2021 NOPR. *Id.*

In the December 2021 NOPR, DOE requested comment on whether there are models of three-phase, single-split-system air conditioners with single-stage or two-stage compressors that are not distributed in commerce as a coil-only combination (*i.e.,* distributed in commerce only as blower-coil combination(s)). *Id.*

Carrier commented that it is not aware if the referenced models exist in the market today, while Lennox stated it was not aware of three-phase split system air conditioners with single-stage or two-stage compressors that are not distributed in commerce with coil-only combinations (*i.e.,* that are distributed in commerce only as blower-coil combinations). (Carrier, No. 15 at p. 5; Lennox, No. 14 at p. 4)

Joint Advocates supported DOE's proposal requiring that every individual combination distributed in commerce must be rated as a coil-only combination. (Joint Advocates, No. 17, at p. 1) Lennox recommended that DOE align the representation requirements of three-phase equipment with similar single-phase products as outlined at 10 CFR 429.16(a)(1), so that all single- and two-stage air conditioners must have a coil-only match representative of the least efficient combination. (Lennox, No. 14 at p. 4)

AHRI commented that it is not aware of any three-phase, two-stage systems distributed in commerce as coil-only combinations, further commenting that three-phase products are most often used in small commercial applications and churches and are provided in matched combinations, and in the event that there are systems not provided as matched combinations, any three-phase requirements should be aligned with single-phase requirements. (AHRI, No. 16 at p. 5)

Based on AHRI's comment, DOE is uncertain which representation requirements AHRI recommends that DOE adopt for three-phase equipment. AHRI's comment suggests that all three-phase, single-split-system air conditioners with two-stage compressors are distributed in commerce only as matched combinations (*i.e.,* blower-coil systems). This contradicts Lennox's comment that it was not aware of three-phase split system air conditioners with single-stage or two-stage compressors that are distributed in commerce only as blower-coil combinations.

DOE's representation requirements for single-phase products require that every individual combination distributed in commerce of single-split-system air conditioner equipped with a single-stage or two-stage compressor has to be rated as a coil-only combination, with additional blower-coil representations allowed as applicable. *See* 10 CFR 429.16(a)(1). Therefore, the SEER2 standards for single-phase single-split-system air conditioners adopted in a direct final rule published on January 6, 2017 (82 FR 1786) are based on coil-only representations. Coil-only ratings are generally lower than blower-coil ratings because the default fan power coefficient and default fan heat coefficient specified in the test procedure for rating coil-only systems are generally more power-consuming than integral fans in blower-coil systems (see section III.D.3.a of this final rule for further discussion of default fan power and fan heat coefficients for coil-only systems). As such, if DOE were to allow blower-coil ratings for rating three-phase single-split-system air conditioners and DOE were to adopt the SEER2 standards for three-phase split system air conditioners proposed in the ECS NOPR (which align with the SEER2 standards specified for single-phase products at 10 CFR 430.32(c)(5)), the SEER2 standards for three-phase split system air conditioners would effectively be less stringent than the standards for the single-phase counterparts, despite the standard values being equivalent.

Given Lennox's comment suggesting that there are no three-phase split system air conditioners with single-stage or two-stage compressors that are distributed in commerce only as blower-coil combinations, the specific support for the proposals expressed by Lennox and Joint Advocates, the absence of any specific alternate approaches included in AHRI's comment, and the broad general support for harmonization between three-phase equipment and single-phase products as discussed in section III.D.1, in this final rule, DOE is adopting the provisions related to three-phase single-split-system air conditioners with single-stage or two-stage compressors as proposed in the December 2021 NOPR.

Additionally, DOE is also clarifying the proposed language in the table at 10 CFR 429.67(b)(1) [25] to state that, for single-split system air conditioners with single- or two-stage compressors, each model of outdoor unit must include a represented value for at least one coil-only individual combination that is distributed in commerce and which is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. For that particular model of outdoor unit, additional represented values for coil-only and blower-coil individual combinations are allowed, if distributed in commerce. This clarification to the provisions proposed in the December 2021 NOPR harmonizes with the provisions adopted in 10 CFR 429.16(a)(1) for CACP/HPs in a final rule published on October 26, 2022. 87 FR 64550.

2. Basic Model Definition

The current definition of ''basic model'' for three-phase equipment in 10 CFR 431.92 refers to all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common 'nominal' cooling capacity. *See* 10 CFR 431.92(2).[26] The definition of ''basic model'' for single-phase products in 10 CFR 430.2 provides additional specifications on this same concept. *See* 10 CFR 430.2 (defining the term ''basic model'' and detailing the application of this term to different configurations of central air conditioners and central air conditioner heat pumps). For example, for split systems manufactured by outdoor unit manufacturers, a basic model includes all individual combinations having the same model of outdoor unit but with percentage variation limits on compressor, outdoor coil, and outdoor fan characteristics. *Id.*

[25] As noted, 10 CFR 429.64 as proposed in the December 2021 NOPR corresponds to 10 CFR 429.67 as finalized in this final rule.

[26] The definition applicable to variable refrigerant flow systems is different in wording but similar in content. *See* 10 CFR 431.92(5).

In the December 2021 NOPR, DOE proposed to amend its ''basic model'' definition for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h to align with that for single-phase CAC/HPs, as this definition forms the basis for the requirements in 10 CFR 429.16. 86 FR 70316, 70327–70328. DOE requested comment on its proposal to align the definition of ''basic model'' for three-phase equipment at 10 CFR 431.96 with that for single-phase products at 10 CFR 430.2. *Id.*

AHRI, Carrier, and Lennox supported aligning the definition of ''basic model'' for three-phase equipment at 10 CFR 431.96 with that for single-phase products at 10 CFR 430.2. (AHRI, No. 16 at p. 5; Carrier, No. 15 at p. 5; Lennox, No. 14 at p. 4) Lennox further recommended that language in 10 CFR 430.2 that allows for ''essentially identical'' electrical equipment should also be included in 10 CFR 431.92, with the added clarification that the various three-phase equipment with varying voltages are to be considered essentially identical. (Lennox, No. 14 at p. 4)

After consideration, DOE finds Lennox's recommendation to be unnecessary because ''essentially identical'' at the proposed 10 CFR 431.92(7)(i)–(iii) includes requirements on the power input for the compressor, outdoor fan, and indoor fan (as applicable). For example, for split systems manufactured by outdoor unit manufacturers (proposed 10 CFR 431.92(7)(i)), one of the requirements to be considered ''essentially identical'' is that the power input for the compressor be within 5 percent and the power input for the outdoor fan be within 20 percent. DOE considers that these requirements on power input ensure that three-phase equipment employing differing three-phase voltages would still be considered to have ''essentially identical'' characteristics, regardless of the differing voltages. Therefore, DOE has concluded that the issue raised in Lennox's comment does not warrant deviating from DOE's proposal to harmonize the basic model definition for three-phase equipment with that for single-phase products.

For the reasons discussed in this section and in the December 2021 NOPR, DOE is amending and aligning the definition of ''basic model'' for three-phase equipment subject to this rulemaking at 10 CFR 431.96 with that for single-phase products at 10 CFR 430.2.

3. Certification Reporting Requirements

The certification reporting requirements for CAC/HPs at 10 CFR 429.16 currently require more detail in filed certification reports than the certification requirements for commercial HVAC equipment at 10 CFR 429.43. In the December 2021 NOPR, DOE proposed to retain the requirements for certification reports currently at 10 CFR 429.43 for the three-phase equipment subject to this rulemaking rather than adopting the certification report requirements for single-phase products at 10 CFR 429.16. 86 FR 70316, 70328.

AHRI, Carrier, Lennox, and Trane supported retaining the requirements for certification reports currently at 10 CFR 429.43 rather than adopting the certification reporting requirements for single-phase products at 10 CFR 429.16. (AHRI, No. 16 at pp. 5–6; Carrier, No. 15 at p. 5; Lennox, No. 14 at pp. 4–5; Trane, No. 19 at p. 2) Carrier commented additionally that the confidence interval specified in 10 CFR 429.16(b)(3) for CAC/HPs [27] is different from that specified in 10 CFR 429.43(a)(1)(ii)(B) for commercial HVAC equipment,[28] and that three-phase equipment should use the same confidence interval of 90 percent, as they are based on the designs of their single-phase counterparts. (Carrier, No. 15 at p. 5)

For the reasons discussed in the December 2021 NOPR and this document, in this final rule, DOE is retaining the certification reporting requirements for the three-phase equipment subject to this rulemaking (*i.e.,* DOE is not aligning with the single-phase certification requirements at this time). Regarding the suggestion by Carrier to align the sampling plan confidence interval for the three-phase equipment subject to this rulemaking with those of their single-phase counterparts, DOE notes that this alignment was already proposed in the December 2021 NOPR and is resolved via the representation requirements adopted in the newly established 10 CFR 429.67. Specifically, DOE is adopting a 90 percent confidence interval for the sampling plans specified at 10 CFR 429.67(c)(2), mirroring the existing requirements for single-phase products in 10 CFR 429.16(b)(3).

4. Product-Specific Enforcement Provisions

In the December 2021 NOPR, DOE proposed to amend its product-specific enforcement requirements by adding provisions to a new 10 CFR 429.134(s) [29] for the three-phase equipment addressed in this rulemaking that would align with those already required at 10 CFR 429.134(k) for single-phase products. 86 FR 70316, 70328. These provisions would pertain only to DOE assessment and enforcement testing and would not impact manufacturer testing. *Id.* Additionally, these requirements would apply only to equipment subject to any potential future standards that DOE may establish in terms of SEER2 and HSPF2. *Id.*

Regarding cooling capacity, DOE proposed that the cooling capacity of each tested unit be measured pursuant to the test procedure and that the mean of the measurement(s) (either the measured cooling capacity for a single unit sample or the average of the measured cooling capacities for a multiple unit sample of the test sample) be used to determine compliance with the applicable standards. *Id.*

Regarding cyclic degradation coefficients, which are a measure of efficiency loss that would occur as a result of the compressor cycling to meet a low load level in field applications, DOE proposed to measure the cooling and/or heating cyclic degradation coefficient, C_D^c/C_D^h, respectively, by conducting the optional cyclic tests if the manufacturer certifies that it conducted the optional cyclic tests. If the manufacturer certifies that it did not conduct the optional cyclic tests, the proposal required that the default C_D^c/C_D^h values specified in the test procedure be used as the basis for calculating SEER2 or HSPF2 for each unit tested. *Id.*

DOE received no comments on these proposals. Regarding the cyclic degradation coefficients, DOE is clarifying that the selection of the default values of C_D^c and/or C_D^h be made according to the criteria for the cyclic test in section 4 of appendix F1, and not Sections 6.1.3.1 and 6.1.3.2 of AHRI 210/240–2023 as mistakenly proposed in the December 2021 NOPR. 86 FR 70316, 70343. Section 4 of appendix F1 aligns with section 3.5e of appendix M, which is referenced in the existing cyclic degradation provisions

[27] The sampling requirements at 10 CFR 429.16(b)(3) for central air conditioners and heat pumps specify a confidence interval of 90 percent.

[28] The sampling requirements at 10 CFR 429.43(a)(1)(ii)(B) for commercial HVAC equipment specify a confidence interval of 95 percent.

[29] The provisions proposed in the December 2021 NOPR at 10 CFR 429.134(s) are being finalized at 10 CFR 429.134(y) in this final rule. 10 CFR 429.134(s) has since been established for direct-expansion dedicated outdoor air systems (DX–DOASes).

for at 10 CFR 429.134(k)(2) for single-phase products. As stated in the December 2021 NOPR, the proposal intended to add product-specific enforcement requirements for three-phase equipment that align with those specified for single-phase products, which is better effectuated by the criteria in section 4 of appendix F1 rather than Sections 6.1.3.1 and 6.1.3.2 of AHRI 210/240–2023. *Id* at 86 FR 70328.

For the reasons discussed in this section and in the December 2021 NOPR, DOE is adopting these provisions (including the minor revision discussed) at 10 CFR 429.134(y).

F. Other Comments Received on the NOPR

In response to the December 2021 NOPR, DOE received several additional comments not specific to any of the issues on which DOE sought comment in the December 2021 NOPR and discussed previously in this final rule. This section addresses those comments.

Joint Advocates, CA IOUs, NEEA, and NYSERDA recommended that DOE consider ways to improve the representativeness of the test procedures for ACUACs, ACUHPs, and VRFs with cooling capacity less than 65,000 Btu/h in future rulemakings. In particular, Joint Advocates, CA IOUs, and NYSERDA encouraged DOE to investigate a load-based test procedure [30] for both single-phase and three-phase equipment. (Joint Advocates, No. 17 at p. 2; CA IOUs, No. 18 at p. 3; NYSERDA, No. 13 at p. 2) Joint Advocates commented that a load-based test procedure, as compared to the current steady-state method, would be more representative of actual energy use and, in turn, would provide more accurate information about efficiency to purchasers. (Joint Advocates, No. 17 at p. 2) CA IOUs added that a dynamic load-based test procedure could yield representations that better reflect the average use cycle of a covered product. (CA IOUs, No. 18 at p. 3). NYSERDA commented that evaluation of a dynamic load-based testing would be especially important for equipment installed in office buildings due to the potential for overcooling. (NYSERDA, No. 13 at p. 2)

CA IOUs and NYSERDA also suggested that DOE consider mandating the $H4_2$ heating test (as specified in the test procedure for central air conditioners and central air conditioning heat pumps at appendix M1) [31] in a future rulemaking for the three-phase equipment subject to this rulemaking. (CA IOUs, No. 18 at p. 3; NYSERDA, No. 13 at p. 2) Both commenters also suggested that DOE consider a controls verification procedure (''CVP'') for the $H4_2$ heating mode test, suggesting that this may serve as a first step to validate cold climate performance of variable-speed VRF heat pumps and ACUHPs while providing significant utility to consumers in cold climate regions. (*Id.*)

NEEA recommended that DOE also consider including a CVP for the three-phase equipment subject to this rulemaking, similar to DOE's proposal to adopt the CVP specified in AHRI 1230–2021 for VRF multi-split systems in a test procedure NOPR for VRF multi-split systems. (*See* 86 FR 706440 (Dec. 10, 2021)). (NEEA, No. 20 at p. 2) NEEA commented that while it understands that there is currently not a CVP associated with AHRI 210/240–2023, DOE could adopt a CVP in the test procedure for the three-phase equipment subject to this rulemaking similar to that defined for VRF multi-split systems in AHRI 1230–2021 in order to ensure controls performance. (*Id.*)

DOE is aware that there is ongoing work addressing questions about whether the current DOE and industry test procedures for variable-speed air conditioners and heat pumps are fully representative. However, in this final rule, DOE is aligning the test procedures for three-phase equipment with the current test procedure for single-phase products, consistent with the referenced industry test procedures in ASHRAE 90.1–2019. EPCA requires that the test procedures for small commercial package air conditioning and heating equipment (including the three-phase equipment subject to this rulemaking) shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, EPCA requires that if an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) AHRI 210/240–2023, referenced in ASHRAE Standard 90.1, does not include a dynamic load based testing method, does not mandate the $H4_2$ test, and does not include a CVP. Further, commenters did not provide evidence to support deviating from AHRI 210/240–2023 to adopt such provisions. Therefore, DOE has concluded that it lacks clear or convincing evidence to adopt the test methods and provisions suggested by Joint Advocates, CA IOUs, NEEA, and NYSERDA in this rulemaking.

Additionally, CA IOUs and NYSERDA raised the issue of DOE coverage of air moving systems paired with coil-only three-phase ACUACs and ACUHPs. (CA IOUs, No. 18 at p. 2; NYSERDA, No. 13 at p. 2) CA IOUs and NYSERDA commented that DOE's test procedure set forth in appendix AA to subpart B of 10 CFR part 430 (''appendix AA'') addresses the measurement of energy consumption of furnace fans in single-phase products, but that no such test procedure exists in 10 CFR part 431 for indoor blowers or designated air movers paired with coil-only three-phase ACUACs and ACUHPs. (*Id.*) NYSERDA further commented that thousands of coil-only three-phase ACUAC and ACUHP combinations are currently available and that the test procedure for the three-phase equipment subject to this rulemaking does not account for all energy being used for such systems. NYSERDA recommended that DOE investigate avenues to address this challenge. (NYSERDA, No. 13 at p. 2)

As recognized by CA IOUs and NYSERDA, while the test method set forth in appendix AA addresses the measurement of energy consumption of furnace fans in single-phase products, it does not currently apply to three-phase furnace fans. While indoor fans present in blower-coil combinations of three-phase ACUAC and ACUHP are included in the three-phase equipment subject to the test procedures being established as part of this rulemaking, any three-phase furnace fans paired with coil-only combinations of three-phase ACUAC and ACUHP are not currently subject to

[30] A dynamic load-based test method differs from the steady-state test method currently used in DOE test procedures for air conditioning and heat pump equipment. In a steady-state test method, the indoor room is maintained at a constant temperature throughout the test. In this type of test, any variable-speed or variable-position components of air conditioners and heat pumps are set in a fixed position, which is typically specified by the manufacturer. In contrast, a dynamic load-based test has the conditioning load applied to the indoor room using a load profile that approximates how the load varies for units installed in the field. In this type of test, an air conditioning system or heat pump is allowed to automatically determine and vary its control settings in response to the imposed conditioning loads, rather than relying on manufacturer-specified settings.

[31] The $H4_2$ heating test is an optional full-load test for central air conditioners and heat pumps conducted at an outdoor entering temperature of 5 °F.

a test procedure that accounts for their energy consumption. Three-phase furnace fans are outside the scope of this rulemaking as they are not covered within the definition of small commercial package air conditioning and heating equipment, but DOE may address this equipment as part of a separate rulemaking, as applicable.

G. Effective and Compliance Dates

The effective date for the adopted test procedure amendments will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) To the extent the modified test procedures adopted in this final rule are required only for the evaluation and issuance of updated efficiency standards (*e.g.,* standards using the SEER2 and HSPF2 metrics), compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of those updated standards.

Any voluntary representations of SEER2 and HSPF2 made prior to the compliance date of amended standards for three-phase equipment that rely on SEER2 and HSPF2 would need to be based on appendix F1 starting 360 days after publication of this final rule in the **Federal Register**. Manufacturers may use appendix F1 to certify compliance with any amended standards based on SEER2 and HSPF2, if adopted, prior to the applicable compliance date for those energy conservation standards.

H. Test Procedure Costs

EPCA requires that the test procedures for small commercial package air conditioning and heating equipment, which includes 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, be generally accepted industry testing procedures or rating procedures developed or recognized by either AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such an amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2)-(3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

In this final rule, DOE is amending the existing test procedures for three-phase, less than 65,000 Btu/h equipment by incorporating by reference, with some modification, the updated version of the applicable industry test method, AHRI 210/240–2023, including the energy efficiency metrics SEER2 and HSPF2. DOE is also amending certain representation requirements to align more closely with the representation requirements for single-phase CAC/HPs. Amendments to both the test procedures and representation requirements in this final rule are consistent with comments from interested parties who supported aligning the Federal regulations for the three-phase equipment addressed in this document with the regulations of their single-phase consumer product counterparts.

DOE has determined that these test procedures would be representative of an average use cycle and would not be unduly burdensome for manufacturers to conduct. Appendix F, measuring both SEER and HSPF per ANSI/AHRI 210/240–2008, does not contain any changes from the current Federal test procedures, and therefore would not require retesting solely as a result of DOE's adoption of this amendment. Similarly, appendix F1, measuring both SEER2 and HSPF2 per AHRI 210/240–2023, would not lead to an increase in cost as compared with testing to the test procedures in appendix F. Specifically, DOE estimates that the cost for third-party lab testing in accordance with appendix F1 would be $5,500 for air conditioners and $8,500 for heat pumps, which is consistent with the costs for testing in accordance with the current test procedures.

As discussed in section III.E.1 of this final rule, DOE is amending the representation requirements for certifying basic models of three-phase, less than 65,000 Btu/h equipment to harmonize with the requirements for single-phase products. For models of outdoor units with no match and multi-split, multi-circuit, and multi-head mini-split systems, this amendment of the representation requirements may increase testing requirements for three-phase equipment compared to the existing requirements. However, DOE is not aware of any such models on the market in these categories, and, accordingly, DOE has concluded that the representation requirements will not lead to an increase in testing cost for any manufacturer.

As discussed in section III.E.1 of this final rule, DOE is amending the AEDM[32] requirements for certifying basic models of three-phase, less than 65,000 Btu/h single-package units and single-split systems. Because most manufacturers' models of three-phase, less than 65,000 Btu/h equipment are nearly identical to their corresponding single-phase consumer products, DOE is allowing the use of an AEDM validated using testing of otherwise identical single-phase counterparts for certifying basic models of three-phase, less than 65,000 Btu/h single package units and split systems. For manufacturers that produce both single-phase consumer products and three-phase, less than 65,000 Btu/h equipment, this adoption would reduce any burden that might result from the proposed test procedures in appendix F1 of this final rule because, for such manufacturers, all certification of three-phase, less than 65,000 Btu/h equipment could be conducted using AEDMs without testing the three-phase, less than 65,000 Btu/h equipment.

As discussed previously throughout this final rule, the test procedures in appendix F1 will not be mandatory until the compliance date of any amended energy conservation standards based on SEER2 and HSPF2. Given that most manufacturers of the three-phase equipment subject to this final rule are AHRI members, and DOE is referencing the prevailing industry test procedure that was established for use in AHRI's certification program (which DOE presumes will be updated to include SEER2 and HSPF2), DOE expects that manufacturers will already be testing using the test methods in AHRI 210/240–2023 by January 1, 2023—the effective date for minimum SEER2 and HSPF2 levels in ASHRAE 90.1–2019 for three-phase equipment, and also the date on which testing according to appendix M1 for single-phase central air conditioners is required.

Based on this expectation, DOE tentatively determined in the December 2021 NOPR that the test procedure amendments would not increase the testing burden on three-phase, less than 65,000 Btu/h equipment manufacturers. 86 FR 70316, 70329. Additionally, DOE

[32] Manufacturers are not required to perform laboratory testing on all basic models. In accordance with 10 CFR 429.70, three-phase, less than 65,000 Btu/h equipment manufacturers may elect to use AEDMs. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. Such tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

tentatively determined that the test procedure amendments would not require manufacturers to redesign any of the covered equipment, would not require changes to how the equipment is manufactured, and would not impact the utility of the equipment. *Id.*

Lennox commented that the harmonized test procedures would reduce manufacturer burden as compared to manufacturers having to follow two separate test procedures. (Lennox, No. 14 at p. 5) AHRI indicated that there would be no expected increase in test burden if their concerns regarding the adoption of appendix G of AHRI 210/240–2023 were addressed. (AHRI, No. 16 at p. 6)

In response to the comments by AHRI, DOE's reasoning behind its decision not to adopt appendix G of AHRI 210/240–2023 is discussed in section III.D.2.c of this final rule. And based on the reasons discussed in the December 2021 NOPR and this document, DOE has concluded that the test procedure amendments adopted in this final rule will not increase testing burden on manufacturers, compared to current industry practice.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003.

On December 8, 2021, DOE published in the **Federal Register** a notice of proposed rulemaking proposing, in relevant part, to update the references in the Federal test procedures to the most recent version of the relevant industry test procedures as they relate to air-cooled, three-phase, small commercial air conditioners and heat pumps with a cooling capacity of less than 65,000 British thermal units per hour (''3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h'') and air-cooled, three-phase, variable refrigerant flow (''VRF'' or ''VRF multi-split systems'') air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h (''3-phase VRF with cooling capacity of less than 65,000 Btu/h''). In addition, DOE proposed to update most of its compliance and enforcement requirements for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h to be consistent with those for the consumer product counterparts (*i.e.,* air-cooled, single-phase, central air conditioners and central air conditioning heat pumps with a cooling capacity of less than 65,000 Btu/h (which include single-phase VRF multi-split systems)).

As part of the December 2021 NOPR, DOE conducted its initial regulatory flexibility analysis (''IRFA''). The following sections outline DOE's determination that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted.

DOE did not receive any written comments that specifically addressed the impacts on small businesses or that were provided directly in response to the IRFA request for comment.

For manufacturers of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The equipment covered by this final rule is classified under North American Industry Classification System (''NAICS'') code 333415,[33] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category.

DOE identified manufacturers using DOE's Compliance Certification

[33] The size standards are listed by NAICS code and industry description and are available at : *www.sba.gov/document/support-table-size-standards* (last accessed July 18, 2022).

Database [34] and prior rulemaking information. For three-phase less than 65,000 Btu/h ACUACs and ACUHPs, DOE identified seventeen original equipment manufacturers (''OEM'') covered by this rulemaking. DOE did not identify any manufacturers of three-phase, less than 65,000 But/h VRF. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. DOE identified four small, domestic OEMs for consideration. DOE used publicly available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet [35]) to determine headcount, revenue, and geographic presence of the small businesses. Of those four small OEMs, one of them is an AHRI member and three are not AHRI members.

DOE understands all AHRI members and all manufacturers currently certifying in the AHRI Directory (including small businesses) will be testing their models in accordance with AHRI 210/240–2023, the industry test procedure DOE is referencing, and using AHRI's certification program, which DOE presumes will be updated to include the SEER2 and HSPF2 metrics. The test procedures' amendments would not add any additional testing burden to manufacturers that are or will be using the AHRI 210/240–2023 test procedure for their models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h.

DOE determined the range of additional potential testing costs for the three small businesses that are not AHRI members and do not certify their equipment that is the subject of this final rule in the AHRI Directory. These small businesses would only incur additional testing costs if the companies would not otherwise be using the AHRI 210/240–2023 test procedure to test their models of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. Of these three small businesses, the first manufacturer certifies one basic model to the DOE Compliance Certification Database, the second manufacturer certifies three basic models to the DOE Compliance Certification Database, and the third manufacturer certifies twelve basic models to the DOE Compliance Certification Database.[36]

In this final rule, DOE is relocating the current DOE test procedures to a new appendix F to subpart F of part 431 (''appendix F'') without change. Appendix F does not contain any changes from the current Federal test procedures, and therefore would have no cost to industry and would not require retesting as a result of DOE's adoption of this amendment to the test procedures.

DOE is also amending the test procedures at appendix F1 to subpart F of part 431 (''appendix F1''). Specifically, DOE is incorporating by reference the updated industry test standard AHRI 210/240–2023 for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h (for which the current Federal test procedure references AHRI 210–240–2008) and for 3-phase VRF with cooling capacity of less than 65,000 Btu/h (for which the current Federal test procedure references AHRI 1230–2010). In addition, DOE is adopting the efficiency metrics SEER2 and HSPF2 from AHRI 210/240–2023 in the test procedure at appendix F1. Finally, DOE is harmonizing representation and enforcement requirements with those applicable to single-phase products.

Appendix F1 adopts the most recent industry test procedure, AHRI 210/240–2023. DOE determined the cost for third-party lab testing according to the appendix F1 test procedure to be $8,500 for three-phase, less than 65,000 Btu/h heating equipment and $5,500 for three-phase, less than 65,000 Btu/h air conditioning equipment.

The first of the three small businesses that DOE analyzed manufactures one basic model of three-phase equipment with a cooling capacity less than 65,000 Btu/h, which is an air conditioner. If a manufacturer conducts physical testing to certify a basic model, two units are required to be tested for the basic model. If this manufacturer uses a third-party lab to test this basic model, DOE estimates this small business would incur additional testing costs of approximately $11,000. DOE estimates the annual revenue of this small business is approximately $82.5 million; thus, DOE estimates testing costs to be less than 0.01 percent of this manufacturer's annual revenue.

The second of the three small businesses that DOE analyzed manufactures three basic models of three-phase equipment with a cooling capacity less than 65,000 Btu/h,—all of which are air conditioners. If this manufacturer uses a third-party lab to test these basic models, DOE estimates this small business would incur additional testing costs of approximately $33,000. DOE estimates the annual revenue of this small business to be approximately $16 million; thus, DOE estimates testing costs to be less than one percent of this manufacturer's annual revenue.

The third of the three small businesses that DOE analyzed manufactures twelve basic models of three-phase equipment with a cooling capacity less than 65,000 Btu/h,—all of which are air conditioners. If this manufacturer uses a third-party lab to test these basic models, DOE estimates this small business would incur additional testing costs of approximately $132,000. DOE estimates the annual revenue of this small business to be approximately $120 million; thus, DOE estimates testing costs to be less than one percent of this manufacturer's annual revenue.

As a result of this analysis, DOE determined that the cost impacts on the three small businesses represent less than 1 percent of annual revenue. Therefore, on the basis of the *de minimis* compliance burden, DOE certifies that this final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE will transmit a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. (See generally 10 CFR part 429.) The

[34] DOE's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data* (last accessed July 18, 2022).

[35] Dun & Bradstreet reports are available at *app.dnbhoovers.com* (last accessed July 18, 2022).

[36] DOE's Compliance Certification Database is available at *www.regulations.doe.gov/certification-data* (last accessed July 21, 2022).

collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

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

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that amending test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

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

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule

that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

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

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

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

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

The modifications to the test procedure for 3-phase ACUACs and ACUHPs with cooling capacity of less than 65,000 Btu/h and 3-phase VRF with cooling capacity of less than 65,000 Btu/h adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: AHRI 210/240–2023 and ANSI/ASHRAE 37–2009. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

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

N. Description of Materials Incorporated by Reference

ANSI/AHRI 210/240–2008 is an industry-accepted test procedure for measuring the performance of air conditioning and heating equipment. ANSI/AHRI 210/240–2008 is available on AHRI's website at: *www.ahrinet.org/app_content/ahri/files/standards%20pdfs/ansi%20standards%20pdfs/ansi.ahri%20standard%20210.240%20with%20addenda%201%20and%202.pdf.*

AHRI 210/240–2023 is an updated version of the industry-accepted test procedure for measuring the performance of air conditioning and heating equipment. AHRI 210/240–2023 is available on AHRI's website at *www.ahrinet.org/search-standards.aspx.*

ANSI/AHRI 1230–2010 is an industry-accepted test procedure for measuring the performance of VRF multi-split air conditioning and heating equipment. ANSI/AHRI 1230–2010 is available on AHRI's website at *www.ahrinet.org/search-standards.aspx.*

ANSI/ASHRAE 37–2009 is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE 37–2009 is available on ANSI's website at *webstore.ansi.org.*

The following standards were previously approved for incorporation by reference in the section where they appear and no change is made: AHRI 210/240–2008, AHRI 340/360–2007, ASHRAE 127–2007, and ISO Standard 13256–1.

V. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

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

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on November 22,

2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on November 30, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 431 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:

■ a. Redesignating paragraphs (c)(1) through (c)(4) as paragraphs (c)(2) through (c)(5); and

■ b. Adding new paragraph (c)(1) .

The addition reads as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(c) * * *

(1) AHRI Standard 210/240–2023, (''AHRI 210/240–2023''), *2023 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,* copyright 2020; IBR approved for § 429.67.

* * * * *

■ 3. Amend § 429.12 by revising paragraph (b)(8) to read as follows:

§ 429.12 General requirements applicable to certification reports.

* * * * *

(b) * * *

(8) The test sample size as follows:

(i) The number of units tested for the basic model; or

(ii) In the case of single-split system or single-package central air conditioners and central air conditioning heat pumps; air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h; air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h; or multi-split, multi-circuit, or multi-head mini-split systems other than the ''tested combination,'' the number of units tested for each individual combination or individual model; or

(iii) If an AEDM was used in lieu of testing, enter ''0'' (and in the case of central air conditioners and central air conditioning heat pumps, this must be indicated separately for each metric);

* * * * *

■ 4. Amend § 429.43 by:

■ a. Revising the section heading;

■ b. Removing paragraphs (b)(2)(iii), (iv,) (ix) and (x);

■ c. Redesignating paragraphs (b)(2)(v) through (viii) as paragraphs (b)(2)(iii) through (vi);

■ d. Redesignating paragraphs (b)(2)(xi) through (xiv) as paragraphs (b)(2)(vii) through (x).

■ e. Removing paragraphs (b)(4)(iii) through (vi); and

■ f. Redesignating paragraphs (b)(4)(vii) through (xiii) as paragraphs (b)(4)(iii) through (ix).

The revision reads as follows:

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 British thermal units per hour cooling capacity).

* * * * *

■ 5. Add § 429.67 to read as follows:

§ 429.67 Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 British thermal units per hour.

(a) *Applicability.* (1) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF), representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in § 429.43 of this title as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

(2) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2) metrics, representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in this section. If manufacturers choose to certify compliance with any standards in terms of SEER2 and HSPF2 prior to the applicable compliance date for those standards, the requirements of this section must be followed.

(b) *Determination of Represented Value*—(1) *Required represented values.* Determine the represented values (including SEER2, HSPF2, cooling capacity, and heating capacity, as applicable) for the individual models/combinations (or ''tested combinations'') specified in table 1 to this paragraph (b)(1).

TABLE 1 TO PARAGRAPH (b)(1)

Category	Equipment subcategory	Required represented values
Single-Package unit	Single-Package AC (including Space-Constrained). Single-Package HP (including Space-Constrained).	Every individual model distributed in commerce.

TABLE 1 TO PARAGRAPH (b)(1)—Continued

Category	Equipment subcategory	Required represented values
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM (Outdoor Unit Manufacturer)).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	Every individual combination distributed in commerce. Each model of outdoor unit must include a represented value for at least one coil-only individual combination that is distributed in commerce and which is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. For that particular model of outdoor unit, additional represented values for coil-only and blower-coil individual combinations are allowed, if distributed in commerce.
	Single-Split-System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	Every individual combination distributed in commerce, including all coil-only and blower coil combinations.
	Single-Split-System HP (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	For each model of outdoor unit, at a minimum, a non-ducted ''tested combination.'' For any model of outdoor unit also sold with models of ducted indoor units, a ducted ''tested combination.'' When determining represented values on or after the compliance date of any amended energy conservation standards, the ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (i.e., conventional, mid-static, or low-static). Additional representations are allowed, as described in paragraph (d)(3) of this section.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For each model of outdoor unit, an SDHV ''tested combination.'' Additional representations are allowed, as described in paragraph (d)(3) of this section.
Indoor Unit Only Distributed in Commerce by ICM (Independent Coil Manufacturer).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Single-Split-System Heat Pump (including Space-Constrained and SDHV).	
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For a model of indoor unit within each basic model, a SDHV ''tested combination.'' Additional representations are allowed, as described in section (d)(3)(ii) of this section.
Outdoor Unit with no Match		Every model of outdoor unit distributed in commerce (tested with a model of coil-only indoor unit as specified in paragraph (c)(2) of this section).

(2) *Refrigerants.* (i) If a model of outdoor unit (used in a single-split, multi-split, multi-circuit, multi-head mini-split, and/or outdoor unit with no match system) is distributed in commerce and approved for use with multiple refrigerants, a manufacturer must determine all represented values for that model using each refrigerant that can be used in an individual combination of the basic model (including outdoor units with no match or ''tested combinations''). This requirement may apply across the listed categories in table 1 to paragraph (b)(1) of this section. A refrigerant is considered approved for use if it is listed on the nameplate of the outdoor unit. If any of the refrigerants approved for use is HCFC–22 or has a 95 °F midpoint saturation absolute pressure that is ±18 percent of the 95 °F saturation absolute pressure for HCFC–22, or if there are no refrigerants designated as approved for use, a manufacturer must determine represented values (including SEER2, HSPF2, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match. If a model of outdoor unit is not charged with a specified refrigerant from the point of manufacture or if the unit is shipped requiring the addition of more than two pounds of refrigerant to meet the charge required for testing per Section 5.1.8 of AHRI 210/240–2023 (incorporated by reference, see § 429.4) (unless either {a} the factory charge is equal to or greater than 70 percent of the outdoor unit internal volume multiplied by the liquid density of refrigerant at 95 °F or {b} an A2L refrigerant is approved for use and listed in the certification report), a manufacturer must determine represented values (including SEER2, HSPF2, cooling capacity, and heating capacity, as applicable) for, at a minimum, an outdoor unit with no match.

(ii) If a model is approved for use with multiple refrigerants, a manufacturer may make multiple separate representations for the performance of that model (all within the same individual combination or outdoor unit with no match) using the multiple

approved refrigerants. In the alternative, manufacturers may certify the model (all within the same individual combination or outdoor unit with no match) with a single representation, provided that the represented value is no more efficient than its performance using the least-efficient refrigerant. A single representation made for multiple refrigerants may not include equipment in multiple categories or equipment subcategories listed in table 1 to paragraph (b)(1) of this section.

(3) *Limitations for represented values of individual combinations.* Paragraph (b)(3)(i) of this section explains the limitations for represented values of individual combinations (or ''tested combinations'').

(i) *Multiple product classes.* Models of outdoor units that are rated and distributed in individual combinations that span multiple product classes must be tested, rated, and certified pursuant to paragraph (b) of this section as compliant with the applicable standard for each product class.

(ii) Reserved.

(4) *Requirements.* All represented values under paragraph (b) of this section must be based on testing in accordance with the requirements in paragraph (c) of this section or the application of an AEDM or other methodology as allowed in paragraph (d) of this section.

(c) *Units tested*—(1) *General.* The general requirements of § 429.11 apply to air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h, and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h; and

(2) *Sampling plans and represented values.* For individual models (for single-package systems) or individual combinations (for split-systems, including ''tested combinations'' for multi-split, multi-circuit, and multi-head mini-split systems) with represented values determined through testing, each individual model/combination (or ''tested combination'') must have a sample of sufficient size tested in accordance with the applicable provisions of this subpart. For heat pumps (other than heating-only heat pumps), all units of the sample population must be tested in both the cooling and heating modes and the results used for determining all representations. The represented values for any individual model/combination must be assigned such that:

(i) *SEER2 and HSPF2.* Any represented value of the energy efficiency or other measure of energy consumption for which consumers would favor higher values shall be less than or equal to the lower of:

(A) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the ith sample; or,

(B) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix A of this subpart). Round represented values of SEER2 and HSPF2 to the nearest 0.05.

(ii) *Cooling Capacity and Heating Capacity.* The represented values of cooling capacity and heating capacity must each be a self-declared value that is:

(A) Less than or equal to the lower of:

(*1*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; or,

(*2*) The lower 90 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.90}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.90}$ is the t statistic for a 90 percent one-tailed confidence interval with n-1 degrees of freedom (from appendix D of this part).

(B) Rounded according to:

(*1*) The nearest 100 Btu/h if cooling capacity or heating capacity is less than 20,000 Btu/h,

(*2*) The nearest 200 Btu/h if cooling capacity or heating capacity is greater than or equal to 20,000 Btu/h but less than 38,000 Btu/h, and

(*3*) The nearest 500 Btu/h if cooling capacity or heating capacity is greater than or equal to 38,000 Btu/h and less than 65,000 Btu/h.

(d) *Determination of represented values*—(1) *All basic models except outdoor units with no match and multi-split systems, multi-circuit systems, and multi-head mini-split systems.* For every individual model/combination within a basic model, either—

(i) A sample of sufficient size, comprised of production units or representing production units, must be tested as complete systems with the resulting represented values for the individual model/combination obtained in accordance with paragraphs (c)(1) and (2) of this section; or

(ii) The represented values of the measures of energy efficiency or energy consumption through the application of an AEDM in accordance with paragraph (e) of this section and § 429.70.

(2) *Outdoor units with no match.* All models of outdoor units with no match within a basic model must be tested with a model of coil-only indoor unit meeting the requirements of Section 5.1.6.2 of AHRI 210/240–2023. Models of outdoor units with no match may not be rated with an AEDM, other than to determine the represented values for models using approved refrigerants other than the one used in testing.

(3) *For multi-split systems, multi-circuit systems, and multi-head mini-split systems.* The following applies:

(i) For each non-SDHV basic model, at a minimum, a manufacturer must test the model of outdoor unit with a ''tested combination'' composed entirely of non-ducted indoor units. For any models of outdoor units also sold with models of ducted indoor units, a manufacturer must test a second ''tested combination'' composed entirely of ducted indoor units (in addition to the non-ducted combination). The ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (*i.e.,* conventional, mid-static, or low-static).

(ii) If a manufacturer chooses to make representations of a variety of a basic model (*i.e.,* conventional, low static, or mid-static) other than a variety for which a representation is required under paragraph (b)(1) of this section the manufacturer must conduct testing of a tested combination according to the requirements in paragraphs (c)(1) and (2) of this section.

(iii) For basic models that include mixed combinations of indoor units (*i.e.,* combinations that are comprised of any two of the following varieties—non-ducted, low-static, mid-static, and conventional ducted indoor units), the represented value for the mixed combination is the mean of the represented values for the individual component combinations as determined in accordance with paragraphs (c)(1) and (2) and (d)(3)(i) and (ii) of this section.

(iv) For each SDHV basic model distributed in commerce by an OUM, the OUM must, at a minimum, test the model of outdoor unit with a ''tested combination'' composed entirely of SDHV indoor units. For each SDHV basic model distributed in commerce by an ICM, the ICM must test the model of indoor unit with a ''tested combination'' composed entirely of SDHV indoor units, where the outdoor unit is the least efficient model of outdoor unit with which the SDHV indoor unit will be paired. The least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER2 combination as certified by the outdoor unit manufacturer. If there are multiple outdoor unit models with the same lowest SEER2 represented value, the indoor coil manufacturer may select one for testing purposes.

(v) For basic models that include SDHV and an indoor unit of another variety (*i.e.,* non-ducted, low-static, mid-static, and conventional ducted), the represented value for the mixed SDHV/other combination is the mean of the represented values for the SDHV and other tested combination as determined in accordance with paragraphs (c)(1) and (2) and paragraphs (d)(3)(i) through (ii) of this section.

(vi) All other individual combinations of models of indoor units for the same model of outdoor unit for which the manufacturer chooses to make representations must be rated as separate basic models, and the provisions of paragraphs (c)(1) and (2) and (d)(3)(i) through (v) of this section apply.

(e) *Alternative efficiency determination methods.* In lieu of testing, represented values of efficiency or consumption may be determined through the application of an AEDM pursuant to the requirements of § 429.70(l) and the provisions of this section.

(1) *Energy efficiency.* Any represented value of the SEER2, HSPF2, or other measure of energy efficiency of an individual model/combination for which consumers would favor higher values must be less than or equal to the output of the AEDM but no less than the standard.

(2) *Cooling capacity.* The represented value of cooling capacity of an individual model/combination must be no greater than the cooling capacity output simulated by the AEDM.

(3) *Heating capacity.* The represented value of heating capacity of an individual model/combination must be no greater than the heating capacity output simulated by the AEDM.

(f) *Certification reports.* This paragraph specifies the information that must be included in a certification report.

(1) The requirements of § 429.12; and

(2) Pursuant to § 429.12(b)(13), for each individual model (for single-package systems) or individual combination (for split-systems, including outdoor units with no match and ''tested combinations'' for multi-split, multi-circuit, and multi-head mini-split systems), a certification report must include the following public equipment-specific information:

(i) Commercial package air conditioning equipment that is air-cooled with a cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)), and the rated cooling capacity in British thermal units per hour (Btu/h).

(ii) Commercial package heating equipment that is air-cooled with a cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/Wh)), and the rated cooling capacity in British thermal units per hour (Btu/h).

(iii) Variable refrigerant flow multi-split air conditioners that are air-cooled with rated cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh)) and rated cooling capacity in British thermal units per hour (Btu/h).

(iv) Variable refrigerant flow multi-split heat pumps that are air-cooled with rated cooling capacity of less than 65,000 Btu/h (3-Phase): The seasonal energy efficiency ratio (SEER in British thermal units per Watt-hour (Btu/Wh), the heating seasonal performance factor (HSPF in British thermal units per Watt-hour (Btu/Wh), and rated cooling capacity in British thermal units per hour (Btu/h).

(3) Pursuant to § 429.12(b)(13), for each individual model/combination (including outdoor units with no match and ''tested combinations''), a certification report must include supplemental information submitted in PDF format. The equipment-specific, supplemental information must include any additional testing and testing set up instructions (*e.g.,* charging instructions) for the basic model; identification of all special features that were included in rating the basic model; and all other information (*e.g.,* operational codes or component settings) necessary to operate the basic model under the required conditions specified by the relevant test procedure. A manufacturer may also include with a certification report other supplementary items in PDF format (*e.g.,* manuals) for DOE consideration in performing testing under subpart C of this part. The equipment-specific, supplemental information must include at least the following:

(i) Air cooled commercial package air conditioning equipment with a cooling capacity of less than 65,000 Btu/h (3-phase): The nominal cooling capacity in British thermal units per hour (Btu/h); rated airflow in standard cubic feet per minute (SCFM) for each fan coil; rated static pressure in inches of water; refrigeration charging instructions (*e.g.,* refrigerant charge, superheat and/or subcooling temperatures); frequency or control set points for variable speed components (*e.g.,* compressors, VFDs); required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model.

(ii) Commercial package heating equipment that is air-cooled with a cooling capacity of less than 65,000 Btu/h (3-phase): The nominal cooling capacity in British thermal units per hour (Btu/h); rated heating capacity in British thermal units per hour (Btu/h); rated airflow in standard cubic feet per minute (SCFM) for each fan coil; rated static pressure in inches of water; refrigeration charging instructions (*e.g.,* refrigerant charge, superheat and/or subcooling temperatures); frequency or control set points for variable speed components (*e.g.,* compressors, VFDs); required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor

(to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model.

(iii) Variable refrigerant flow multi-split air conditioners that are air-cooled with a cooling capacity of less than 65,000 Btu/h (3-Phase): The nominal cooling capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (SCFM) for each indoor unit; rated static pressure in inches of water; compressor frequency set points; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

(iv) Variable refrigerant flow multi-split heat pumps that are air-cooled with a rated cooling capacity of less than 65,000 Btu/h (3-Phase): The nominal cooling capacity in British thermal units per hour (Btu/h); rated heating capacity in British thermal units per hour (Btu/h); outdoor unit(s) and indoor units identified in the tested combination; components needed for heat recovery, if applicable; rated airflow in standard cubic feet per minute (SCFM) for each indoor unit; rated static pressure in inches of water; compressor frequency set points; required dip switch/control settings for step or variable components; a statement whether the model will operate at test conditions without manufacturer programming; any additional testing instructions, if applicable; if a variety of motors/drive kits are offered for sale as options in the basic model to account for varying installation requirements, the model number and specifications of the motor (to include efficiency, horsepower, open/closed, and number of poles) and the drive kit, including settings, associated with that specific motor that were used to determine the certified rating; and which, if any, special features were included in rating the basic model. Additionally, upon DOE request, the manufacturer must provide a layout of the system set-up for testing including charging instructions consistent with the installation manual.

■ 6. Amend § 429.70 by:

■ a. Revising the paragraph (c) heading, and paragraph (c)(1) introductory text;

■ b. Revising the tables in paragraphs (c)(2)(iv) and (c)(5)(vi)(B); and

■ c. Adding paragraph (l).

The revisions and addition read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) *Alternative efficiency determination method (AEDM) for commercial HVAC & WH products (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 Btu/h cooling capacity), and commercial refrigerators, freezers, and refrigerator-freezers*—(1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section unless:

* * * * *

(2) * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (c)(2)(iv)

Validation class	Minimum number of distinct models that must be tested per AEDM
(A) Commercial HVAC validation classes	
Air-Cooled, Split and Packaged ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.
Air-Cooled, Variable Refrigerant Flow ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
(B) Commercial water heater validation classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.

TABLE 1 TO PARAGRAPH (c)(2)(iv)—Continued

Validation class	Minimum number of distinct models that must be tested per AEDM
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial packaged boilers validation classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial furnace validation classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial refrigeration equipment validation classes	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * *

(5) * * *

(vi) * * *

(B) * * *

TABLE 2 TO PARAGRAPH (c)(5)(vi)(B)

Equipment	Metric	Applicable tolerance
Commercial Packaged Boilers	Combustion Efficiency	5% (0.05)
	Thermal Efficiency	5% (0.05)
Commercial Water Heaters or Hot Water Supply Boilers	Thermal Efficiency	5% (0.05)
	Standby Loss	10% (0.1)
Unfired Storage Tanks	R-Value	10% (0.1)
Air-Cooled, Split and Packaged ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities.	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Water-Source HPs, All Capacities	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Single Package Vertical ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
Packaged Terminal ACs and HPs	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)

TABLE 2 TO PARAGRAPH (c)(5)(vi)(B)—Continued

Equipment	Metric	Applicable tolerance
Variable Refrigerant Flow ACs and HPs (Excluding Air-Cooled, Three-phase with Less than 65,000 Btu/h Cooling Capacity).	Energy Efficiency Ratio	5% (0.05)
	Coefficient of Performance	5% (0.05)
	Integrated Energy Efficiency Ratio	10% (0.1)
Computer Room Air Conditioners	Sensible Coefficient of Performance	5% (0.05)
Direct Expansion-Dedicated Outdoor Air Systems	Integrated Seasonal Coefficient of Performance 2	10% (0.1)
	Integrated Seasonal Moisture Removal Efficiency 2	10% (0.1)
Commercial Warm-Air Furnaces	Thermal Efficiency	5% (0.05)
Commercial Refrigeration Equipment	Daily Energy Consumption	5% (0.05)

* * * * *

(l) *Alternate Efficiency Determination Method (AEDM) for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 Btu/h cooling capacity.*

(1) *Applicability.* (i) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF), representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in § 429.70(c) of this title as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

(ii) For air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h subject to standards in terms of seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2) metrics, representations with respect to the energy use or efficiency, including compliance certifications, are subject to the requirements in this section. If manufacturers choose to certify compliance with any standards in terms of SEER2 and HSPF2 prior to the applicable compliance date for those standards, the requirements of this section must be followed.

(2) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to an individual model/combination to determine its represented values (SEER2 and HSPF2, as applicable) pursuant to this section unless authorized pursuant to § 429.67(e) and:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the individual model or combination (SEER2 and HSPF2, as applicable) as measured by the applicable DOE test procedure; and

(ii) The manufacturer has validated the AEDM in accordance with paragraph (i)(3) of this section.

(3) *Validation of an AEDM.* For manufacturers whose models of air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h or air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h are otherwise identical to their central air conditioner and heat pump models (meaning differing only in phase or voltage of the electrical system and the phase or voltage of power input for which the motors and compressors are designed) and who have validated an AEDM for the otherwise identical central air conditioners and heat pumps under § 429.70(e)(2), no additional validation is required. For manufacturers whose models of air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h or air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h who have not validated an AEDM for otherwise identical central air conditioners and heat pumps under § 429.70(e)(2) must, before using an AEDM, validate the AEDM's accuracy and reliability as follows:

(i) *Minimum testing.* The manufacturer must test a single unit each of two basic models in accordance with paragraph (i)(3)(iii) of this section. Using the AEDM, calculate the energy use or efficiency for each of the tested individual models/combinations within each basic model. Compare the represented value based on testing and the AEDM energy use or efficiency output according to paragraph (i)(3)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and reliability of the AEDM and that their representations are appropriate and the models being distributed in commerce meet the applicable standards, regardless of the amount of testing required in this paragraph.

(ii) *Individual model/combination tolerances.* This paragraph (i)(3)(ii) provides the tolerances applicable to individual models/combinations rated using an AEDM.

(A) The predicted represented values for each individual model/combination calculated by applying the AEDM may not be more than four percent greater (for measures of efficiency) or less (for measures of consumption) than the values determined from the corresponding test of the individual model/combination.

(B) The predicted energy efficiency or consumption for each individual model/combination calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard.

(iii) *Additional test unit requirements.* (A) Each AEDM must be supported by test data obtained from physical tests of current individual models/combinations; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 431 of this chapter; and

(C) Each test must have been performed in accordance with the applicable DOE test procedure with which compliance is required at the time the individual models/combinations used for validation are distributed in commerce.

(4) *AEDM records retention requirements.* If a manufacturer has used an AEDM to determine

representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Product information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (i)(3) of this section; and

(iii) Product information and AEDM calculations for each individual model/combination to which the AEDM has been applied.

(5) *Additional AEDM requirements.* If requested by the Department, the manufacturer must:

(i) Conduct simulations before representatives of the Department to predict the performance of particular individual models/combinations;

(ii) Provide analyses of previous simulations conducted by the manufacturer; and/or

(iii) Conduct certification testing of individual models or combinations selected by the Department.

(6) *AEDM verification testing.* DOE may use the test data for a given individual model/combination generated pursuant to § 429.104 to verify the represented value determined by an AEDM as long as the following process is followed:

(i) *Selection of units.* DOE will obtain one or more units for test from retail, if available. If units cannot be obtained from retail, DOE will request that a unit be provided by the manufacturer;

(ii) *Lab requirements.* DOE will conduct testing at an independent, third-party testing facility of its choosing. In cases where no third-party laboratory is capable of testing the equipment, testing may be conducted at a manufacturer's facility upon DOE's request.

(iii) *Testing.* At no time during verification testing may the lab and the manufacturer communicate without DOE authorization. If, during test set-up or testing, the lab indicates to DOE that it needs additional information regarding a given individual model or combination in order to test in accordance with the applicable DOE test procedure, DOE may organize a meeting between DOE, the manufacturer, and the lab to provide such information.

(iv) *Failure to meet certified value.* If an individual model/combination tests worse than its certified value (*i.e.,* lower than the certified efficiency value or higher than the certified consumption value) by more than 5 percent, or the test results in cooling capacity that is lower than its certified cooling capacity, DOE will notify the manufacturer. DOE will provide the manufacturer with all documentation related to the test set up, test conditions, and test results for the unit. Within the timeframe allotted by DOE, the manufacturer may present any and all claims regarding testing validity.

(v) *Tolerances.* This paragraph specifies the tolerances DOE will permit when conducting verification testing.

(A) For consumption metrics, the result from a DOE verification test must be less than or equal to 1.05 multiplied by the certified represented value.

(B) For efficiency metrics, the result from a DOE verification test must be greater than or equal to 0.95 multiplied by the certified represented value.

(vi) *Invalid represented value.* If, following discussions with the manufacturer and a retest where applicable, DOE determines that the verification testing was conducted appropriately in accordance with the DOE test procedure, DOE will issue a determination that the represented values for the basic model are invalid. The manufacturer must conduct additional testing and re-rate and re-certify the individual models/combinations within the basic model that were rated using the AEDM based on all test data collected, including DOE's test data.

(vii) *AEDM use.* This paragraph (i)(6)(vii) specifies when a manufacturer's use of an AEDM may be restricted due to prior invalid represented values.

(A) If DOE has determined that a manufacturer made invalid represented values on individual models/combinations within two or more basic models rated using the manufacturer's AEDM within a 24-month period, the manufacturer must test the least efficient and most efficient individual model/combination within each basic model in addition to the individual model/combination specified in § 429.16(b)(2). The 24-month period begins with a DOE determination that a represented value is invalid through the process outlined in paragraphs (i)(6)(i) through (vi) of this section.

(B) If DOE has determined that a manufacturer made invalid represented values on more than four basic models rated using the manufacturer's AEDM within a 24-month period, the manufacturer may no longer use an AEDM.

(C) If a manufacturer has lost the privilege of using an AEDM, the manufacturer may regain the ability to use an AEDM by:

(*1*) Investigating and identifying cause(s) for failures;

(*2*) Taking corrective action to address cause(s);

(*3*) Performing six new tests per basic model, a minimum of two of which must be performed by an independent, third-party laboratory from units obtained from retail to validate the AEDM; and

(*4*) Obtaining DOE authorization to resume use of an AEDM.

■ 7. Section 429.134 is amended by adding paragraph (y) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(y) *Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* The following provisions apply for assessment and enforcement testing of models subject to standards in terms of SEER2 and HSPF2 (as applicable).

(1) *Verification of cooling capacity.* The cooling capacity of each tested unit of the individual model (for single-package units) or individual combination (for split systems) will be measured pursuant to the test requirements of appendix F1 to subpart F of part 431. The mean of the cooling capacity measurement(s) (either the measured cooling capacity for a single unit sample or the average of the measured cooling capacities for a multiple unit sample) will be used to determine the applicable standards for purposes of compliance.

(2) *Verification of C_D value.* (i) For models other than models of outdoor units with no match, if manufacturers certify that they did not conduct the optional tests to determine the C^c and/or C^h value for an individual model (for single-package systems) or individual combination (for split systems), as applicable, the default value of C^c and/or C^h will be used as the basis for calculation of SEER2 or HSPF2 for each unit tested. If manufacturers certify that they conducted the optional tests to determine the value of C^c and/or C^h for an individual model (for single-package systems) or individual combination (for split systems), as applicable, the value of C^c and/or C^h will be measured pursuant to the test requirements of appendix F1 to subpart F of part 431 for each unit tested. The result for each unit tested (either the tested value or the default value, as selected according to the criteria for the cyclic test in section

4 of appendix F1 to subpart F of part 431) will be used as the basis for calculation of SEER2 or HSPF2 for that unit.

(ii) For models of outdoor units with no match, DOE will use the default value of Cc and/or Ch specified in the test procedure in appendix F1 to subpart F of part 431.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 8. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 9. Amend § 431.92 in the definition of *Basic model,* by revising paragraphs (5) and (7), and adding paragraph (8) to read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

* * * * *

Basic model includes:

* * * * *

(5) *Small, large, and very large air-cooled or water-cooled commercial package air conditioning and heating equipment (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h cooling capacity)* means all units manufactured by one manufacturer within a single equipment class, having the same or comparably performing compressor(s), heat exchangers, and air moving system(s) that have a common ''nominal'' cooling capacity.

* * * * *

(7) *Variable refrigerant flow systems (excluding air-cooled, three-phase, variable refrigerant flow air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h)* means all units manufactured by one manufacturer within a single equipment class, having the same primary energy source (*e.g.,* electric or gas), and which have the same or comparably performing compressor(s) that have a common ''nominal'' cooling capacity and the same heat rejection medium (*e.g.,* air or water) (includes VRF water source heat pumps).

(8) *Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h* and *air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h* means all units manufactured by one manufacturer, having the same primary energy source, and, which have essentially identical electrical, physical, and functional (or hydraulic) characteristics that affect energy consumption, energy efficiency, water consumption, or water efficiency; where essentially identical electrical, physical, and functional (or hydraulic) characteristics means:

(i) For split systems manufactured by outdoor unit manufacturers (OUMs): all individual combinations having the same model of outdoor unit, which means comparably performing compressor(s) [a variation of no more than five percent in displacement rate (volume per time) as rated by the compressor manufacturer, and no more than five percent in capacity and power input for the same operating conditions as rated by the compressor manufacturer], outdoor coil(s) [no more than five percent variation in face area and total fin surface area; same fin material; same tube material], and outdoor fan(s) [no more than ten percent variation in airflow and no more than twenty percent variation in power input];

(ii) For split systems having indoor units manufactured by independent coil manufacturers (ICMs): all individual combinations having comparably performing indoor coil(s) [plus or minus one square foot face area, plus or minus one fin per inch fin density, and the same fin material, tube material, number of tube rows, tube pattern, and tube size]; and

(iii) For single-package systems: all individual models having comparably performing compressor(s) [no more than five percent variation in displacement rate (volume per time) rated by the compressor manufacturer, and no more than five percent variations in capacity and power input rated by the compressor manufacturer corresponding to the same compressor rating conditions], outdoor coil(s) and indoor coil(s) [no more than five percent variation in face area and total fin surface area; same fin material; same tube material], outdoor fan(s) [no more than ten percent variation in outdoor airflow], and indoor blower(s) [no more than ten percent variation in indoor airflow, with no more than twenty percent variation in fan motor power input];

(iv) Except that,

(A) For single-package systems and single-split systems, manufacturers may instead choose to make each individual model/combination its own basic model provided the testing and represented value requirements in 10 CFR 429.67 of this chapter are met; and

(B) For multi-split, multi-circuit, and multi-head mini-split combinations, a basic model may not include both individual small-duct, high velocity (SDHV) combinations and non-SDHV combinations even when they include the same model of outdoor unit. The manufacturer may choose to identify specific individual combinations as additional basic models.

* * * * *

■ 10. Amend § 431.95 by:

■ a. Revising paragraph (b)(1);

■ b. Redesignating paragraphs (b)(2) through (8) as (b)(3) through (9);

■ c. Adding new paragraph (b)(2);

■ d. Revising newly redesignated paragraph (b)(8); and

■ e. Revising paragraph (c)(2).

The revisions and addition read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(1) ANSI/AHRI Standard 210/240–2008 (AHRI 210/240–2008), *2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment,* approved by ANSI on October 27, 2011, and updated by addendum 1 in June 2011 and addendum 2 in March 2012; IBR approved for § 431.96 and appendix F to this subpart.

(2) AHRI Standard 210/240–2023 (AHRI 210/240–2023), *2023 Standard for Performance Rating of Unitary Air-conditioning & Air-source Heat Pump Equipment,* copyright May 2020; IBR approved for appendix F1 to this subpart.

* * * * *

(8) ANSI/AHRI Standard 1230–2010 (AHRI 1230–2010), *2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment,* approved August 2, 2010, and updated by addendum 1 in March 2011; IBR approved for § 431.96 and appendices D and F to this subpart.

(c) * * *

(2) ANSI/ASHRAE Standard 37–2009 (''ANSI/ASHRAE 37–2009''), *Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,* ASHRAE approved June 24, 2009; IBR approved for § 431.96 and appendices A, B, D1, F1, G, and G1 to this subpart.

* * * * *

■ 11. Amend § 431.96 by revising Table 1 to paragraph (b), to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	Appendix F to this subpart [3].	None.
			SEER2 and HSPF2	Appendix F1 to this subpart [3].	None.
	Air-Cooled AC and HP.	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A of this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1.	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP.	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<65,000 Btu/h	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <760,000 Btu/h.	SCOP	ASHRAE 127–2007 (omit section 5.11).	Paragraphs (c) and (e).
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase).	SEER	Appendix F to this subpart [3].	None.
			SEER2	Appendix F1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase).	SEER and HSPF	Appendix F to this subpart [3].	None.
			SEER2 and HSPF2	Appendix F1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D of this subpart [3].	None.
		≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP	Appendix D1 of this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D of this subpart [3].	None.
		<760,000 Btu/h	IEER and COP	Appendix D1 of this subpart [3].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix G to this subpart [3].	None.

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS—Continued

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
			EER, IEER, and COP	Appendix G1 to this subpart [3].	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B of this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems
[3] For equipment with multiple appendices listed in table 1, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

Appendix E to Subpart F of Part 431 [Reserved]

■ 12. Add reserved appendix E to subpart F of part 431.

■ 13. Add appendix F to subpart F of part 431 to read as follows:

Appendix F to Subpart F of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air-Wooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant standard from § 431.97 as that standard appeared in the January 1, 2022, edition of 10 CFR parts 200–499. Specifically, representations must be based upon results generated either under this appendix or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2021.

For any amended standards for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h that rely on SEER2 and HSPF2 published after January 1, 2021, manufacturers must use the results of testing under appendix F1 to determine compliance. Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendices F or F1) when determining compliance with the relevant standard. Manufacturers may also use appendix F1 to certify compliance with any amended standards that rely on SEER2 and HSPF2 prior to the applicable compliance date for those standards.

1. Incorporation by Reference

DOE incorporated by reference in § 431.95, the entire standard for ANSI/AHRI 210/240–2008 and ANSI/AHRI 1230–2010. However, certain enumerated provisions of those standards, as set forth in this section 1, are inapplicable. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 ANSI/AHRI 210/240–2008:

(a) Section 6.5—*Tolerances*

(b) Reserved.

1.2 ANSI/AHRI 1230–2010:

(a) Section 5.1.2—*Manufacturer involvement*

(b) Section 6.6—*Verification testing and uncertainty*

2. General

2.1 Air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h. Determine the seasonal energy efficiency ratio (SEER) and heating seasonal performance factor (HSPF) (as applicable) in accordance with ANSI/AHRI 210/240–2008. Sections 3 to 6 of this appendix provide additional instructions for determining SEER and HSPF.

2.2 Air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h. Determine the SEER and HSPF (as applicable) in accordance with ANSI/AHRI 1230–2010.

Sections 3 through 6 of this appendix provide additional instructions for determining SEER and HSPF.

3. *Optional break-in period.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in this appendix. A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this period's duration as part of the information in the supplemental testing instructions under 10 CFR 429.43.

4. *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Sections 3.1 through 3.3 of this appendix provide specifications for addressing key information typically found in the installation and operation manuals.

4.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value shall be used.

4.2. The airflow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton shall be used.

4.3. For air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h, the test set-up and the fixed compressor speeds (*i.e.,* the maximum, minimum, and any intermediate speeds used for testing) should be recorded and maintained as part of the test data underlying the certified ratings that is required to be maintained under 10 CFR 429.71.

5. *Refrigerant line length corrections for air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* For test setups where it is physically impossible for the laboratory to use the required line length listed in Table 3 of ANSI/AHRI 1230–2010, then the actual refrigerant line length used by the laboratory may exceed the required length and the following cooling capacity correction factors are applied:

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction (%)
0≤X ≤20	0≤Y ≤6.1	1
20≤X ≤40	6.1≤Y ≤12.2 ...	2
40≤X ≤60	12.2≤Y ≤18.3	3
60≤X ≤80	18.3≤Y ≤24.4	4
80≤X ≤100	24.4≤Y ≤30.5	5

Piping length beyond minimum, X (ft)	Piping length beyond minimum, Y (m)	Cooling capacity correction (%)
100 >X ≤120	30.5≤Y ≤36.6	6

6. *Manufacturer involvement in assessment or enforcement testing for air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h.* A manufacturer's representative will be allowed to witness assessment and/or enforcement testing. The manufacturer's representative will be allowed to inspect and discuss set-up only with a DOE representative and adjust only the modulating components during testing in the presence of a DOE representative that are necessary to achieve steady-state operation. Only previously documented specifications for set-up as specified under sections 3 and 4 of this appendix will be used.

■ 14. Add appendix F1 to subpart F of part 431 to read as follows:

Appendix F1 to Subpart F of Part 431—Uniform Test Method for the Measurement of Energy Consumption of Air-Cooled, Three-Phase, Small Commercial Package Air Conditioning and Heating Equipment With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Three-Phase, Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h

Note: Manufacturers must use the results of testing under this appendix to determine compliance with any amended standards for air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 Btu/h and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with a cooling capacity of less than 65,000 Btu/h provided in § 431.97 that are published after January 1, 2021, and that rely on seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2). Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendices F or F1) when determining compliance with the relevant standard. Manufacturers may also use this appendix to certify compliance with any amended standards that rely on SEER2 and HSPF2 prior to the applicable compliance date for those standards.

1. *Incorporation by Reference.* DOE incorporated by reference in § 431.95, the entire standard for AHRI 210/240–2023 and ANSI/ASHRAE 37–2009. However, certain enumerated provisions of AHRI 210/240–2023 and ANSI/ASHRAE 37–2009, as set forth in this section 1, are inapplicable. To the extent there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE.

1.1. AHRI 210/240–2023:

(a) Section 6 Rating Requirements—6.1 Standard Ratings—6.1.8 Tested Combinations or Tested Units

(b) Section 6 Rating Requirements—6.2 Application Ratings

(c) Section 6 Rating Requirements—6.4 Ratings

(d) Section 6 Rating Requirements—6.5 Uncertainty and Variability

(e) Section 7—Minimum Data Requirements for Published Ratings

(f) Section 8—Operating Requirements

(g) Section 9—Marking and Nameplate Data

(h) Section 10—Conformance Conditions

(i) Appendix C—Certification of Laboratory Facilities Used to Determine Performance of Unitary Air-Conditioning & Air-Source Heat Pump Equipment—Informative

(j) Appendix F—ANSI/ASHRAE Standard 116–2010 Clarifications/Exceptions—Normative—F15.2 and F17

(k) Appendix G—Unit Configuration for Standard Efficiency Determination—Normative

(l) Appendix H—Off-Mode Testing—Normative

(m) Appendix I Verification Testing—Normative

1.2. ANSI/ASHRAE 37–2009:

(a) Section 1—Purpose

(b) Section 2—Scope

(c) Section 4—Classification

2. *General.* Determine the seasonal energy efficiency ratio 2 (SEER2) and heating seasonal performance factor 2 (HSPF2) (as applicable) in accordance with AHRI 210/240–2023 and ANSI/ASHRAE 37–2009. Sections 3 and 4 to this appendix provide additional instructions for determining SEER2 and HSPF2.

3. *Energy Measurement Accuracy.* The Watt-hour (W·h) measurement system(s) shall be accurate within ± 0.5 percent or 0.5 W·h, whichever is greater, for both ON and OFF cycles. If two measurement systems are used, then the meters shall be switched within 15 seconds of the start of the OFF cycle and switched within 15 seconds prior to the start of the ON cycle.

4. *Cycle Stability Requirements.* Conduct three complete compressor OFF/ON cycles. Calculate the degradation coefficient CD for each complete cycle. If all three CD values are within 0.02 of the average CD then stability has been achieved, and the highest CD value of these three shall be used. If stability has not been achieved, conduct additional cycles, up to a maximum of eight cycles total, until stability has been achieved between three consecutive cycles. Once stability has been achieved, use the highest CD value of the three consecutive cycles that establish stability. If stability has not been achieved after eight cycles, use the highest CD from cycle one through cycle eight, or the default CD, whichever is lower.

[FR Doc. 2022–26418 Filed 12–15–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 87 Friday,
No. 241 December 16, 2022

Part IV

Department of Health and Human Services

42 CFR Part 8
Medications for the Treatment of Opioid Use Disorder; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

42 CFR Part 8

RIN 0930–AA39

Medications for the Treatment of Opioid Use Disorder

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Health and Human Services (HHS or ''the Department'') is issuing this notice of proposed rulemaking (NPRM) to solicit public comment on its proposal to modify its regulations regarding medications for the treatment of opioid use disorder.

DATES: Comments due on or before February 14, 2023.

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- *Federal eRulemaking Portal:* You may submit electronic comments at *https://www.regulations.gov.* Follow the instructions at *https://www.regulations.gov* for submitting electronic comments. Attachments should be in Microsoft Word or Portable Document Format (PDF), and please refer to RIN 0930–AA39 in all comments.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: The Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, 5600 Fishers Lane, Room 13–E–30, Rockville, MD 20857.

Note: Due to the COVID–19 pandemic, SAMHSA notes receipt of mail may be delayed and encourages submission of comments electronically to the docket.

Inspection of Public Comments: All comments received by the accepted methods and due date specified above may be posted without change to content to *https://www.regulations.gov,* which may include personal information provided about the commenter, and such posting may occur after the closing of the comment period. However, the Department may redact certain content from comments before posting, including threatening language, hate speech, profanity, graphic images, or individually identifiable information about a third-party individual other than the commenter. Because of the large number of public comments normally received on **Federal Register** documents, SAMHSA is not able to provide individual acknowledgments of receipt. Please allow sufficient time for mailed comments to be received timely in the event of delivery or security delays. Comments submitted by fax or email, and those submitted after the comment period will not be accepted.

FOR FURTHER INFORMATION CONTACT: Robert Baillieu, MD, MPH, Physician and Senior Advisor, SAMHSA/CSAT, 5600 Fishers Lane, Room 13–E–30, Rockville, MD 20857, Phone: 202–923–0996, Email: *Robert.Baillieu@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: The discussion below includes an Executive Summary and overview describing the need for the proposed rule changes, a section-by-section description of the proposed modifications, and the impact statement and other required regulatory analyses. The Department solicits public comment on all aspects of the proposed rule. Persons interested in commenting on the provisions of the proposed rules can assist the Department by preceding discussion of any particular provision or topic with a citation to the section of the proposed rule being discussed.

Executive Summary

A. Overview

The Controlled Substances Act (CSA), under 21 U.S.C. 823(g)(1), requires ''practitioners who dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment'' to ''obtain annually a separate registration for that purpose'' except as provided under 21 U.S.C. 823(g)(2). Section 823(g)(1) also provides that, ''[t]he Attorney General shall register an applicant to dispense narcotic drugs to individuals for maintenance treatment or detoxification treatment (or both)'' if, among other things, the applicant ''is determined by the Secretary to be qualified (under standards established by the Secretary [of HHS]) to engage in the treatment with respect to which registration is sought[,]'' and ''if the Secretary determines that the applicant will comply with standards established by the Secretary (after consultation with the Attorney General) respecting the quantities of narcotic drugs which may be provided for unsupervised use by individuals in such treatment.'' 21 U.S.C. 823(g)(1)(A)–(C). The standards authorized under section 823(g)(1) have been published as regulations under part 8 of title 42 of the Code of Federal Regulations (42 CFR part 8 or ''part 8'').[1] Among other things, these regulations establish the procedures by which the Secretary of HHS determines whether a program is qualified to dispense opioid agonist medications in the treatment of opioid use disorders, and standards regarding the appropriate quantities of opioid agonist medications that may be provided for unsupervised use by individuals undergoing such treatment. See 42 CFR 8.1. In addition, ''a program or practitioner engaged in opioid treatment of individuals with an opioid agonist treatment medication'' that is also ''registered under 21 U.S.C. 823(g)(1)'' is described as an ''Opioid Treatment Program'' (OTP). See 42 CFR 8.2.[2] The statue, at 21 U.S.C. 823(g)(2), also authorizes a waiver from the registration requirements of 21 U.S.C. 823(g)(1) for qualifying practitioners seeking to dispense or prescribe schedule III, IV, or V controlled substances that are Food and Drug Administration (FDA)-approved for use in ''maintenance and detoxification treatment.'' Practitioners with a waiver under section 823(g)(2) are limited in the number of patients with opioid use disorder they may treat at any one time, and depending on the practitioner's experience or qualifications, this statutory limitation is set at either 30, 100, or 275. See 21 U.S.C. 823(g)(2)(B)(iii). The Secretary is also authorized to change the patient limitations by regulation, and qualifying practitioners must satisfy the requirements of 42 CFR 8.610 through 8.655 ''(or successor regulations)'' in order to treat up to 275 patients, which is the maximum number under existing law. See 21 U.S.C. 823(g)(2)(B)(iii)(II)(dd).[3]

In this NPRM, the Department proposes to modify certain provisions of part 8 to update OTP accreditation and certification standards, treatment standards for the provision of medications for opioid use disorder (MOUD) as dispensed by OTPs, and requirements for individual

[1] For readability, the Department refers to specific sections of 42 CFR part 8 using a shortened citation with the ''§'' symbol except where necessary to distinguish title 42 citations from other CFR titles, such as title 45 CFR, and in footnotes where the full reference is used.

[2] The terms ''narcotic drugs'' and ''detoxification treatment'' included in this paragraph are found in statute. SAMHSA recognizes that these terms can be stigmatizing for some people, and not aligned with current terminology. SAMHSA uses ''opioid agonist medications'' (see Treatment Improvement Protocol (TIP) 63) as an alternative to ''narcotic drugs'' and ''withdrawal management'' as the alternative to ''detoxification treatment''.

[3] *See https://www.govinfo.gov/content/pkg/USCODE-2016-title21/html/USCODE-2016-title21-chap13-subchapI-partC-sec823.htm.*

practitioners eligible to dispense (including by prescribing) certain types of MOUD with a waiver under 21 U.S.C. 823(g)(2).

The proposal draws on experience from the COVID–19 Public Health Emergency (PHE), as well as more than 20 years of practice-based research. The COVID–19 PHE necessitated changes to policy guidance and legal exemptions to protect the public's health, promote social distancing and to preserve patient and staff safety among OTPs. In March 2020, SAMHSA published flexibilities in the provision of unsupervised doses of methadone and the use of telehealth in initiating buprenorphine.[4] These flexibilities represented the first substantial change to OTP treatment and medication delivery standards in over 20 years. A growing body of research has demonstrated that these flexibilities facilitate access to treatment and eliminate criteria that promote stigma and discourage people from accessing care from OTPs.

This proposed rule not only makes these flexibilities permanent, but also updates standards to reflect an accreditation and treatment environment that has evolved since part 8 went into effect in 2001. Accordingly, the Department is proposing to update part 8 to: promote practitioner autonomy; remove stigmatizing or outdated language; create a patient-centered perspective; and reduce barriers to receiving care. These elements have been identified in the literature and in feedback as being essential to promoting effective treatment in OTPs.[5] [6] [7]

To this end, the definition of a qualifying practitioner has been expanded to include a provider who is appropriately licensed by the state to prescribe (including dispense) covered medications and who possesses a waiver under 21 U.S.C. 823(g)(2). Admission criteria have been updated to remove significant barriers to entry, such as the one-year requirement for opioid use disorder (OUD),[8] while also defining the scope and purpose of the 'initial' and 'periodic' medical examinations. The proposed rule also includes new definitions to expand access to evidence-based practices such as split dosing, telehealth and harm reduction activities. Further to this, outdated terms such as 'detoxification' have been revised to remove stigmatizing language.

The Department promotes practitioner autonomy and individualized care by proposing to revise the provision containing the criteria for unsupervised doses of methadone. This includes removal of consideration of the length of time an individual has been in treatment, as well as rigid reliance on toxicology testing results that demonstrate complete and sustained abstinence from all substances prone to misuse. Based on the clinical judgment of the treating provider, patients may be eligible for unsupervised, take home doses of methadone upon entry into treatment. This recognizes the importance of the practitioner-patient relationship, and is consistent with modern treatment standards. It also allows for greater flexibility in creating plans of care that promote recovery activities such as employment, while also eliminating the barrier of frequent visits for individuals without access to reliable transportation.[9]

Accreditation and certification standards have been reviewed to codify the use of online/electronic forms, to eliminate types of certification that are no longer in use, and to update existing types of certification in a manner that reflects established practice. Part 8 has also been updated to facilitate information sharing between Accreditation Bodies and SAMHSA, particularly in those circumstances where there have been changes or violations in accreditation. The proposed rule also clarifies administrative issues pertaining to mobile medication units and interim treatment.

The proposed changes seek to make treatment in OTPs more accessible to patients, easier to deliver for providers and supportive of evidence-based and patient-centered care. In proposing these changes, SAMHSA has relied on published evidence, stakeholder feedback and the need to expand access to care in the face of a growing overdose epidemic, exacerbated by the COVID–19 PHE.[10] This is brought further into focus by the HHS declaration of a public health emergency for the opioid crisis which has been regularly renewed since 2017.[11] The proposed changes are expansive but are focused on permanently implementing existing flexibilities and updating practices. In this way, SAMHSA believes that much of what is proposed in the rule will not represent a significant burden for OTPs and, in fact, will offer many benefits to providers and patients. The proposed rule, therefore, supports OTPs in their on-going provision of equitable and evidence-based care to often marginalized patients with OUD. The proposed rule also is consistent with the HHS Overdose Prevention Strategy which calls for increasing access to and the uptake of evidence-based treatments for substance use disorders.[12]

B. Effective and Compliance Dates

The proposed effective date of a final rule would be 60 days after publication of the final rule and the compliance date would be 6 months after the effective date. Entities subject to the final rule would have until the compliance date to achieve compliance with this rule.

C. Summary of Major Proposals

The Department proposes the following changes to 42 CFR part 8 that revise, delete, replace, or add sections. This section summarizes major proposals in this NPRM. Additional proposed revisions are not listed here because they are not considered major.[13] All proposed changes are discussed in detail in section III of this NPRM:

---

[4] *See https://www.samhsa.gov/sites/default/files/otp-guidance-20200316.pdf* and *https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf.*

[5] Suen LW, Coe WH, Wyatt JP, Adams ZM, Gandhi M, Batchelor HM, Castellanos S, Joshi N, Satterwhite S, Pérez-Rodríguez R, Rodríguez-Guerra E, Albizu-Garcia CE, Knight KR, Jordan A. Structural Adaptations to Methadone Maintenance Treatment and Take-Home Dosing for Opioid Use Disorder in the Era of COVID–19. Am J Public Health. 2022 Apr;112(S2):S112–S116. doi: 10.2105/AJPH.2021.306654. PMID: 35349324; PMCID: PMC8965183.

[6] Kleinman MB, Felton JW, Johnson A, Magidson JF. ''I have to be around people that are doing what I'm doing'': The importance of expanding the peer recovery coach role in treatment of opioid use disorder in the face of COVID–19 health disparities. J Subst Abuse Treat. 2021 Mar;122:108182. doi: 10.1016/j.jsat.2020.108182. Epub 2020 Oct 21. PMID: 33160763; PMCID: PMC7577312.

[7] Suen LW, Castellanos S, Joshi N, Satterwhite S, Knight KR. ''The idea is to help people achieve greater success and liberty'': A qualitative study of expanded methadone take-home access in opioid use disorder treatment. Subst Abus. 2022;43(1):1143–1150. doi: 10.1080/08897077.2022.2060438. PMID: 35499469.

[8] *See* 42 CFR 8.12(e)(1).

[9] Ware OD, Frey JJ, Cloeren M, Mosby A, Imboden R, Bazell AT, Huffman M, Hochheimer M, Greenblatt AD, Sherman SA. Examining Employment and Employment Barriers Among a Sample of Patients in Medication-Assisted Treatment in the United States, Addictive Disorders & Their Treatment: December 2021—Volume 20—Issue 4—p 578–586 doi: 10.1097/ADT.0000000000000295.

[10] Tanz LJ, Dinwiddie AT, Snodgrass S, O'Donnell J, Mattson CL, Davis NL. A qualitative assessment of circumstances surrounding drug overdose deaths during the early stages of the COVID–19 pandemic. SUDORS Data Brief, No 2. Atlanta, GA: Centers for Disease Control and Prevention, U.S. Department of Health and Human Services; 2022.

[11] *See https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.*

[12] *See https://www.hhs.gov/overdose-prevention/.*

[13] Generally, the proposals not listed make wording changes, not substantive changes. These proposals are reviewable in the regulatory text.

1. Heading.

The heading of part 8 has been changed from *Medication Assisted Treatment for Opioid Use Disorders* to *Medications for the Treatment of Opioid Use Disorder* to reflect currently accepted medical terminology and to remove language that is widely viewed to be stigmatizing.

2. Subpart A.

Subpart A currently addresses accreditation and includes steps that accreditation bodies must follow to obtain approval to accredit OTPs. It also sets forth accreditation bodies' responsibilities, including the use of accreditation elements, during accreditation surveys. In the proposed rule, these specifications are relocated to subpart B, which still would include Certification of Opioid Treatment Programs. The proposed rule limits subpart A to the preamble and definitions.

3. Section 8.1—Scope.

Revised § 8.1 to reflect modern medical terminology, to detail updated acronyms, and for clarity. Of note, the term medication assisted treatment (MAT) has been updated to MOUD, and the term treatment program has been changed to opioid treatment program throughout the proposed rule.

4. Section 8.2—Definitions.

Revised § 8.2 to add and update definitions. Added definitions include: care plan; harm reduction; individualized dose; long-term care facility; recovery support services; split dosing; and telehealth. Existing definitions updated include: comprehensive treatment; medication for opioid use disorder; and practitioner. The term detoxification treatment is removed and replaced with withdrawal management.

5. Section 8.3—Application For Approval as an Accreditation Body.

Added details of policies and procedures expected of accreditation bodies, particularly that accreditation bodies shall include staff physician(s) with experience in treating OUD with MOUD in their survey team. A correction has been made to the email address to which the accreditation application is submitted. The current rule calls for the accreditation bodies' training policies to be provided as part of their application process. Furthermore, this regulation would be updated to ensure that accreditation bodies provide training policies specifically related to training of survey team members. In addition to state or territorial governments, the proposed rule also provides for Indian Tribes to apply for approval as an accreditation body.

6. Section 8.4—Accreditation Body Responsibilities.

Amended to clarify expectations for cooperation of accreditation bodies with SAMHSA's oversight. These include steps to be taken by accreditation bodies in response to OTPs that are found to not be complying with accreditation or certification standards, such as follow up on corrective measures and confirmation of timely corrections. Time frames are also established for submission of survey reports. The proposed rule adds a requirement that all records of accreditation activities be made available to SAMHSA upon request. Current requirements regarding accreditation body follow up on complaints are maintained, but the proposed rule adds a requirement that accreditation bodies notify SAMHSA of all aspects of a complaint response within 5 days of receipt. The current rule requiring surveyors to recuse themselves from surveys due to conflict of interest is amended to clarify that such conflicts must be documented by the accreditation body and made available to SAMHSA.

7. Section 8.11—Opioid Treatment Program Certification.

This section is amended to update categories of certification, to clarify SAMHSA's expectation that OTPs maintain certification, and to establish procedures for OTPs whose certification has lapsed. Current terms for the extension of certification are amended to clarify the circumstances in which an extension could be requested, and the means of requesting an extension are defined in the proposed rule. The proposed rule also updates the certification application process to reflect the shift from paper applications to electronic submission, and the email address for submission of supporting documents is corrected.

The proposed rule removes ''transitional certification'' which expired as a category of certification in 2003. The wording of ''provisional certification'' is amended to clarify that it is a category of certification available only to new programs that have not been previously certified, and a new category of ''conditional certification'' has been added for OTPs that have received a one-year conditional accreditation status from an accrediting body—an organization that has been approved by the Secretary of HHS to accredit OTPs—in order for operations to continue or resume as the OTP takes steps needed to achieve permanent certification. The criteria for granting certification extensions outside of routine certification renewals has been expanded to address extensions needed under extraordinary circumstances. The grammar used in describing procedures for requesting an extension was revised.

The applicability of Health Insurance Portability and Accountability Act (HIPAA) privacy protections have been explained, along with clarification that changes in the status of the program sponsor or medical director must be submitted to SAMHSA in writing. The chapter of the Controlled Substances Act with which OTPs are expected to comply has been added; the chapter number is not included in the current version of the rule.

The conditions for approval of interim treatment have been amended to increase the duration of interim treatment from 120 days to 180 days, with the stipulation that individuals shall not be discharged without the approval of an OTP practitioner while awaiting transfer to a comprehensive treatment program. A reference to section 1923 of the Public Health Service Act (21 U.S.C. 300x–23) is removed. The proposed rule also shifts the need to seek approval from the 'chief public health officer' of the state in which the OTP operates to the State Opioid Treatment Authority in the state in which the OTP operates.

The services that can be provided in medication units have been clarified to explicitly allow the full range of OTP services, based on space and privacy available in the medication unit.

8. Section 8.12—Federal Opioid Use Disorder Treatment Standards.

Revisions of treatment standards incorporated in this section aim to improve access to treatment, improve patient satisfaction and engagement in services and support use of clinical judgment in decision-making. In several instances, stigmatizing language such as ''legitimate treatment use'' of controlled substances, has been removed and patient-centered language is added.

The paragraph on staff credentials is amended to expand the definition of ''qualifying practitioners'' to a ''physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse midwife who is appropriately licensed by a State to prescribe covered medications and who possesses a waiver under 21 U.S.C. 823(g)(2).'' The expectation that all licensed and credentialed staff maintain

licensure and/or certification has been added.

Criteria for admission to treatment removes reference to the Diagnostic and Statistical Manual of Mental Disorders (DSM) IV and eliminates the requirement for a one-year history of OUD. The proposed rule instead specifies that the individual should either: meet diagnostic criteria for active moderate to severe OUD; that the individual may be in OUD remission; or at high risk for recurrence or overdose. The section is amended to assure that the basis for the admission decision is documented in the patient's record. In recognition of the use of telehealth and its limitation in obtaining physical signatures, the requirement to obtain written patient consent to treatment is removed. Consent may be provided verbally or electronically, and documented as such. The requirement that individuals under age 18 have two documented unsuccessful attempts at short term withdrawal management (''detoxification'') or drug free treatment is also amended to allow consent of a parent, legal guardian, or responsible adult. Further to this, the rule requiring a 1-year history of OUD for people recently released from penal institutions, pregnant patients or previously enrolled individuals has been removed.

Throughout the document, ''detoxification'' and the corresponding definition and standards for short-and long-term detoxification treatment have been removed. ''Withdrawal management'' and terms for tapering from MOUD are added on behalf of individuals who seek this approach or who elect or need to reduce and/or discontinue MOUD.

The ''Required services'' paragraph is revised to incorporate patient-centered language, establish flexible terminology, promote use of clinical judgment, and clarify SAMHSA's expectations of OTPs. The proposed rule creates the requirement that services be available that meet patient needs, and ''shared decision making'' is added as the method to be used in developing care plans.

The paragraph describing the initial medical examination has been amended to clarify the terms ''screening'' medical exam and ''comprehensive examination'', while also expanding the qualifications of practitioners able to complete such examinations. These include practitioners outside of the OTP (with limitations and specific instructions). The proposed rule also creates criteria for lab testing conducted prior to a screening medical exam, as well as a permissible timeframe. The use of telehealth in undertaking the screening medical exam and initiation of MOUD has also been addressed in the proposed rule. Additionally, the paragraph on special services for pregnant people is amended to specify that confirmation of pregnancy is required for priority treatment admissions. The option to use split dosing for patients is also added.

The components of initial and periodic medical examinations have been expanded in the proposed rule to incorporate assessment of behavioral health, risk of self-harm or harm to others, and to specify time frames for completion of the care plan. Areas of psychosocial assessment are amended so as to assure information is gathered on the context of the patient's whole life such as their mental health, housing, recovery support and harm reduction resources. Additionally, patient-centered language has been added, such as ''services a patient needs and wishes to pursue''.

The proposed rule expands the definition of 'counseling services' to include psychoeducational services, harm reduction and recovery-oriented services, and counseling and linkage to treatment for anyone with positive test results on human immunodeficiency virus (HIV), viral hepatitis, and other sexually transmitted infection (STI) panels, or from OTP-provided medical examinations. Language about services that must be provided directly or through referral is revised to promote a patient-centered approach to care that does not make medication continuity contingent upon involvement in counseling services but fosters shared decision-making for all care plans.

The requirement that an OTP have a formal documented agreement with outside agencies is amended to remove the word ''formal''; the proposed rule calls for a ''documented agreement'' to provide such services.

Language that addresses drug testing services has been amended to remove stigmatizing phrases, such as ''drug abuse'', and to remove content on short-term withdrawal management (''detoxification''). Further to this, the requirement to use drug tests that have received the FDA's marketing authorization was added.

Rules that address recordkeeping and efforts to avoid simultaneous enrollment in multiple OTPs are amended to be more declarative, such as changing the word ''review'' to ''determine'' whether or not a patient is enrolled in another OTP, and documenting review efforts in the patient's record to demonstrate the good faith efforts made. The proposed rule also expands the circumstances in which a patient may obtain treatment at another OTP to include instances when there is an inability to access care at the OTP of record.

Specification of disciplines authorized to administer or dispense MOUD is removed from the rule. LAAM, also known as Levacetylmethadol, is removed from the list of treatment medications because it is no longer available, and other medications approved since prior revisions to this rule were added. The regulation of an initial dose of methadone remains at 30mg, not to exceed 40mg on the first day, with the incorporation of a provision for higher doses if clinically indicated and documented in the patient's record. The rule to ensure documentation of any significant deviation from FDA-approved labeling has been maintained in the proposed rule, while redundant language was removed.

Rules on the provision of unsupervised (or take home) doses of methadone are substantially amended to incorporate flexibilities issued in response to the COVID–19 pandemic. Stigmatizing language is removed, and the criteria for decision-making is reframed to promote use of clinical judgement and patient-centered care. In general, the revised criteria allow up to 7 days of take home doses during the first 14 days of treatment, up to 14 take home doses from 15 days of treatment and up to 28 take home doses from 31 days in treatment. The requirement that OTPs maintain procedures to protect take homes from theft and diversion was continued, and patient education on safe transport and storage of take home doses is added, including documentation of the provision of this education in the patient's clinical record.

Consistent with the conditions for approval of interim treatment, the proposed rule extends the potential duration of interim treatment from 120 days to 180 days. It also clarifies the circumstances in which interim treatment may apply and maintains priority access to comprehensive services for pregnant individuals. The proposed rule removes the requirement for observation of all daily doses during interim treatment. It clarifies the expectation that crisis services and information pertaining to locally available, community-based resources for ancillary services be made available to individual patients in interim treatment. A requirement of a plan for continuing treatment beyond 180 days of interim services was added to the proposed rule.

9. Section 8.13—Revocation of Accreditation and Accreditation Body Approval.

Changes in this section were limited to referring to an OTP as a ''program'' instead of a ''facility''.

10. Section 8.14—Suspension or Revocation of Certification.

This section refines steps SAMHSA may take when immediate action is necessary to protect public health or safety.

11. Subpart D—Procedures for Review of Suspension or Proposed Revocation of OTP Certification, and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body.

Language referencing ''treatment program'' in this section was changed to ''OTP'' for document consistency.

12. Subpart F—Authorization To Increase Patient Limit to 275 Patients.

This subpart has been amended to change the format from the prior Question-and-Answer style to a standard format.

13. Section 8.610—Practitioner Eligibility Requirements for a 3-Year 275-Patient Limit.

Modernized language to refer to MOUD and to remove stigmatizing language that referred to 'legitimate medications'. The proposed rule also clarified that the 275-patient waiver is limited to three years in duration, requiring renewal.

14. Section 8.635—What are the reporting requirements for practitioners whose 275 request for patient limit is approved?

The proposed rule removes reporting requirements for practitioners approved to treat up to 275 patients, eliminating § 8.635 in its entirety.

Background and Need for Proposed Rule

As of June 2022 there are over 1,920 OTPs in the United States, providing care to over 650,000 patients. These are the only settings within which methadone, a schedule II opioid receptor agonist, can be legally provided to people with OUD outside the context of hospital admission or certain other special circumstances.[14]

An OTP is an accredited treatment program with SAMHSA certification and Drug Enforcement Administration (DEA) registration to administer and dispense opioid agonist medications that are approved by FDA to treat OUD. Currently, these include methadone and buprenorphine, a schedule III partial opioid receptor agonist. Other pharmacotherapies, such as naltrexone, may be provided but are not subject to regulations under part 8. For purposes of certification, OTPs must also provide adequate medical, counseling, vocational, educational, and other assessment and treatment services either onsite or by referral to an outside agency or practitioner.[15] Buprenorphine can also be dispensed (including by prescribing) to treat OUD by eligible practitioners with a waiver under 21 U.S.C. 823(g)(2) in settings outside of OTPs given its different scheduling and treatment under the Controlled Substances Act.[16]

Practitioners treating OUD and the OTPs in which they practice must continuously adapt to evolving patterns of drug misuse. Over the past 40 years, this has been complicated by rapid changes in prescribing practices, supply chains and patterns of drug use. Indeed, the early opioid epidemic of the 1990s was characterized by an increased supply of prescription opioids.[17] By 2010, however, the U.S. began to see rapid increases in overdose deaths involving heroin [18] and then by 2013, synthetic opioids other than methadone—primarily illicitly manufactured fentanyl—contributed to a further rise in overdose-related deaths.[19] [20]

The isolation, anxiety and reduced access to resources experienced by many during the COVID–19 pandemic has exacerbated substance misuse and overdose deaths. According to provisional data from the Centers for Disease Control and Prevention (CDC), a predicted 107,375 Americans died from a drug overdose in the 12-month period ending in January 2022.[21] Synthetic opioids (primarily illicitly manufactured fentanyl) appear to be the principal driver of overdose deaths, increasing 55 percent from 2019 to 2020 and further increasing 26 percent from 2020 to 2021.[22] Overdose deaths involving cocaine also increased by 22 percent from 2019 to 2020. These deaths are likely linked to co-use or mixing (by illicit producers) of cocaine with illicitly manufactured fentanyl or heroin.[23] The rise in fentanyl use or exposure, concurrent substance misuse, as well as overdose deaths, necessitates changes to part 8 that expand access to care, and promote engagement in OTP services, while also maintaining oversight and accreditation activities. Oversight and accreditation standards are supported as a means of promoting evidence-based care, while minimizing diversion and also adverse patient outcomes.

A. Regulatory Background

On January 17, 2001 (66 FR 4075), the Department issued final regulations for the use of opioid agonist medications (referred to as narcotic drugs) in treatment and withdrawal management (referred to as detoxification) of OUD. The final rule repealed the treatment regulations enforced by the FDA, and created a new regulatory system based on an accreditation model. In addition, the final rule shifted administrative responsibility and oversight from the FDA to SAMHSA. This rulemaking initiative followed a study by the Institute of Medicine (IOM) (now known as the National Academy of Medicine) and reflected recommendations by the IOM and several other entities to improve the treatment of OUD by allowing for increased medical judgment in the care of patients with OUD. Since publication of the final rule in 2001, it has been updated to include new medications, such as buprenorphine, while also updating or adding new rules governing the provision of such medications.

Between 1972 and 2001, Federal regulatory oversight of OTPs was

[14] See 21 CFR 1306.07.

[15] Substance Abuse and Mental Health Services Administration. (2015). Federal guidelines for opioid treatment programs. HHS Publication No. (SMA) PEP15–FEDGUIDEOTP. Rockville, MD: Substance Abuse and Mental Health Services Administration.

[16] 21 U.S.C. 823(g)(2); Substance Abuse and Mental Health Services Administration. Medications for Opioid Use Disorder. Treatment Improvement Protocol (TIP) Series 63 Publication No. PEP21–02–01–002. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2021.

[17] Centers for Disease Control and Prevention (CDC). Vital signs: overdoses of prescription opioid pain relievers—United States, 1999–2008. MMWR MorbMortal Wkly Rep. 2011 Nov 4; 60(43):1487–1492.

[18] Rudd RA, Paulozzi LJ, Bauer MJ, Burleson RW, Carlson RE, Dao D, Davis JW, Dudek J, Eichler BA, Fernandes JC, Fondario A. Increases in heroin overdose deaths—28 states, 2010 to 2012.MMWR MorbMortal Wkly Rep. 2014 Oct 3; 63(39):849.

[19] Gladden RM, Martinez P, Seth P. Fentanyl law enforcement submissions and increases in synthetic opioid-involved overdose deaths—27 states, 2013–2014. MMWR MorbMortal Wkly Rep. 2016; 65:837–43.

[20] O'Donnell JK, Gladden RM, Seth P. Trends in deaths involving heroin and synthetic opioids excluding methadone, and law enforcement drug product reports, by census region—United States, 2006–2015. MMWR MorbMortal Wkly Rep. 2017; 66:897–903.

[21] Ahmad, F.B., Rossen, L.M., Sutton, P. (2021). Provisional drug overdose death counts. National Center for Health Statistics.

[22] Wide-ranging online data for epidemiologic research (WONDER). Atlanta, GA: CDC, National Center for Health Statistics; 2022. Available at *https://wonder.cdc.gov.*

[23] Ibid.

enforced by the FDA before responsibility for oversight was transferred to SAMHSA. Periodic reviews, studies, and reports on the Federal oversight system culminated with the 1995 IOM Report entitled Federal Regulation of Methadone Treatment.[24] The IOM report recommended that the FDA process-oriented regulations should be reduced in scope to allow more clinical judgment in treatment and greater reliance on guidelines. The IOM report also recommended designing a single inspection format, having multiple elements, that would (1) provide for consolidated, comprehensive inspections conducted by one agency (under a delegation of Federal authority, if necessary), which serves all agencies (Federal, State, local) and (2) improve the efficiency of the provision of methadone services by reducing the number of inspections and consolidating their purposes.

To address these recommendations, SAMHSA proposed a ''certification'' system based on accreditation. Under the system, an applicant who intended to dispense opioid agonist medications in the treatment of OUD must first obtain from SAMHSA, a certification that the applicant is qualified under the Secretary's standards and will comply with such standards. Eligibility for certification depended upon the applicant obtaining accreditation from a private nonprofit entity, or from a State agency, that had been approved by SAMHSA to accredit OTPs.

Accreditation bodies were directed to base accreditation decisions on a review of an application for accreditation and on surveys (onsite inspections) conducted every three years by OUD treatment experts. In addition, accreditation bodies must apply specific opioid treatment accreditation elements that reflect ''state-of-the-art'' opioid treatment guidelines. Further to this, accreditation standards required that OTPs have quality assurance systems that consider patient outcomes.

The 2001 final regulations replaced FDA 'approval' of programs, with direct government inspection in accordance with more detailed process-oriented regulations. These process-oriented regulations continue to prescribe many aspects of oversight and treatment. To this end, subpart B of the regulation addresses accreditation and includes steps that accreditation bodies must follow to achieve approval to accredit OTPs. It also sets forth the accreditation bodies' responsibilities, including the use of accreditation elements during accreditation surveys. Subpart C describes the sequence and requirements for obtaining certification, and addresses how and when programs must apply for initial certification and renewal of their certification. Subpart D elucidates the procedures for review of the withdrawal of approval of the accreditation body or the suspension and proposed revocation of an OTP certification. Subpart F, added in 2016, describes criteria for increasing the patient limit for those meeting Federal requirements to prescribe buprenorphine to 275.[25]

In 2001 there were close to 900 OTPs, but that number has grown to over 1900 by 2022.[26] Over this period of time, the incidence of fentanyl misuse has increased, escalating with the onset of the COVID–19 public health emergency in early 2020. To protect the public's health and reduce the risk of COVID–19 infection among patients and providers, SAMHSA issued flexibilities in the provision of unsupervised doses of methadone and also initiation of buprenorphine via telehealth, that allowed for continued treatment of OUD with reduced direct patient contact. Each of these flexibilities represented a significant change to treatment standards, and are discussed in detail below.

Flexibility for Methadone Medication Take Homes in Opioid Treatment Programs

Among the existing standards for medication administration and dispensing of methadone are limitations on unsupervised or ''take home'' use. These prior standards were established early in the history of methadone as a medication for OUD, and the criteria for determining whether a patient may be allowed take homes were restrictive, requiring daily visits to the OTP for extended periods of time, and adherence to strict measures of sustained stability as described in 42 CFR part 8.[27] These criteria can pose disruption to employment and daily activities for patients, and several of the criteria reflect outdated biases that promote stigma and discourage people from engaging in care in OTPs.

In March 2020, as a result of the pandemic, SAMHSA issued exemptions that allowed state regulatory authorities to request blanket exceptions to allow patients to take home more doses of methadone; 43 states and the District of Columbia did so.[28] With this flexibility, SAMHSA allowed OTPs to dispense 28 days of ''take home'' methadone doses to ''stable'' patients for the treatment of OUD, and up to 14 doses of ''take home'' methadone for ''less stable'' patients ''who the OTP believes can safely handle this level of take home medication.'' [29] Although the duration of this flexibility was not initially specified, a SAMHSA FAQ published in April 2020, indicated that the flexibility was tied with the duration of ''the current national health emergency . . . .'' [30]

The intention of the methadone take home flexibility was to reduce the risk of COVID–19 infection among patients and providers. Beyond this, the flexibility promotes individualized care that considers patient characteristics and program involvement beyond time in treatment. By reducing the burden on patients to visit the OTP daily, this flexibility could reduce stigma for those seeking treatment, while also providing more equitable access to care as telemedicine in OTPs is expanded. It also allows those who reside far from an OTP or who lack access to reliable transportation to receive treatment, while also being able to gain or maintain employment, care for loved ones and engage in other required activities of daily living.

The methadone take home flexibility has been met with widespread support among patients,[31] OTPs,[32] and state authorities.[33] Patients reported that increased take home doses of methadone left them feeling more respected as responsible individuals.[31] In a recent meeting, state authorities reported that the flexibilities were appreciated by patients and OTPs alike,

[24] For full text, see: *https://www.ncbi.nlm.nih.gov/books/NBK232108/.*

[25] See *https://www.federalregister.gov/documents/2016/07/08/2016-16120/medication-assisted-treatment-for-opioid-use-disorders.*

[26] SAMHSA treatment locator. See *https://dpt2.samhsa.gov/treatment/directory.aspx.*

[27] *https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-8?toc=1.*

[28] HHS Guidance for Opioid Treatment Programs. *https://www.samhsa.gov/sites/default/files/otp-guidance-20200316.pdf.*

[29] See *https://www.samhsa.gov/sites/default/files/otp-guidance-20200316.pdf.*

[30] See *https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf.*

[31] Hatch-Maillette MA, Peavy KM, Tsui JI, Banta-Green CJ, Woolworth S, Grekin P. Re-thinking patient stability for methadone in opioid treatment programs during a global pandemic: Provider perspectives. J Subst Abuse Treat. 2021 May;124:108223. doi: 10.1016/j.jsat.2020.108223. Epub 2020 Dec 5. PMID: 33342667; PMCID: PMC8005420.

[32] Joseph G, Torres-Lockhart K, Stein MR, Mund PA, Nahvi S. Reimagining patient-centered care in opioid treatment programs: Lessons from the Bronx during COVID–19. J Subst Abuse Treat. 2021 Mar;122:108219. doi: 10.1016/j.jsat.2020.108219. Epub 2020 Dec 3. PMID: 33353790; PMCID: PMC7833302.

[33] ''To Save Lives From Opioid Overdose Deaths, Bring Methadone Into Mainstream Medicine'', Health Affairs Forefront, May 27, 2022.

with no significant change in rates of diversion seen since the COVID–19 PHE was declared. Indeed, analysis of the relevant data indicates that the actual level of misuse, diversion or harm from methadone is more likely to occur when it is prescribed for pain as opposed to OUD, and that the rate of diversion is lower than that of oxycodone or hydrocodone.[34] Additionally, a recent survey found that diversion of methadone is low among patients receiving take home doses under the COVID–19 PHE flexibility.[35] [36] Further to this, analysis of data on fatal overdoses from January 2019 to August 2021 demonstrated that this flexibility did not lead to more deaths involving methadone.[37]

Recognizing the importance of this flexibility, SAMHSA released guidance on November 18, 2021, that extended the methadone take home flexibility for one year past the end of COVID PHE. This was to accommodate the rule making process that proposes to make this flexibility permanent. In this proposed rule, SAMHSA has reviewed and updated criteria used to determine eligibility for take home doses of methadone, while also promoting shared decision making that is supported by availability of unsupervised doses of methadone from entry into treatment. Individuals receiving take home doses of methadone are supported through individually tailored telehealth visits to practitioners, counselors and other services as indicated. Further to this, the proposed changes highlight practitioner autonomy in determining eligibility for unsupervised doses of methadone. This is a significant change to treatment standards, but it is grounded in evidence that demonstrates the safety and efficacy of promoting patient and provider autonomy.

The Opioid Treatment Program Flexibility To Prescribe MOUD via Telehealth Without an Initial In-Person Physical Evaluation

Telehealth is a mode of service delivery that has been used in clinical settings for over 60 years and empirically studied for just over 20 years. [38] [39] [40] Between 2016 and 2019, use of telehealth, in general, doubled from 14 to 28 percent,[41] while substance use disorder (SUD) treatment, offered through telehealth over the same period, increased from 13.5 to 17.4 percent.[42] This trend has rapidly increased between 2019 and 2021, due to the COVID–19 pandemic.[43]

The pandemic spurred use of telemedicine for the treatment of OUD using buprenorphine, a schedule III partial opioid receptor agonist. Prior to buprenorphine's development, the only opioid agonist that could be used to treat OUD was methadone dispensed through OTPs. Methadone has a relatively complicated pharmacological profile, necessitating closer observation of new patients to ensure that initial doses do not exceed an individual's tolerance for the medication. The Drug Addiction Treatment Act of 2000 (DATA 2000) allowed practitioners to treat OUD outside of OTPs using buprenorphine, generally with an initial in-person medical evaluation before prescribing.

On March 16, 2020, the Secretary of HHS, with the concurrence of the Acting DEA Administrator, designated that the telemedicine exception under 21 U.S.C. 802(54)(D), applied to all schedule II–V controlled substances.[44] Accordingly, DEA-registered, DATA-Waived practitioners may issue buprenorphine prescriptions through telemedicine to new patients for whom they have not conducted an in-person medical evaluation, provided certain conditions are met during the COVID–19 public health emergency.

On March 25, 2020, the DEA also granted a ''temporary exception'' to its regulations that allows practitioners to prescribe controlled medications in states in which they are not registered, if the practitioner is registered with the DEA in at least one state and is authorized by both the state where the practitioner is registered with DEA and the state where the dispensing occurs.[45] According to the DEA, practitioners may utilize this temporary exception via in-person prescribing or prescribing via telemedicine. The DEA also specified that this exception is granted through ''the duration of the COVID–19 public health emergency as declared by the Secretary of Health and Human Services.'' [46]

Building upon this, SAMHSA implemented OTP regulatory flexibilities designed to help address the impact of the COVID–19 pandemic on OTPs and their patients.[47] In April 2020, SAMHSA exempted OTPs from the requirement to perform an in-person physical evaluation (under 42 CFR 8.12(f)(2)) for any patient who will be treated by the OTP with buprenorphine if a program physician, primary care physician, or an authorized healthcare professional under the supervision of a program physician, determines that an adequate evaluation of the patient can be accomplished via telehealth. The duration of this exemption was specifically tied with the ''period of the national emergency declared in response to the COVID–19 pandemic'',[48] and the exemption did not include

[34] National Institute on Drug Abuse (NIDA). 2018, June. Medications to Treat Opioid Use Disorder. Retrieved from *https://irp.drugabuse.gov/wp-content/uploads/2019/12/NIDA-Medications-to-treat-opioid-use-disorder_2018.pdf.*

[35] Figgatt, MC, Salazar Z, Day E, Vincent L, Dasgupta N. Take-home dosing experiences among persons receiving methadone maintenance treatment during COVID–19, Journal of Substance Abuse Treatment, Volume 123, 2021, *https://doi.org/10.1016/j.jsat.2021.108276.*

[36] Dooling, B.C.E. & Stanley, L.E. (2021). *Unsupervised use of opioid treatment medications: Report II of the extending pandemic flexibilities for opioid use disorder treatment project.* GW Regulatory Studies Center. *https://regulatorystudies.columbian.gwu.edu/unsupervised-use-opioid-treatment-medications.*

[37] Jones, C. M., Compton, W. M., Han, B., Baldwin, G., & Volkow, N. D. (2022). Methadone-Involved Overdose Deaths in the US Before and After Federal Policy Changes Expanding Take-Home Methadone Doses From Opioid Treatment Programs. JAMA psychiatry, e221776. Advance online publication. *https://doi.org/10.1001/jamapsychiatry.2022.1776.*

[38] Bashshur, R.L., Shannon, G.W., Bashshur, N., & Yellowlees, P.M. (2016). The empirical evidence for telemedicine interventions in mental disorders. Telemedicine and e-Health, 22(2), 87–113.

[39] Lustig, T. (2012). The role of telehealth in an evolving health care environment: Workshop summary. National Academies Press.

[40] Mace, S., Boccanelli, A., & Dormond, M. (2018). The use of telehealth within behavioral health settings: Utilization, opportunities, and challenges. University of Michigan School of Public Health, Behavioral Health Workforce Research Center.

[41] American Medical Association (2019). Telehealth implementation playbook. Digital Health Implementation Playbook Series. *https://www.ama-assn.org/system/files/2020-04/ama-telehealth implementation-playbook.pdf.*

[42] Uscher-Pines, L., Cantor, J., Huskamp, H.A., Mehrotra, A., Busch, A., & Barnett, M. (2020). Adoption of telemedicine services by substance abuse treatment facilities in the U.S. Journal of Substance Abuse Treatment, 117, 108060.

[43] Melamed OC, deRuiter WK, Buckley L, Selby P. Coronavirus Disease 2019 and the Impact on Substance Use Disorder Treatments. Psychiatr Clin North Am. 2022 Mar;45(1):95–107. doi: 10.1016/j.psc.2021.11.006. Epub 2021 Nov 12. PMID: 35219445; PMCID: PMC8585604.

[44] See *https://www.deadiversion.usdoj.gov/coronavirus.html.*

[45] See Exception to Separate Registration Requirements Across State Lines (DEA067), *https://www.deadiversion.usdoj.gov/GDP/(DEA-DC-018)(DEA067)%20DEA%20state%20reciprocity%20(final)(Signed).pdf.*

[46] With respect to methadone delivery, during the COVID–19 public health emergency, the DEA has also authorized employees of OTPs to personally deliver methadone to patients who otherwise cannot travel to the OTP, and has issued a waiver to permit law enforcement and National Guard personnel to deliver methadone directly to patients of OTPs. See *https://www.deadiversion.usdoj.gov/faq/coronavirus_faq.htm#NTP_FAQ.*

[47] OTPs are authorized to dispense narcotic maintenance and detoxification medication under 21 U.S.C. 823(g)(1) and regulated under 42 CFR part 8.

[48] See *https://www.samhsa.gov/sites/default/files/faqs-for-oud-prescribing-and-dispensing.pdf.*

induction of methadone via telehealth technology.

Recent research has demonstrated that telehealth can be an effective tool in integrating care and extending the reach of specialty providers,[49] and that among those requiring treatment with buprenorphine, there are high levels of satisfaction with the use of telehealth services.[50] Additionally, there are no significant differences between telehealth and in-person buprenorphine induction in the rate of continued substance use, retention in treatment or engagement in services.[38] [51] Research also shows that there is no significant difference in client and provider ratings of therapeutic alliance when using telehealth technology platforms.[39]

In the face of an escalating overdose crisis and an increasing need to reach remote and underserved communities, making the buprenorphine telehealth flexibility permanent is of paramount importance. The proposed rule makes permanent criteria of initiation of buprenorphine via audio-only or audio-visual telehealth technology if an OTP physician, primary care physician, or an authorized healthcare professional under the supervision of a program physician, determines that an adequate evaluation of the patient can be accomplished via telehealth.

SAMHSA believes that evidence underlying the initiation of buprenorphine using telehealth translates, to some degree, to the treatment of OUD with methadone, and warrants expanding access to methadone therapy by applying some of the buprenorphine in-person examination flexibilities to treatment with methadone in OTPs.[52] The proposed rule allows for the use of audio-visual telehealth for any new patient who will be treated by the OTP with methadone if a program physician, or an authorized healthcare professional under the supervision of a program physician, determines that an adequate evaluation of the patient can be accomplished via an audio-visual telehealth platform. SAMHSA is not extending this change to the use of audio-only telehealth platforms in assessing new patients who will be treated with methadone because methadone, in comparison to buprenorphine, holds a higher risk profile for sedation in patients presenting with mild somnolence which may be easier to identify through an audio-visual telehealth platform. The proposed rule is not applicable to, and does not authorize, the prescription of methadone pursuant to a telehealth visit. Instead, this proposed change applies to the ordering of methadone by appropriately licensed OTP practitioners and dispensed to the individual patient by the OTP under existing OTP procedures.

Further to this, health care providers who receive Federal financial assistance are reminded of their obligations to ensure that their audio-only and audio-visual telehealth platforms are accessible to individuals with disabilities and afford an opportunity for meaningful access for limited English proficient (LEP) individuals. Federal civil rights laws prohibit discrimination on the basis of disability and may require health care providers to make reasonable modifications to their policies, practices, or procedures to ensure that a person who is not able to use an audio-visual telehealth platforms on the basis of their disability has an equal opportunity to benefit from treatment with MOUD. Similarly, Federal civil rights laws that prohibit discrimination on the basis of national origin (including language ability), require recipients to take reasonable steps to provide meaningful access to LEP individuals, which may require the provision of a qualified interpreter and/or translated material, such that they have the opportunity benefit from treatment with MOUD.

Expanding Access to Services

On June 28, 2021, the DEA introduced requirements for OTPs to add a ''mobile component'' to their existing registration and waived any obligation for an OTP mobile medication unit complying with these requirements to separately register at the remote locations where it dispenses.[53] On September 21, 2021, SAMHSA released guidance on the establishment of mobile and non-mobile medication units and allowable services.[54] While part 8 currently allows OTPs certified by SAMHSA to establish medication units (as defined under 42 CFR 8.2), the proposed rule further defines mobile units and clarifies potential services, interventions and accreditation processes.

Additionally, the proposed rule defines harm reduction and promotes expansion of harm reduction services to OTP patients.[55] The importance of this has been highlighted during the COVID–19 pandemic, principally with the CDC and SAMHSA's April 7, 2021, joint announcement that Federal funding could be used to purchase rapid fentanyl test strips (FTS).[56] This was proposed in an effort to help curb the dramatic spike in drug overdose deaths largely driven by the use (both intentional and unintentional) of potent synthetic opioids, primarily illicitly manufactured fentanyl. FTS can be used to determine if drugs have been mixed or cut with fentanyl, providing people who use drugs and their communities with important information about fentanyl in the illicit drug supply so they can take steps to reduce their risk of overdose. Other important harm reduction activities highlighted in the proposed rule include: counseling on preventing exposure to, and the transmission of, HIV, viral hepatitis, and STIs; providing access to services and treatments for those with HIV, viral hepatitis or an STI; provision of patient-centered harm reduction education; and distribution of opioid overdose reversal medications (*e.g.,* naloxone).[57]

The need to facilitate access to services has been highlighted during the COVID–19 pandemic. This is particularly important in the face of increased exposure to fentanyl. Section 8.12(e)(1) of the proposed rule eliminates the requirement that a person must have had an addiction to opioids for one year before admission to treatment and receipt of OTP services, and permits access to those: who meet diagnostic criteria for a moderate to severe OUD; individuals with active

[49] Guille, C., Simpson, A.N., Douglas, E., Boyars, L., Cristaldi, K., McElligott, J., Johnson, D., & Brady, K. (2020). Treatment of opioid use disorder in pregnant women via telemedicine: A nonrandomized controlled trial. JAMA Network Open, 3(1), e1920177–e1920177.

[50] King, V.L., Brooner, R. K., Peirce, J.M., Kolodner, K., & Kidorf, M.S. (2014). A randomized trial of web-based videoconferencing for substance abuse counseling. Journal of Substance Abuse Treatment, 46(1), 36–42.

[51] Vakkalanka, J.P., Lund, B. C., Ward, M.M., Arndt, S., Field, R.W., Charlton, M., & Carnahan, R.M. (2022). Telehealth Utilization Is Associated with Lower Risk of Discontinuation of Buprenorphine: a Retrospective Cohort Study of US Veterans. Journal of general internal medicine, 37(7), 1610–1618. *https://doi.org/10.1007/s11606-021-06969-1.*

[52] Chan B, Bougatsos C, Priest KC, McCarty D, Grusing S, Chou R. Opioid treatment programs, telemedicine and COVID–19: A scoping review. Subst Abus. 2022;43(1):539–546. doi: 10.1080/08897077.2021.1967836. Epub 2021 Sep 14. PMID: 34520702.

[53] See 86 FR 33861; *https://www.federalregister.gov/documents/2021/06/28/2021-13519/registration-requirements-for-narcotic-treatment-programs-with-mobile-components.*

[54] See *https://www.samhsa.gov/medication-assisted-treatment/statutes-regulations-guidelines#mobile.*

[55] The proposed rule does not permit OTPs to engage in any activities that would violate Federal, State, or local law.

[56] See *https://www.cdc.gov/media/releases/2021/p0407-Fentanyl-Test-Strips.html.*

[57] See *https://www.samhsa.gov/blog/new-samhsa-guide-highlights-hiv-prevention-treatment-people-substance-use-andor-mental.*

moderate to severe OUD, or OUD in remission; or those individuals who are at high risk for overdose or recurrence of use. Admission to the OTP is contingent upon appropriate informed consent and education, as well as appropriate documentation of consent in the patient's clinical record.

These activities are supported, in the proposed rule, through defining a practitioner (in § 8.2) as being ''a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse midwife who is appropriately licensed by a State to prescribe covered medications and who possesses a waiver under 21 U.S.C. 823(g)(2).'' Further to this, the proposed rule expands decision making capacity of OTP practitioners to: admission of patients; the provision of treatment activities; and service provision. This is supported by the use of telehealth, described above, and involvement of outside practitioners. Indeed, § 8.12(f)(2) of the proposed rule allows for the initial medical examination to be completed by a practitioner external to the OTP no more than seven days prior to admission, provided that it is verified by an OTP practitioner. This expands access to OTP services and is consistent with current medical practice.

In this way, the proposed rule draws on evidence from the COVID–19 pandemic as well as over 20 years of practice-based research. The proposed rule makes permanent or expands upon flexibilities initiated during the COVID–19 PHE and recognizes the efficacy and safety of creating a less restrictive and patient-centered treatment environment. Further to this, the evidence demonstrates the positive impact of not requiring frequent patient visits to the OTP. This has been shown to promote recovery behaviors, such as sustained employment, as well as support those individuals who live a long distance from the OTP.[58] The integration of telehealth into the proposed rule further supports this and allows OTPs flexibility in initiating MOUD.

Section-by-Section Description of Proposed Amendments to 42 CFR Part 8

Below, the Department describes the proposals in this NPRM to amend 42 CFR part 8. The Department believes that the proposed rule expands access to evidence-based and patient-centered care, limits use of stigmatizing language, and promotes the practitioner-patient relationship. These changes are in line with evidence-based practice, and the Department welcomes feedback on all aspects of the proposed rule.

In particular, the Department is interested in feedback on the proposal to increase the allowable time for interim treatment from 120 days to 180 days. This is intended to accommodate OTPs and states as they address important issues such as staff shortages. It may also serve as a way of engaging individuals in care. Such issues underlie the need for this service approach, and while SAMHSA is working with other Federal and State agencies to build workforce capacity, the use of interim treatment adds to the care continuum for people with OUD.

The Department also seeks feedback on other paradigms of care promoted in the proposed rule. Split-dosing and delivery of services via telehealth are, for example, evidence-based interventions that promote patient-centered care. The Department proposes to expand access to evidence-based treatment through the addition of such practices, and seeks guidance on the proposed use of these interventions and their integration into the practice environment.

Also proposed are new criteria to support decision making around take home doses of methadone. The take home flexibility issued at the start of the COVID–19 pandemic demonstrated that length of time in treatment, as well as strict negative toxicology test results were not central to positive outcomes.[58] This is reflected in the proposed rule, and feedback is solicited on the proposed criteria, as well as the schedule for providing unsupervised doses of methadone.

The Department further requests comment on all proposals described in the following paragraphs of this NPRM. In addition, the Department requests comment on all aspects of the Regulatory Impact Analysis, including the assumptions and estimates about the costs and benefits of the proposed changes, and the alternatives the Department considered when developing the proposals in this NPRM.

The Department proposes the following amendments to part 8:

A. Heading

The Department proposes to revise the heading to *Medications for the Treatment of Opioid Use Disorder* to reflect current medical terminology and to remove stigmatizing language. The term 'opioid use disorder' more precisely reflects the diagnosis for which medications are indicated. Further to this, the terms 'maintenance' and 'detoxification' reference outdated terminology that has potentially hindered adoption of evidence-based treatments for OUD.[59] The amended heading reflects current medical terminology and highlights that OUD is a chronic, treatable condition.

B. Subpart A

Subpart A currently addresses accreditation and includes steps that accreditation bodies will follow to achieve approval to accredit OTPs under the new rules. It also sets forth the accreditation bodies' responsibilities, including the use of accreditation elements during accreditation surveys. In the proposed rule, these specifications are relocated to subpart B, which still includes Certification of Opioid Treatment Programs. In this way, subpart A is now limited to the overview of part 8 and definitions. This improves categorization and provides clear flow within the proposed rule.

C. Section 8.1—Scope

This section has been revised to reflect modern medical terminology and to detail updated acronyms. Historically, pharmacological treatment for opioid use disorder was referred to as ''medication assisted treatment'' (MAT). There is an increasing movement towards the more medically accurate term ''medication for opioid use disorder'' (MOUD) since this precisely describes the medications that are being provided, carries less stigma, and aligns with treatment approaches to all other health conditions. Further to this, the term 'MAT' implies that these medications are simply adjuncts to a broader treatment strategy.[60] In fact, these medications are one critical element of a comprehensive, long-term treatment and recovery strategy.[60] As such, the acronym MAT has been removed from the proposed rule and replaced with MOUD throughout. The proposed rule identifies other treatment modalities, such as counseling, by their individual component names, similar to

[58] Treitler, P.C., Bowden, C.F., Lloyd, J., Enich, M., Nyaku, A.N., & Crystal, S. (2022). Perspectives of opioid use disorder treatment providers during COVID–19: Adapting to flexibilities and sustaining reforms. Journal of substance abuse treatment, 132, 108514. *https://doi.org/10.1016/j.jsat.2021.108514.*

[59] NIDA. 2021, November 29. Words Matter—Terms to Use and Avoid When Talking About Addiction. Retrieved from *https://nida.nih.gov/nidamed-medical-health-professionals/health-professions-education/words-matter-terms-to-use-avoid-when-talking-about-addiction.*

[60] Substance Abuse and Mental Health Services Administration. Medications for Opioid Use Disorder. Treatment Improvement Protocol (TIP) Series 63 Publication No. PEP21–02–01–002. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2021.

the manner by which elements of other chronic disease care are described.

D. Section 8.2—Definitions

In the 21 years since part 8 was first published, definitions and paradigms of care for OUD have changed. In particular, treatment for OUD has evolved from being prescriptive to multimodal and patient-centered.[61] This reflects an understanding that OUD is a chronic condition [62] and that to be successful, treatment interventions should be individualized and include harm reduction and recovery support services. Further to this, flexibilities expanded under the COVID–19 PHE demonstrated the safety of telehealth interventions.[63] Accordingly, telehealth is defined in this section using a standard definition. The proposed rule updates other definitions to reflect current evidence and practice in the provision of care in OTPs. This is seen in an expanded definition of 'practitioner'. Patients have benefitted for years from the care provided by nurse practitioners (NPs) and physician assistants (PAs) in OTPs, and the proposed rule expands the definition of practitioner to include a ''physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse midwife.'' Finally, the proposed rule removes the term ''detoxification treatment'' and replaces it with ''withdrawal management.'' The term detoxification is customarily called medically supervised withdrawal management to destigmatize the process and more accurately reflect what patients undergo, and healthcare practitioners provide, in response to withdrawal from a variety of substances or medications to which physiologic tolerance develops.[64]

[61] Mark TL, Hinde J, Henretty K, Padwa H, Treiman K. How Patient Centered Are Addiction Treatment Intake Processes? J Addict Med. 2021 Apr 1;15(2):134–142. doi: 10.1097/ADM.0000000000000714. PMID: 32826618.

[62] Russell HA, Sanders M, Meyer JKV, Loomis E, Mullaney T, Fiscella K. Increasing Access to Medications for Opioid Use Disorder in Primary Care: Removing the Training Requirement May Not Be Enough. J Am Board Fam Med. 2021 Nov-Dec;34(6):1212–1215. doi: 10.3122/jabfm.2021.06.210209. PMID: 34772776.

[63] Langabeer JR 2nd, Yatsco A, Champagne-Langabeer T. Telehealth sustains patient engagement in OUD treatment during COVID–19. J Subst Abuse Treat. 2021 Mar;122:108215. doi: 10.1016/j.jsat.2020.108215. Epub 2020 Nov 24. PMID: 33248863; PMCID: PMC7685137.

[64] Substance Abuse and Mental Health Services Administration. Medications for Opioid Use Disorder. Treatment Improvement Protocol (TIP) Series 63 Publication No. PEP21–02–01–002. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2021.

E. Section 8.3—Application for Approval as an Accreditation Body

This section adds details of policies and procedures expected of accreditation bodies for clarity and completeness. In § 8.3(b) the email address for submission of accreditation body applications is updated. Changes to § 8.3(b)(6) reflect the expectation that physicians with experience in managing MOUD are employed by accreditation bodies to assure appropriate medical standards of care are established and included in review of OTPs. Further amendments are incorporated to promote communication between the accreditation bodies and SAMHSA, and to ensure that accreditation bodies focus on OTP adherence to 42 CFR part 8. Expectations about training provided for survey team members are added to promote consistency in OTP reviews with Federal standards and to reduce the risk of unnecessary and overly burdensome accreditation activities. Further to this, the proposed rule also provides for Indian Tribes to apply for approval as an accreditation body.

F. Section 8.4—Accreditation Body Responsibilities

SAMHSA is responsible for oversight of the accreditation bodies. A thorough review of its oversight procedures resulted in several proposed changes to improve processes, to assure documentation of accreditation decisions, and to establish steps to be taken to assure OTP adherence to 42 CFR part 8. For example, making records available to SAMHSA on request is added to assure that SAMHSA can review survey processes and information, and confirm decisions of survey outcomes. Other amendments, such as accreditation body policies for training survey team members, have been added to address concerns regarding inconsistent application of accreditation standards and regulations. The documentation and sharing of information regarding conflict or perceived conflict of interest has been added to ensure any conflict of interest and action taken by the accreditation body is disclosed to SAMHSA.

G. Section 8.11—Opioid Treatment Program Certification

The requirements for certification and renewal have been in place since 2001. Therefore, it is necessary to update these as some certifications and processes no longer apply. For example, ''transitional certification'' expired as a category in May 2003. Other revisions have been incorporated based on SAMHSA's 20-years of experience in OTP certification.

The category of ''provisional'' certification required clarification as to when provisional certification is available. Moreover, the current rule only designates three-year certifications for OTPs, whether the accreditation survey resulted in a ''full'' (3-year) or ''conditional'' 1-year accreditation status. The proposed rule establishes the category of ''conditional certification'' to allow an OTP granted a temporary one-year accreditation to continue treatment services while the OTP takes steps to address issues identified during the accreditation process. The current regulation limits extension of certification status to OTPs with provisional certification only. Circumstances related to the COVID–19 PHE necessitated expansion of extensions for renewal of any category of certification.

The expectation that OTPs comply with HIPAA regulations when applicable is added to emphasize rules that govern practice that have come into effect since 2001. Documentation of change of sponsors or medical directors is added to assure written records are available, and a reference to the applicable chapter of the Controlled Substances Act for OTPs was added to clarify the DEA regulations to which OTPs must adhere.

Interim treatment means that on a temporary basis, a patient may receive services from an OTP, while awaiting access to more comprehensive treatment services. The extension of interim treatment approval from 120 days to 180 days is intended to better accommodate OTPs and states in addressing underlying causes necessitating this category of treatment, such as staff shortages. This approach may also serve to engage individuals with OUD who otherwise may not seek care. Given the significant mortality risk of illicit fentanyl and data demonstrating reductions in overdose death with methadone treatment, interim services add an opportunity for low-threshold access to life-saving services. The expectation that individuals enrolled in interim treatment shall not be discharged without the approval of an OTP practitioner is to assure continuity of and engagement in care for the individual as an interim step to a comprehensive treatment program where additional services are available. The reference to section 1923 of the Public Health Service Act (PHSA) (42 U.S.C. 300x–23) is removed because it does not specifically pertain to time in interim treatment. The proposed rule also changes the need to seek approval

from the 'chief public health officer of the state in which the OTP operates' to the State Opioid Treatment Authority (SOTA) of the state in which the OTP operates. This change was made to streamline and centralize the application process.

An overall goal of these revisions is to expand access to MOUD, specifically to OTP services. Accordingly, the range of services that can be provided in medication units has been clarified to improve access to the services OTPs offer, especially in geographic areas in which distances are a key barrier to accessing treatment.

H. Section 8.12—Federal Opioid Use Disorder Treatment Standards

OTP regulations currently do not reflect the changes in OUD treatment standards that have occurred over the past 20 years. The dual challenges of the COVID–19 pandemic and the evolving opioid overdose epidemic necessitated review and revision of these regulations. Significant lessons have been learned from adapting treatment in response to the need for physical distancing and quarantine, and from the results of implementing flexibilities for take home doses and use of telehealth under the COVID–19 PHE.

Overcoming the opioid crisis through the expansion of prevention, treatment, and recovery support services is a primary priority for SAMHSA, and SAMHSA seeks to expand access to quality treatment services, encourage the use of MOUD, and improve engagement and retention in treatment and recovery support services. Consistent with that goal, amendments to treatment standards incorporated in this section are intended to improve access to care and improve patient satisfaction and engagement in services, while also promoting flexibility and medical judgment in decision-making to reduce the burden of patient participation in OTPs.

Changes to the ''Required services'' paragraph incorporate patient-centered language, and promote flexibility in the use of clinical judgment. For example, required services are amended to assure that OTPs meet patient needs, and ''shared decision making'' is added to ensure that the patient be included in the development and implementation of their care plan. In several instances, the intent of standards was not changed, but stigmatizing wording such as ''legitimate treatment use'' of controlled substances has been removed. These amendments are incorporated as a means of reducing the use of stigmatizing attitudes, practices and language within OTPs that may contribute to discrimination and impede access to treatment.[65]

Other revisions in this section are included to ensure alignment with laws and regulations that have been issued since 2001 and to emphasize their importance to OTPs. These include HIPAA, the Comprehensive Addiction and Recovery Act (CARA), and the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act. Section 303 of CARA, for example, expanded the definition of ''qualifying practitioners'' from physicians to include nurse practitioners and physician assistants who meet certain criteria; this change has been included in the section on staff credentials and is in alignment with the professionalization of SUD treatment services that has occurred over the last 20 years. [66] [67]

A significant change in OTP access is the removal of the requirement that patients must have had an addiction to opioids for at least one year prior to admission for MOUD; this is a vestige of prior versions of the DSM and has posed a barrier to access to treatment. OUD includes signs and symptoms that are associated with compulsive, prolonged use of opioid substances for non-medical purposes, despite harm and negative consequences to the individual with OUD. Therefore, the assessment of OUD is refocused, in the proposed rule, to consideration of problematic patterns of opioid use that are in line with the current version of the DSM diagnostic categories.[68] The proposed rules also recognize the potential for recurrence of OUD in individuals who have sustained remission and recovery and the high mortality risk associated with these situations. The revised definition allows for clinical judgment and consideration of severity of use and comorbid conditions. The new rules also remove the requirement that individuals under 18 must have two documented unsuccessful attempts at treatment within one year to be eligible for MOUD. Except where not required by state law, parental consent to treatment remains a requirement for patients under age 18. In recognition of the use of telehealth and the limitation of obtaining written consent, the requirement for a written form of consent to treatment was removed for adult patients.

Throughout the document, ''detoxification'' and the corresponding definition and standards for short- and long-term detoxification have been removed as the word ''detoxification'' is considered a pejorative term and not accurately reflective of the process of managing or experiencing the withdrawal associated with substances or medications to which physiologic tolerance develops. Detoxification is an outdated term that was used to distinguish opioid dependence from OUD based on the Narcotic Addiction Treatment Act of 1974 (NATA). Practice-based evidence and extensive research shows that treatment with MOUD is more effective than withdrawal management at reducing OUD recurrence and associated mortality and morbidity risk.[69] However, it is recognized that some patients may choose, or need, to taper off MOUD. Therefore, ''withdrawal management'' and terms for tapering from MOUD are included in the section of the regulations that currently refer to ''detoxification.''

Language used in the current rule about the initial medical examination required clarification to distinguish between an initial ''screening'' exam and a more comprehensive ''examination.'' For patients with OUD, initiating MOUD is of utmost importance to suppress withdrawal, engage the individual in additional services, and improve retention. The need to improve access to treatment necessitates expanding the qualifications of those practitioners able to complete screening examinations. The proposed rule allows practitioners who work outside of the OTP (with limitations and specific instructions) to undertake screening. This is likely to reduce delays in diagnosing OUD, initiating MOUD, and in beginning comprehensive treatment. This section also improves medical services by setting expectations for lab testing, establishing time frames for examinations, and incorporating use of

[65] See *https://www.justice.gov/opa/pr/justice-department-issues-guidance-protections-people-opioid-use-disorder-under-americans.*

[66] Center for Substance Abuse Treatment. Competencies for Substance Abuse Treatment Clinical Supervisors. Technical Assistance Publication (TAP) Series 21–A. HHS Publication No. (SMA) 12–4243. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2007/2013.

[67] Center for Substance Abuse Treatment. Clinical Supervision and Professional Development of the Substance Abuse Counselor. Treatment Improvement Protocol (TIP) Series 52. HHS Publication No. (SMA) 144435. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2009/2014.

[68] See *https://www.aoaam.org/resources/Documents/Clinical%20Tools/DSM-V%20Criteria%20for%20opioid%20use%20disorder%20.pdf.*

[69] Kleber HD. Pharmacologic treatments for opioid dependence: detoxification and maintenance options. Dialogues Clin Neurosci. 2007;9(4):455–70. doi: 10.31887/DCNS.2007.9.2/hkleber. PMID: 18286804; PMCID: PMC3202507.

telehealth. Special services for pregnant people have been revised to specify that confirmation of pregnancy is required for priority treatment admissions to prevent misuse of priority status. The option to use split dosing for patients was added to this section, as well.

Changes to the initial and periodic medical services sections are intended to promote key issues for OTP medical practitioners and the OTP multi-disciplinary team to address with a patient as part of treatment. This includes areas that may increase the risk of a patient leaving care prematurely, such as unmet mental health or other disability, medical and oral health needs, the need for culturally supportive care that addresses race, ethnicity, sexual orientation, religion or gender identity, and social determinants of health, such as housing and transportation, that may pose barriers to treatment engagement, or harm reduction and recovery support service needs. Patient-centered language was added to ensure that the care provided is consistent with the patient's needs, and self-identified goals for treatment and recovery. The time frames for completion of the care plan are included as a measure of quality. Also included is the requirement in § 8.12(f)(4)(i) that individuals starting treatment be screened for imminent risk of harm to self or others. This recognizes that risk for suicide is increased among individuals who misuse substances [70] and that appropriate screening, intervention, and referrals for care are vital to health and engagement in treatment activities.[71]

Counseling services have been more finely described to align OTP services with the current paradigm for evidence-based SUD treatment. This includes the delineation of psychoeducational services, overdose prevention and other harm reduction counseling, and recovery-oriented counseling services. Specific counseling on reducing HIV, hepatitis C, and other STIs, and linkage to treatment for anyone with positive test results from OTP-provided laboratory testing, was added to improve quality of care. Language about services that must be provided directly or through referral has also been revised to infuse a more patient-centered approach, such as in ''identified and mutually agreed-upon as beneficial by the patient and program staff,'' rather than the program staff determining that the patient is ''in need of such services.''

Drug testing services have been revised to remove the stigmatizing language of ''drug abuse,'' to remove content on short-term withdrawal management (''detoxification''), and to improve readability. The requirement for use of drug tests that have received FDA's marketing authorization was added to assure valid assays are used.

The current regulations require OTPs to review whether a patient is enrolled in another OTP prior to admission. Simultaneous enrollment in multiple OTPs risks patients obtaining more medication than is needed. Good faith efforts to prevent this must be documented. Therefore, the language regarding verification of non-enrollment changed from ''review'' to ''determine'' in order to ensure that evidence of good faith efforts is available. This section also expands the circumstances in which a patient may obtain treatment at another OTP to include instances when there is an inability to access care at the OTP of record. Experiences of state and OTP responses to occurrence of natural disasters gave evidence of the need to incorporate this allowance on behalf of patients.

In § 8.12(h) (Medication administration, dispensing, and use), the specific disciplines authorized to administer or dispense MOUD have been removed to accommodate variations among states regarding disciplines allowed to provide this service. Among medications used by OTPs, LAAM has been removed as it has black box warnings and is no longer commercially available, while other medications approved since 2001 (naltrexone) were added. Although the maximum initial dose of methadone remains at 30 mg, use of clinical judgment in dose adjustments is underscored, due to higher opioid tolerance associated with increasing rates of fentanyl exposure and opioid overdose. Should 30 mg be insufficient to control symptoms of withdrawal, the program physician or practitioner may increase the dosage, provided that the rationale for this change is appropriately documented. The requirement that the program physician be familiar with the most up-to-date product labeling has been removed as § 8.12(d) requires that each person engaged in the treatment of OUD must have sufficient education, training, and experience, or any combination thereof, to enable that person to perform the assigned functions. This is inclusive of the expectation that all program medical practitioners maintain familiarity with the most up-to-date product labeling for the medications they administer and dispense to patients.

The exemption policies promulgated by SAMHSA in response to COVID–19 allowed OTPs to provide more take home doses of methadone to patients on a more rapid schedule than is permitted in the current regulations. In the two years since implementation, there have been few reports of overdose or harm related to take homes, misuse, or other negative consequences of this flexibility. Evidence from multiple studies has shown that increases in take home doses following the SAMHSA exemption did not lead to worse treatment outcomes, higher overdose rates, or diversion of medication, but instead resulted in increased treatment engagement and improved patient satisfaction with care.[72] [73] [74] [75] There are sufficient studies to conclude that this exemption has enhanced and encouraged use of and retention in OTP services; therefore, the proposed rule for unsupervised (take home) doses fully incorporates the flexibilities for take home medication issued during the COVID–19 PHE.

The proposed rule removes stigmatizing language in favor of person-centered approaches and person-first terminology. Changes focus on the well-being of the individual and reframe the criteria for unsupervised medication from rule-based to clinical judgment-based decisions. When determining take home medication schedules under the proposed rule, SAMHSA recommends that the best interest of each patient and the public's health be taken into consideration, and that clinical judgement, not rigid rules, determine if the therapeutic benefit of take home

[70] Substance Abuse and Mental Health Services Administration (2015). Substance Use and Suicide: A Nexus Requiring a Public Health Approach. In Brief.

[71] Lynch Fl., Peterson EL, Lu CY, Hu Y, Rossom RC, Waitzfelder BE, Owen-Smith AA, Hubley S, Parbhakar D, Keoki Williams L, Beck A, Simon GE, Ahmedani BK. Substance use disorders and risk of suicide in a general US population: a case control study. Addict Sci Clin Pract. 2020 Feb 21;15(1):14. doi:10.1186/s13722-020-0181-1. PMID: 32085800; PMCID: PMC7035727.

[72] Figgatt, M.C., Salazar, Z., Day, E., Vincent, L., & Dasgupta, N. (2021). Take-home dosing experiences among persons receiving methadone maintenance treatment during COVID–19. Journal of substance abuse treatment, 123, 108276. *https://doi.org/10.1016/j.jsat.2021.108276.*

[73] Joseph, G., Torres-Lockhart, K., Stein, M.R., Mund, P.A., & Nahvi, S. (2021). Reimagining patient-centered care in opioid treatment programs: Lessons from the Bronx during COVID–19. Journal of substance abuse treatment, 122, 108219. *https://doi.org/10.1016/j.jsat.2020.108219.*

[74] Amram, O., Amiri, S., Panwala, V., Lutz, R., Joudrey, P.J., & Socias, E. (2021). The impact of relaxation of methadone take-home protocols on treatment outcomes in the COVID–19 era. The American journal of drug and alcohol abuse, 47(6), 722–729. *https://doi.org/10.1080/00952990.2021.1979991.*

[75] Brothers S., Viera A., Heimer R. Changes in methadone program practices and fatal methadone overdose rates in Connecticut during COVID–19 Journal of Substance Abuse Treatment. 2021 Dec;131:108449. doi: 10.1016/j.jsat.2021.108449. Epub 2021 Apr 29. PMID: 34098303.

medication outweighs the risks to the patient and public health. The proposed rule is meant to address barriers to care associated with the requirement for regular clinic attendance while also improving patient satisfaction and treatment engagement in a manner that also balances patient and public health safety.

The conditions for interim treatment extend the potential duration of this approach from 120 days to 180 days. This is based on SAMHSA's experience and reports from states that the underlying issues which prompted interim treatment, such as staff shortages, are not easily resolved in 120 days.[76] [77] In addition, interim services may serve as a low-threshold approach to engaging individuals with OUD in care, particularly in areas where OTPs offering more comprehensive services are not as readily available. Clarification of language in this section also ensures that patients in interim treatment have documented plans for continuation of treatment beyond 180 days, and are not discharged based on length of time in interim care. The circumstances in which a patient could receive interim services required clarification from ''cannot be placed in a public or nonprofit private program'' to ''if comprehensive services are not readily available.'' Services to be provided in this category are revised to assure alignment of quality expectations for interim care between OTPs and SAMHSA.

On July 28, 2021, the DEA published a final rule that permits DEA registrants who are authorized to dispense methadone for OUD to add a ''mobile component'' to their existing registration—waiving any requirement that mobile medication units of OTPs operating in compliance with the rule separately register at their remote dispensing locations (86 FR 33861). This expanded opportunities for OTPs to provide needed services in remote or underserved areas. Through use of Substance Abuse Prevention and Treatment Block Grant (SABG) funds, SAMHSA encouraged OTPs to establish medication units as a means of making treatment more readily available, especially to those people in remote, rural, or underserved areas. To further the goal of improving and expanding access, the range of services that can be provided in medication units are described in the proposed rule. Such services must be delivered in accordance with the nondiscrimination provision at 42 U.S.C. 300x–57, which state that: ''No person shall on the ground of sex (including, in the case of a woman, on the ground that the woman is pregnant), or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 300x or 300x–21 of this title.''

I. Section 8.14—Suspension or Revocation of Certification

This section clarifies the actions that SAMHSA may take when immediate intervention is necessary to protect the public's health or safety. The proposed rule specifies the administrative actions available to SAMHSA in the event that a program sponsor, or any employee of an OTP has: been found guilty of misrepresentation in obtaining certification; failed to comply with the Federal Opioid Use Disorder treatment standards; failed to comply with reasonable requests from SAMHSA or from an accreditation body for records; or refused a reasonable request of a duly designated SAMHSA inspector, DEA Inspector, State Inspector, or accreditation body representative for permission to inspect the program or the program's operations or its records.

J. Subpart F—Authorization To Increase Patient Limit to 275 Patients

This subpart is amended to change the format from a Question-and-Answer style to a standard narrative text format. This is for consistency with the format found throughout the proposed rule.

K. Section 8.610—Practitioner Eligibility Requirements for a 3-Year 275-Patient Limit

This section clarifies the 3-year limit to the 275-patient limit.

L. Section 8.635—What are the reporting requirements for practitioners whose 275 request for patient limit is approved?

As of May 2022, there were 8,641 practitioners waivered at the 275-level and of these, 5,905 were Doctors of Medicine and Doctors of Osteopathic Medicine (MD/DOs). The proposed rule removes reporting requirements for practitioners at this level. Practitioners have found the submission of these reports to be burdensome and a disincentive to treating a higher number of patients.[78] As increasing numbers of Americans lose their lives to overdose, it is essential to support practitioners and to remove perceived disincentives or barriers to treating more patients. In this way, the extent of the overdose crisis as a result of the COVID–19 PHE outweighs the potential value of data obtained from compliant reporters. The proposed rule removes reporting requirements for those who are authorized to treat up to 275 patients with buprenorphine. Rather than expect practitioners to submit reports, SAMHSA will seek to work in partnership with other Federal agencies for monitoring purposes.

Further to this, reporting requirements are known to perpetuate stigma towards MOUD and to potentially reduce prescribing of a life-saving medication.[79] Negative attitudes and beliefs toward use of medications in treating OUD is common among healthcare professionals, members of law enforcement and others in justice settings, in the wider community, and even among persons with OUD themselves.[80] Of primary care physicians in a national survey, just over three quarters (77.5%) perceived buprenorphine to be an effective treatment for OUD.[81] Many treatment programs and support groups discourage participants from using medications, including MOUD.[82] Young adults with OUD experience difficulties obtaining or remaining on buprenorphine as a result of stigma from healthcare providers, 12-step programs, residential treatment programs, and

[76] Sigmon SC. Interim treatment: Bridging delays to opioid treatment access. Prev Med. 2015;80:32–36. doi:10.1016/j.ypmed.2015.04.017.

[77] Oleskowicz TN, Ochalek TA, Peck KR, Badger GJ, Sigmon SC. Within-subject evaluation of interim buprenorphine treatment during waitlist delays. Drug Alcohol Depend. 2021 Mar 1;220:108532. doi: 10.1016/j.drugalcdep.2021.108532. Epub 2021 Jan 20. PMID: 33508690; PMCID: PMC8148627.

[78] Lanham, H.J., Papac, J., Olmos, D.I., Heydemann, E.L., Simonetti, N., Schmidt, S., & Potter, J.S. (2022). Survey of Barriers and Facilitators to Prescribing Buprenorphine and Clinician Perceptions on the Drug Addiction Treatment Act of 2000 Waiver. JAMA network open, 5(5), e2212419. *https://doi.org/10.1001/jamanetworkopen.2022.12419.*

[79] Pew Charitable Trusts (2019). Why Aren't More People With Opioid Use Disorder Getting Buprenorphine? Available at: *https://www.pewtrusts.org/en/research-and-analysis/articles/2019/07/31/why-arent-more-people-with-opioid-use-disorder-getting-buprenorphine.*

[80] Scorsone, K.L., Haozous, E.A., Hayes, L., & Cox, K.J. (2020). Overcoming Barriers: Individual Experiences Obtaining Medication-Assisted Treatment for Opioid Use Disorder. Qualitative health research, 30(13), 2103–2117. *https://doi.org/10.1177/1049732320938689.*

[81] McGinty, E.E., Stone, E.M., Kennedy-Hendricks, A., Bachhuber, M.A., & Barry, C.L. (2020). Medication for Opioid Use Disorder: A National Survey of Primary Care Physicians. Annals of internal medicine, 173(2), 160–162. *https://doi.org/10.7326/M19-3975.*

[82] Beetham, T., Saloner, B., Gaye, M., Wakeman, S.E., Frank, R.G., & Barnett, M.L. (2020). Therapies Offered at Residential Addiction Treatment Programs in the United States. JAMA, 324(8), 804–806. *https://doi.org/10.1001/jama.2020.8969.*

parents.[83] Prejudice against MOUD even exists among specialist SUD treatment providers. One 2020 national survey of residential OUD treatment programs found that less than a third (29%) offered maintenance treatment with buprenorphine-naloxone; many programs actively discouraged the use of medication, which are the standard of care, revealing that there is a vast knowledge gap about MOUD among treatment providers.[84]

Proposed changes to part 8 seek to reduce discriminatory attitudes and beliefs, and to incorporate evidence-based principles on practitioner autonomy, patient-centered decision making and individualized care plans. This is in line with the chronic disease model of care,[85] and represents a departure from the prescriptive model of care currently in place. In this way, The Department seeks to support practitioners in providing evidence-based and compassionate care to patients while also engaging them in recovery. This is an essential means of reducing stigma among practitioners and community members, while also positively addressing a patient's internalized stigma.[86]

Request for Comments

The Department requests public comment on all aspects of the proposed amendments to the regulations at 42 CFR part 8, *Medications for the Treatment of Opioid Use Disorder.* The Department welcomes public comment on any benefits or drawbacks of the proposed amendments set forth above in this proposed rule. Of particular interest are comments pertaining to: interim treatment; split dosing; telehealth; and take home doses of methadone.

Public Participation

The Department seeks comment on all issues raised by the proposed regulation, including any potential unintended adverse consequences. Because of the large number of public comments normally received on **Federal Register** documents, the Department is not able to acknowledge or respond to them individually. In developing the final rule, the Department will consider all comments that are received by the date and time specified in the **DATES** section of the Preamble.

Because mailed comments may be subject to delays due to security procedures, please allow sufficient time for mailed comments to be received by the deadline in the event of delivery delays. Any attachments submitted with electronic comments on *www.regulations.gov* should be in Microsoft Word or Portable Document Format (PDF). Please note that comments submitted by fax or email and those submitted after the comment period deadline will not be accepted.

Regulatory Impact Analysis

The Department has examined the impact of the proposed rule as required by Executive Order 12866 on Regulatory Planning and Review, 58 FR 51735 (October 4, 1993); Executive Order 13563 on Improving Regulation and Regulatory Review, 76 FR 3821 (January 21, 2011); Executive Order 13132 on Federalism, 64 FR 43255 (August 10, 1999); Executive Order 13175 on Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (November 9, 2000); Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, 86 FR 7009 (January 25, 2021); the Congressional Review Act, Public Law 104–121, sec. 251, 110 Stat. 847 (March 29, 1996); the Unfunded Mandates Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (March 22, 1995); the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164 (September 19, 1980); Executive Order 13272 on Proper Consideration of Small Entities in Agency Rulemaking, 67 FR 53461 (August 16, 2002); the Assessment of Federal Regulations and Policies on Families, Public Law 105–277, sec. 654, 112 Stat. 2681 (October 21, 1998); and the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (May 22, 1995).

Statement of Need

This proposed rule is being issued to update part 8 in response to increasing opioid overdose deaths, exacerbated by the COVID–19 pandemic.[87] Across the United States in 2020, 9.5 million people aged 12 or older misused heroin or prescription pain relievers.[88] The percentage was highest among young adults aged 18 to 25 (4.1 percent or 1.4 million people), followed by adults aged 26 or older (3.4 percent or 7.5 million people). It was lowest among adolescents aged 12 to 17 (1.6 percent or 396,000 people).[88] These numbers likely underestimate the true prevalence of opioid misuse and OUD, since the use of illicitly manufactured fentanyl has not to date been considered in the National Survey on Drug Use and Health (NSDUH) survey, and populations likely to have high prevalence of opioid misuse and use disorder, such as individuals in the criminal justice system, other institutionalized settings, and individuals experiencing homelessness not living in shelters are not included in the NSDUH.

Further to this, there are important equity considerations evidenced by the data. A recent analysis by the Centers for Disease Control and Prevention (CDC) demonstrates high levels of overdose among Black, American Indian and Alaska Native communities over the course of the pandemic.[89] This study showed that overdose death rates rose 44 percent in 2020 for Black people and 39 percent for American Indian and Alaska Native people, compared with 22 percent for white people.[89] Black youth ages 15 to 24 saw an 86 percent increase in overdose deaths, the largest spike of any age or race group, while Black men 65 and older were nearly seven times as likely than white men to die from an overdose.[89] It was also found that Black people were less than half as likely as white people to have received substance use treatment.

Research demonstrates that MOUD can reduce mortality from overdose by up to 59% (based on results of multivariable Cox proportional hazards models adjusted for age; sex; baseline

[83] Hadland, S.E., Park, T.W., & Bagley, S.M. (2018). Stigma associated with medication treatment for young adults with opioid use disorder: a case series. Addiction science & clinical practice, 13(1), 15. *https://doi.org/10.1186/s13722-018-0116-2.*

[84] Beetham, T., Saloner, B., Gaye, M., Wakeman, S.E., Frank, R.G., & Barnett, M.L. (2020). Therapies Offered at Residential Addiction Treatment Programs in the United States. JAMA, 324(8), 804–806. *https://doi.org/10.1001/jama.2020.8969.*

[85] Grover, A., & Joshi, A. (2014). An overview of chronic disease models: a systematic literature review. Global journal of health science, 7(2), 210–227. *https://doi.org/10.5539/gjhs.v7n2p210.*

[86] Idemudia, E.S., Olasupo, M.O., & Modibo, M.W. (2018). Stigma and chronic illness: A comparative study of people living with HIV and/or AIDS and people living with hypertension in Limpopo Province, South Africa. Curationis, 41(1), e1–e5. *https://doi.org/10.4102/curationis.v41i1.1879.*

[87] Cartus AR, Li Y, Macmadu A, Goedel WC, Allen B, Cerdá M, Marshall BDL. Forecasted and Observed Drug Overdose Deaths in the US During the COVID–19 Pandemic in 2020. JAMA Netw Open. 2022 Mar 1;5(3):e223418. doi: 10.1001/jamanetworkopen.2022.3418. PMID: 35311967; PMCID: PMC8938716.

[88] Substance Abuse and Mental Health Services Administration. (2021). Key substance use and mental health indicators in the United States: Results from the 2020 National Survey on Drug Use and Health (HHS Publication No. PEP21–07–01–003, NSDUH Series H–56). Rockville, MD: Center for Behavioral Health Statistics and Quality, Substance Abuse and Mental Health Services Administration. Retrieved from *https://www.samhsa.gov/data/.*

[89] Kariisa M, Davis NL, Kumar S, et al. Vital Signs: Drug Overdose Deaths, by Selected Sociodemographic and Social Determinants of Health Characteristics—25 States and the District of Columbia, 2019–2020. MMWR Morb Mortal Wkly Rep 2022;71:940–947. DOI: *https://dx.doi.org/10.15585/mmwr.mm7129e2.*

anxiety diagnosis; depression diagnosis; receipt of methadone, buprenorphine, opioid, and benzodiazepine prescriptions in the 12 months before index nonfatal opioid overdose; and time-varying receipt of opioid prescriptions, benzodiazepine prescriptions, withdrawal management episode, and short- and long-term residential treatments [90]), yet few people who may benefit from these medications have immediate and sustained access to them.[91]

The pattern of enrollment in programs providing methadone was established in the latter part of the 20th century.[92] Research reveals that the rate of methadone treatment at that time was highest in low income urban areas.[93] These patterns have remained relatively unchanged since the expansion of access to buprenorphine in 2002. Research demonstrates that there are extensive 'treatment deserts' where there is little to no physical access to OTPs, especially in rural areas.[94] SAMHSA believes that proposed changes to part 8 will, as described above, facilitate:

- Enhanced access to medications for opioid use disorder, such as through take home doses of methadone and extending interim treatment to 180 days;
- Changes to ensure updated language and terminology;
- Clarification of standards applying to accreditation bodies;
- Revising Federal Opioid Use Disorder Treatment Standards; and
- Removing reporting requirements for practitioners approved to treat up to 275 patients.

SAMHSA notes below that these changes are associated with limited burden as the proposed rule does not substantially alter reporting or accreditation activities. The changes proposed will support SAMHSA in its role of overseeing accrediting bodies and OTPs, modernizing language and expectations in response to current challenges and anticipated future trends. SAMHSA invites comments on the assumptions of costs and benefits identified below, including citations to any publicly available studies or reports that could elucidate and improve this analysis.

A. Executive Orders 12866 and 13563 and Related Executive Orders on Regulatory Review

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). Executive Order 13563 is supplemental to, and reaffirms the principles, structures, and definitions governing regulatory review as established in, Executive Order 12866.

This proposed rule is partially regulatory and partially deregulatory. The Department estimates that because much of what is being proposed does not substantially alter current practice as implemented over the past 2 years under the COVID PHE, the proposed rule will not result in significantly altered costs. Further to this, the proposed rule creates efficiencies in service delivery and in administration. These include strengthening the patient-practitioner relationship in a manner that promotes efficient, evidence-based and patient-centered care, updating accreditation procedures and providing a stable regulatory environment. Additionally, the proposed rule makes permanent some OTP treatment flexibilities implemented within the past two years.

B. Executive Order 13985 Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

A recent analysis by the Centers for Disease Control and Prevention (CDC) demonstrates high levels of overdose among Black, American Indian and Alaska Native communities over the course of the pandemic.[95] While these trends existed long before the COVID–19 PHE, this study highlights that overdose death rates rose 44 percent in 2020 for Black people and 39 percent for American Indian and Alaska Native people, compared with 22 percent for white people.[95] Black youth ages 15 to 24 saw an 86 percent increase in overdose deaths, the largest spike of any age or race group, while Black men 65 and older were nearly seven times as likely than white men to die from an overdose.[95] It was also found that Black people were less than half as likely as white people to have received substance use treatment.

This disparity amplifies the importance of promoting person-centered care that is culturally appropriate and responsive to patient need, while also fostering a treatment environment that promotes and sustains patient engagement. The proposed changes facilitate the practitioner-patient relationship in a manner that espouses these principles, while also expanding the reach of OTPs (through activities such as mobile medication units) to physically engage communities that are in need of intervention. Further to this, the proposed changes promote examination of a patient's cultural needs as they engage in treatment services. This is consistent with evidence-based and culturally responsive paradigms of care.

The proposed changes also facilitate patient engagement through removing, at the practitioner's discretion, the requirement to attend an OTP each day. Indeed, the ability to provide unsupervised doses of methadone early in treatment allows those with unstable access to transportation, for example, to focus on recovery activities in their own community. Evidence from the past two years demonstrates safety, as well as high patient and practitioner satisfaction with take-home doses of methadone. This is principally because unsupervised doses of methadone allow individuals the opportunity to engage in employment or other activities that are supportive of recovery and longer term community involvement.

1. Cost-Benefit Analysis

a. Overview

The U.S. estimated economic cost of opioid use disorder ($471 billion) and fatal opioid overdose ($550 billion), prior to the pandemic, totaled $1,021 billion.[96] Among the 39 jurisdictions

[90] Larochelle MR, Bernson D, Land T, Stopka TJ, Wang N, Xuan Z, Bagley SM, Liebschutz JM, Walley AY (2018). Medication for Opioid Use Disorder After Nonfatal Opioid Overdose and Association With Mortality: A Cohort Study. Ann Intern Med. Aug 7;169(3):137–145. doi: 10.7326/M17–3107.

[91] Winograd RP, Presnall N, Stringfellow E, Wood C, Horn P, Duello A, Green L, Rudder T. (2019). The case for a medication first approach to the treatment of opioid use disorder. Am J Drug Alcohol Abuse. 2019;45(4):333–340. doi: 10.1080/00952990.2019.1605372. Epub 2019 May 14. PMID: 31084515.

[92] D'Aunno T, Pollack HA. (2002). Changes in methadone treatment practices: results from a national panel study, 1988–2000. JAMA. 2002;288(7):850–856. doi:10.1001/jama.288.7.850.

[93] Strain EC, Stitzer ML, Liebson IA, Bigelow GE. (1994). Comparison of buprenorphine and methadone in the treatment of opioid dependence. Am J Psychiatry. 1994 Jul;151(7):1025–30. doi: 10.1176/ajp.151.7.1025. PMID: 8010359.

[94] Mitchell P, Samsel S, Curtin KM, Price A, Turner D, Tramp R, Hudnall M, Parton J, Lewis D. (2022). Geographic disparities in access to Medication for Opioid Use Disorder across US census tracts based on treatment utilization behavior. Soc Sci Med. 2022 Jun;302:114992. doi: 10.1016/j.socscimed.2022.114992. Epub 2022 Apr 28. PMID: 35512612.

[95] Kariisa M., Davis N.L., Kumar S., et al. Vital Signs: Drug Overdose Deaths, by Selected Sociodemographic and Social Determinants of Health Characteristics—25 States and the District of Columbia, 2019–2020. MMWR Morb Mortal Wkly Rep 2022;71:940–947. DOI: *https://dx.doi.org/10.15585/mmwr.mm7129e2.*

[96] Luo, F., Li, M., & Florence, C. (2021). State-Level Economic Costs of Opioid Use Disorder and Fatal Opioid Overdose—United States, 2017.

reviewed in this analysis, combined costs of opioid use disorder and fatal opioid overdose varied from $985 million in Wyoming to $72.6 billion in Ohio. Per capita combined costs varied from $1,204 in Hawaii to $7,247 in West Virginia. States with high per capita combined costs were located mainly in the Ohio Valley and New England. Across many studies, reduced quality of life is the largest component of the cost of opioid use disorder.[97]

A recent study showed that in the absence of treatment, 42,717 overdoses (4,132 fatal, 38,585 nonfatal) and 12,660 deaths were estimated to occur in a cohort of 100,000 patients over 5 years.[98] An estimated reduction in overdoses was associated with methadone treatment (10.7%), buprenorphine or naltrexone treatment (22.0%), and medication treatment combined with psychotherapeutic interventions (range, 21.0%–31.4%).[98] Estimated decreased deaths were associated with treatment with methadone (6%), buprenorphine or naltrexone (13.9%), and the combination of medications and psychotherapy (16.9%). When criminal justice costs were included, all forms of MOUD (with buprenorphine, methadone, and naltrexone) were associated with cost savings compared with no treatment, yielding savings of $25,000 to $105,000 in lifetime costs per person.

McAdam-Marx et al. reported in 2010 that Medicaid beneficiaries with opioid use disorder, physical dependence on opioids, or poisoning had nearly triple the total medical costs adjusted for baseline sample characteristics compared to beneficiaries matched by age, gender, and state with no opioid misuse diagnosis ($23,556 vs. $8436; P < 0.001).[99] The opioid dependence/abuse group (using an older version of the Diagnostic and Statistical Manual of Mental Disorders) also had higher prevalence of comorbidities, such as psychiatric disorders, pain-related diagnoses, and other substance use conditions. While this study considered overall cost, it did not address medication costs in particular, or any impact treatment may have had on overall cost.

OTPs provide comprehensive interventions including medications, counseling and services designed to offer a whole-person approach to care and ameliorate social determinants of health that contribute to substance misuse. Numerous studies have demonstrated that treatment with pharmacotherapy and counseling services can reduce overall healthcare costs for patients with OUD.[100] [101] [102] For example, a 2019 analysis demonstrated that a comprehensive approach to OUD treatment is associated with improved health and economic outcomes.[103] This study assessed patients with OUD treated at a comprehensive primary care center (CCP) and other Maryland facilities in a large state Medicaid program, and demonstrated cost savings with a comprehensive approach to care. Compared to the non-CCP patient group (n = 867), the CCP group (n = 131) had a higher 6-month buprenorphine treatment retention rate (P < 0.001), fewer hospital stays in the 12-month follow-up period (P = 0.005), and lower total cost (US$10,942 vs. $13,097, P < 0.001) and hospital stay cost (US$1448 vs. $4265, P = 0.001).[103] Other measures, including emergency department utilization and cost, substance use-related cost, and non-buprenorphine pharmacy cost, were not statistically different between the 2 groups. Results suggested that patients, as well as the health care system, can benefit from a comprehensive model of care for OUD with better treatment retention, fewer hospital stays, and lower costs.

These findings are consistent with a 2016 cross sectional study that evaluated medical claims for Vermont Medicaid beneficiaries with opioid dependence or addiction between 2008 and 2013. In their analysis, Mohlman and colleagues determined that medication combined with psychosocial counseling is associated with reduced general health care expenditures and utilization, such as inpatient hospital admissions and outpatient emergency department visits, for Medicaid beneficiaries with opioid misuse.[104] Two prior studies assessed data from commercial health insurance claims on the overall health care costs and utilization rates for those using MOUD compared to those treated without MOUD.[101] [105] The first study found that over a five-year period, members on MOUD had 50% lower total annual health plan costs than those who had two or more visits to an addiction treatment setting and no treatment, and 62% lower than those with zero or one visit for addiction treatment and no intervention.[105] The other study found that after a six-month period, those on MOUD had significantly lower overall annual health plan costs compared to those with no medication ($10,192 vs. $14,353; p-value < 0.0001).[101] The difference was driven largely by lower inpatient services and non-opioid-related outpatient services for the group receiving medication.

The regulatory impact analysis (RIA) outlined below, relies on data provided to SAMHSA by OTP accreditation bodies for the year 2020–2021. Pursuant to 42 CFR part 8, accreditation bodies and OTPs are required to submit information to SAMHSA's Center for Substance Abuse Treatment (CSAT). The annualized burden of information collection for OTPs and accreditation bodies under the rule is set forth in the tables that follow.

This proposed rule does not substantially alter reporting burden or accreditation activities. The total number of burden hours reported in

MMWR. Morbidity and mortality weekly report, 70(15), 541–546. *https://doi.org/10.15585/mmwr.mm7015a1.*

[97] Mitchell, S.G., Gryczynski, J., Schwartz, R.P., Myers, C.P., O'Grady, K.E., Olsen, Y.K., & Jaffe, J.H. (2015). Changes in Quality of Life following Buprenorphine Treatment: Relationship with Treatment Retention and Illicit Opioid Use. Journal of psychoactive drugs, 47(2), 149–157. *https://doi.org/10.1080/02791072.2015.1014948.*

[98] Fairley M., Humphreys K., Joyce V.R., et al. (2021). Cost-effectiveness of Treatments for Opioid Use Disorder. JAMA Psychiatry. 2021;78(7):767–777. doi:10.1001/jamapsychiatry.2021.0247.

[99] McAdam-Marx C., Roland C.L., Cleveland J., Oderda G.M. (2010). Costs of opioid abuse and misuse determined from a Medicaid database. J Pain Palliat Care Pharmacother. 2010 Mar;24(1):5–18. doi: 10.3109/15360280903544877. PMID: 20345194.

[100] Murphy S.M., Polsky D. (2016). Economic Evaluations of Opioid Use Disorder Interventions. Pharmacoeconomics. 2016 Sep;34(9):863–87. doi: 10.1007/s40273–016–0400–5. PMID: 27002518; PMCID: PMC5572804.

[101] Baser O., Chalk M., Fiellin D.A., Gastfriend D.R. (2011). Cost and utilization outcomes of opioid-dependence treatments. Am J. Manag Care. 2011 Jun;17 Suppl 8:S235–48. PMID: 21761950.

[102] Lynch F.L., McCarty D., Mertens J., Perrin N.A., Green C.A., Parthasarathy S., Dickerson J.F., Anderson B.M., Pating D. (2014). Costs of care for persons with opioid dependence in commercial integrated health systems. Addict Sci Clin Pract. 2014 Aug 14;9(1):16. doi: 10.1186/1940–0640–9–16. PMID: 25123823; PMCID: PMC4142137.

[103] Hsu Y.J., Marsteller J.A., Kachur S.G., Fingerhood M.I. (2019). Integration of Buprenorphine Treatment with Primary Care: Comparative Effectiveness on Retention, Utilization, and Cost. Idemudia, E.S., Olasupo, M.O., & Modibo, M.W. (2018). Stigma and chronic illness: A comparative study of people living with HIV and/or AIDS and people living with hypertension in Limpopo Province, South Africa. Curationis, 41(1), e1–e5. *https://doi.org/10.4102/curationis.v41i1.1879.*

[104] Mohlman M.K., Tanzman B., Finison K., Pinette M., Jones C. Impact of Medication-Assisted Treatment for Opioid Addiction on Medicaid Expenditures and Health Services Utilization Rates in Vermont. J Subst Abuse Treat. 2016 Aug; 67:9–14. doi: 10.1016/j.jsat.2016.05.002. Epub 2016 May 9. PMID: 27296656.

[105] McCarty D., Perrin N.A., Green C.A., Polen M.R., Leo M.C., Lynch F. (2010). Methadone maintenance and the cost and utilization of health care among individuals dependent on opioids in a commercial health plan. Drug Alcohol Depend. 2010 Oct 1;111(3):235–40. doi: 10.1016/j.drugalcdep.2010.04.018. PMID: 20627427; PMCID: PMC2950212.

2020–2021 for accreditation body respondents was approximately 394.70 hours. The total number of burden hours for OTP respondents during the same period was 1,868.95 hours. The annual burden associated with this rule and the associated forms was estimated to be 2,263.65 hours.

This analysis quantifies a few limited categories of paperwork-related costs, but there are more substantive actions (with associated costs and benefits) that would be necessary in the chain of cause and effect between the rule's most direct effects and the health and mortality consequences that are implied, above, as being potentially large if this proposal is finalized. For instance, relative to the appropriate analytic baseline (the future in the absence of the rule), the proposed rule would facilitate the expansion of mobile methadone units via their inclusion in operations, and such expansion would entail both new use of resources (costs [106]) and then, contingent upon such costs being incurred, the types of benefits described above. As a further example, the accrual of health and overdose-mortality-avoidance benefits due to removal of the one-year requirement for opioid addiction before patient admission to an OTP would generally be contingent upon increasing resource use associated with such admission.

b. Estimated Costs of Reporting Burdens for OTPs and Accreditation Bodies

In developing its estimates of the potential costs of the proposed regulation, the Department relied substantially on recent estimates of burden and cost pertaining to requirements set forth in 42 CFR part 8.

Hourly labor costs involved in reporting requirements vary greatly between programs. Based on wage estimates obtained from the U.S. Department of Labor, Bureau of Labor Statistics, and Occupational Employment Statistics website, it is estimated that employees involved in complying with reporting requirements range from minimum wage ($7.25) clerical workers, to counselors averaging $22.14 an hour, managers, licensed practical nurses and registered nurses averaging $35.36 per hour, administrators averaging $52.58 per hour, and physicians averaging $96.26 per hour. The estimated average hourly wage for program personnel involved in reporting requirements, calculated as a simple mean, is $42.71. Multiplying the estimated average hourly wage by 2.0 to account for fringe benefits and overhead costs, an estimated hourly labor cost of $85.42 is obtained. The cost to accreditation bodies for applying for initial and ongoing approval with Form SMA–163, as well as for complying with the reporting requirements under 42 CFR 8.4 and 8.6 may be estimated at $33,672.56, using the $85.42 hourly cost figure. The estimated total annualized cost to the treatment program respondents for preparing the Form SMA–162 and for complying with other reporting requirements pursuant to 42 CFR 8.11, 8.24, 8.25, 8.26, and 8.28, using $85.42 as the hourly cost figure, is $16,140.11.

Items	Preparation time (hours)	Cost/hour	Total cost
Form SMA–163, compliance with the reporting requirements under 42 CFR 8.4 and 8.6	394.2	$85.42	$33,672.56
Form SMA–162, compliance with other reporting requirements under 21 CFR 8.11, 8.24, 8.25, 8.26, and 8.28	188.95	85.42	16,140.11
Form SMA–168, Exception Request and Record of Justification Under 42 CFR 8.11(h)	2,135	85.42	182,371.70
Subtotal			232,184.37

c. Cost Pertaining to Recordkeeping

The recordkeeping requirements set forth in 42 CFR 8.4 and 8.12 include maintenance of the following: a patient's medical examination when admitted to treatment; a patient's history; a care plan; any prenatal support provided to the patient; justification of unusually large initial doses; changes in a patient's dosage schedule; the rationale for decreasing a patient's clinic attendance; services provided; and documentation of physiologic tolerance.

SAMHSA believes that the recordkeeping requirements are customary and usual practices within the medical and behavioral health treatment communities. Accreditation bodies also maintain accreditation records for 5 or more years as a customary and usual practice. SAMHSA has neither calculated a response burden nor a cost burden for these activities.

d. Costs Pertaining to Disclosure

The proposed rule includes requirements that OTPs and accreditation organizations disclose information. For example, § 8.12(e)(1) requires that a practitioner explain the facts concerning the use of MOUD to each patient. This type of disclosure is consistent with common medical practice and is not considered an additional burden. Further, the rule requires, under § 8.4(i)(1), that accreditation organizations shall make public their fee structure. This type of disclosure is standard business practice and is not considered a burden in this analysis.

e. Estimate of Annualized Non-Hourly Cost Burden to Respondents

The proposed rule does not impose new capital or startup costs beyond the normal office and laboratory equipment required for achieving regulatory compliance. It is estimated that there are some costs associated with preparation for the accreditation site visit itself; assuming that OTP staff spend approximately 180 hours preparing for the site visit at an average cost of $85.42 per hour and an average of 1.33 site visits per facility, the total cost would be $20,450 or an annualized cost of $15,376 per facility. For the current approximately 1,920 affected OTPs these total annual costs are estimated to be $29,521,920. The percentage of this total cost that is associated with recordkeeping and reporting-only is difficult to estimate, but it is considered to be a small fraction of the total associated with accreditation.

i. Estimate of Annualized Cost to the Government

The total annualized cost to SAMHSA for administering 42 CFR part 8 is estimated at $450,000. This estimate includes the cost of an outside contractor to develop and maintain an extensive on-line system for SAMHSA,

[106] It would be incorrect to interpret this analytic discussion as implying that the proposed rule changes authorization procedures for mobile methadone units.

opioid treatment programs, State opioid treatment authorities, accreditation organizations, and others to have use a protected website for day-to-day regulatory activities. This estimate does not include funds that SAMHSA/CSAT allocates to its ''look back'' program that monitors the adequacy of accreditation surveys. Of this amount, the total annualized cost to SAMHSA for Paperwork Reduction Act activities as a result of this regulation is estimated as $221,434, as shown in the following table.

ANNUALIZED COST TO SAMHSA/CSATT

Item (purpose)	Responses	Hours per response	Total hours	Total cost @$85.42 per hour
SMA–162 (New Programs)	42	1.5	63	$5,381
SMA–162 (Renewal)	386	.75	289.5	24,729
SMA–162 (Relocation)	35	.25	8.75	747
Notification of Provisional Certification	40	.50	20	1,708
Notification of Extension of Provisional Certification	15	.50	7.5	641
Notification of Sponsor or Medical Director Change	60	0.33	19.8	1,691
Documentation to SAMHSA for Interim Treatment	1	0.50	0.5	43
Requests to SAMHSA for Exemption from §§ 8.11 and 8.12 (including SMA–168)	24,000	0.07	1680	143,506
Notification to SAMHSA Before Establishing Medication Units	20	1.00	20	1,708
Review of Submissions under Part C	2	2.00	4	342
Accreditation Body Initial Application (SMA–163)	3	40	120	10,250
Accreditation Body Renewal (SMA–163)	3	40	120	10,250
Relinquishment Notification	1	.50	0.5	43
Notification for Serious Non-Compliant Programs	2	.50	1	85
General Documents to SAMHSA Upon Request	10	1.00	10	854
Accreditation Survey to SAMHSA Upon Request	383	.50	191.5	16,358
Less Than Full Accreditation Report to SAMHSA	10	1.00	10	854
Summaries of Inspections	12	1.00	12	1,025
Notification of Complaints to SAMHSA	10	1.00	10	854
Submission of 90-Day Corrective Plan to SAMHSA	1	4.25	4.25	363
Subtotal	25,036	97.15	2592.3	221,434

2. Consideration of Regulatory Alternatives

The Department has initiated rulemaking to make flexibilities issued during the COVID–19 PHE permanent, while also updating accreditation and treatment standards to reflect evidence-based practices and current medical terminology and approaches to OUD treatment given the current overdose crisis. The alternative would be to allow the current flexibilities to lapse with the end of the COVID–19 PHE, or to renew them periodically as may be needed during future emergencies or changed circumstances.

3. Request for Comments on Costs and Benefits

The Department requests public comment on all the estimates, assumptions, and analyses within the cost-benefits analysis. As part of this request, feedback is welcome on the extent to which cited papers follow sound scientific practices, such as: clearly stating null hypotheses and presenting estimating equations; ensuring that appendices or other supplementary materials are available online, if claimed to be so in the main body of a paper; using compelling identification strategies if making causal claims (for example, establishing parallel trends pre-intervention if using a difference-in-differences method [107]); and avoiding the types of errors that Kim et al. (2020 [108]) and Sanders et al. (2016 [109]) indicate are common in published cost-effectiveness analyses. The Department also requests comments on any relevant information or data that would inform a quantitative analysis of proposed reforms that the Department qualitatively addresses in this RIA. The Department also requests comments on whether there may be other indirect costs and benefits resulting from the proposed changes in the proposed rule and welcomes additional information that may help quantify those costs and benefits.

B. Regulatory Flexibility Act

The Department has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act (RFA) requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. The Act defines ''small entities'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, and (3) a small government jurisdiction of less than 50,000 population. Because 90 percent or more of all health care providers meet the SBA size standard for a small business or are nonprofit organizations, the Department generally treats all health care providers as small entities for purposes of performing a regulatory flexibility analysis. The SBA size standard for health care providers ranges between a maximum of $8 million and $41.5 million in annual receipts, depending upon the type of entity.

For the reasons stated above, it is not expected that the cost of compliance would be significant for OTPs or accreditation bodies. Therefore, this

[107] Wing C, Simon K, Bello-Gomez RA (2018). Designing difference in difference studies: best practices for public health policy research. Annual Review of Public Health 39: 453–469.

[108] Kim DD, Silver MC, Kunst N, et al. (2020). Perspective and costing in cost-effectiveness analysis, 1974–2018. PharmacoEconomics 38: 1135–1145.

[109] Sanders GD, Neumann PJ, Basu A, et al. (2016). Recommendations for conduct, methodological practices, and reporting of cost-effectiveness analyses: second panel on cost-effectiveness in health and medicine, JAMA, 1093–1103.

proposed rule would not result in a significant negative impact.

C. Unfunded Mandates Reform Act

Section 202(a) of The Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending that may result in expenditures in any one year of $100 million in 1995 dollars, updated annually for inflation. As of 2022, this threshold is $165 million. The Department does not anticipate that this proposed rule would result in the expenditure by state, local, and tribal governments, taken together, or by the private sector, of $165 million or more in any one year.

D. Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has federalism implications. The Department does not believe that this rulemaking would have any significant federalism implications, impose significant costs on state or local governments or preempt state law.

E. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 [110] requires Federal departments and agencies to determine whether a proposed policy or regulation could affect family well-being. If the determination is affirmative, then the Department or agency must prepare an impact assessment to address criteria specified in the law. The Department believes that the proposed regulations would positively impact the ability of patients and families to access treatment for OUD. The Department does not anticipate negative impacts on family well-being as a result of this rulemaking as described.

F. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13), agencies are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule, and are required to publish such proposed requirements for public comment. The PRA requires agencies to provide a 60-day notice in the **Federal Register** and solicit public comment on a proposed collection of information before it is submitted to OMB for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that the Department solicit comment on the following issues:

1. Whether the information collection is necessary and useful to carry out the proper functions of the agency;

2. The accuracy of the agency's estimate of the information collection burden;

3. The quality, utility, and clarity of the information to be collected; and

4. Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The PRA requires consideration of the time, effort, and financial resources necessary to meet the information collection requirements referenced in this section. The Department explicitly seeks, and will consider, public comment on its assumptions as they relate to the PRA requirements summarized in this section.

As discussed below, the Department estimates a total OTP burden associated with all information collections of 1,868.95 hours, and a total number of burden hours for accreditation body respondents of approximately 394.70 hours each year. The annual burden associated with this rule and the associated forms is therefore estimated to be 2,263.65 hours.

1. Explanation of Estimated Annualized Burden Hours for 42 CFR Part 8

The Department presents, in separate tables below, burden estimates for the annual reporting requirement for accreditation bodies and also OTPs pursuant to the proposed rule.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total Responses	Hours/ response	Total hours
8.3(b)(1) through (11)	Initial approval (SMA–163)	1	1	1	6.0	6
8.3(c)	Renewal of approval (SMA–163)	2	1	2	1.0	2
8.3(e)	Relinquishment notification	1	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTPs	1	90	90	0.1	9
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant OTPs.	2	2	4	1.0	4
8.4(b)(1)(iii)	Notification to OTP for serious noncompliance	2	10	20	1.0	20
8.4(d)(1)	General documents and information to SAMHSA upon request.	6	5	30	0.5	15
8.4(d)(2)	Accreditation survey to SAMHSA upon request	6	75	450	0.02	9
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request	6	6	36	0.2	7.2
8.4(d)(4)	Report of less than full accreditation to SAMHSA	6	5	30	0.5	15
8.4(d)(5)	Summaries of Inspections	6	50	300	0.5	150
8.4(e)	Notifications of Complaints	12	6	72	0.5	36
8.6(a)(2) and (b)(3)	Revocation notification to Accredited OTPs	1	185	185	0.3	55.5
8.6(b)	Submission of 90-day corrective plan to SAMHSA	1	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTPs of Probationary Status	1	185	185	0.3	55.5
Subtotal		54		1,407		394.70

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.11(b)	Renewal of approval (SMA–162)	386	1	386	0.15	57.9
8.11(b)	Relocation of Program (SMA–162)	35	1	35	1.17	40.95

[110] Public Law 105–277, 112 Stat. 2681 (October 21, 1998).

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondent	Total responses	Hours/ response	Total hours
8.11(d)	Application for provisional certification	42	1	42	1	42.00
8.11(f)	Application for extension of provisional certification	30	1	30	0.25	7.50
8.11(g)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	60	0.1	6.00
8.11(h)(2)	Documentation to SAMHSA for interim treatment	1	1	1	1	1.00
8.11(i)	Request to SAMHSA for Exemption from §§ 8.11 and 8.12 (including SMA–168).	1,200	20	24,000	0.07	1,680
8.11(j)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	10	0.25	2.5
8.12(j)(2)	Notification to State Opioid Treatment Authority for Interim Treatment.	1	20	20	0.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	2	0.25	.50
8.25(a)	Informal Review Request	2	1	2	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement	2	1	2	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	2	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	2	5.00	10.00
Subtotal		1,775		24,594		1,868.95
Total		1,829		26,001		2,263.65

The tables above reflect current estimates of burden, as the proposed rule does not effectively add or alter new reporting requirements. The estimates are derived from SAMHSA's data and are reflective of work from over the preceding twelve months. Further to this, the estimates of burden do not substantially differ from previously submitted estimates provided to The Office of Management and Budget.

The proposed rule does not alter reporting requirements as these have been shown to be effective in the safe administration of OTPs. The accreditation system provides effective oversight, while OTP reporting requirements support accreditation activities and the provision of safe treatment. Further to this, the proposed rule retains requirements that OTP's and accreditation organizations disclose information related to patient care and clinic policies and procedures for the treatment of OUD with MOUD. For example, § 8.12(e)(1) requires that a qualifying health care practitioner explain the facts concerning the use of MOUD to each patient. This type of disclosure is considered to be consistent with common medical practice and is not considered an additional burden. Further, the requirement under § 8.4(i)(1) that each accreditation organization shall make public its fee structure is considered standard business practice and is not considered a burden in this analysis.

List of Subjects in 42 CFR Part 8

Administrative practice and procedure, Health professions, Methadone, Reporting and recordkeeping requirements, Substance misuse.

■ For the reasons stated in the preamble, the Department of Health and Human Services proposes to revise 42 CFR part 8 to read as set forth below:

PART 8—MEDICATIONS FOR THE TREATMENT OF OPIOID USE DISORDER

Subpart A—General Provisions

Subpart B—Accreditation of Opioid Treatment Programs

Subpart C—Certification and Treatment Standards for Opioid Treatment Programs

Subpart D—Procedures for Review of Suspension or Proposed Revocation of OTP Certification, and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body

Subpart E [Reserved]

Subpart F—Authorization To Increase Patient Limit to 275 Patients

Authority: 21 U.S.C. 823; 42 U.S.C. 257a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

Subpart A—General Provisions

§ 8.1 Scope.

(a) This subpart and subparts B through D of this part establish the procedures by which the Secretary of Health and Human Services (the Secretary) will determine whether an

applicant seeking to become an Opioid Treatment Program (OTP) is qualified under section 303(g) of the Controlled Substances Act (CSA) (21 U.S.C. 823(g)(1)) to dispense Medications for Opioid Use Disorder (MOUD) in the treatment of Opioid Use Disorder (OUD), and establishes the Secretary's standards regarding the appropriate quantities of MOUD that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(1)). Under this subpart and subparts B through D, an applicant seeking to become an OTP must first obtain from the Secretary or, by delegation, from the Assistant Secretary for Mental Health and Substance Use, a certification that the applicant is qualified under the Secretary's standards and will comply with such standards. Eligibility for certification will depend upon the applicant obtaining accreditation from an accreditation body that has been approved by the Secretary. This subpart and subparts B through D also establish the procedures whereby an entity can apply to become an approved accreditation body, and the requirements and general standards for accreditation bodies to ensure that OTPs are consistently evaluated for compliance with the Secretary's standards for treatment of OUD with MOUD.

(b) The regulations in subpart F of this part establish the procedures and requirements that practitioners who are authorized to treat up to 100 patients with OUD pursuant to a waiver obtained under section 303(g)(2) of the CSA (21 U.S.C. 823(g)(2)), must satisfy in order to treat up to 275 patients with medications covered under section 303(g)(2)(C) of the CSA.

§ 8.2 Definitions.

The following definitions apply to this part:

Accreditation body means an organization that has been approved by the Secretary in this part to accredit OTPs dispensing MOUD.

Accreditation body application means the application filed with the Secretary for purposes of obtaining approval as an accreditation body, as described in § 8.3(b).

Accreditation elements mean the elements or standards that are developed and adopted by an accreditation body and approved by the Secretary.

Accreditation survey means an onsite review and evaluation of an OTP by an accreditation body for the purpose of determining compliance with the Federal opioid treatment standards described in § 8.12.

Accredited OTP means an OTP that is the subject of a current, valid accreditation from an accreditation body approved by the Secretary under § 8.3(d).

Additional credentialing means board certification in Addiction Medicine or Addiction Psychiatry by the American Board of Addiction Medicine, the American Board of Medical Specialties, or the American Osteopathic Association or certification by the American Board of Addiction Medicine, the American Society of Addiction Medicine.

Approval term means the 3-year period in which a practitioner is approved to treat up to 275 patients with OUD that commences when a practitioner's Request for Patient Limit Increase is approved in accordance with § 8.625.

Behavioral health services means any intervention carried out in a therapeutic context at an individual, family, or group level. Interventions may include structured, professionally administered clinical interventions (*e.g.,* cognitive behavior therapy or insight-oriented psychotherapy) delivered in-person, or remotely via telemedicine, which has been shown to facilitate treatment outcomes, or non-clinical interventions.

Care plan means an individualized treatment and/or recovery plan that outlines attainable treatment goals that have been identified and agreed upon between the patient and the OTP clinical team, and which specifies the services to be provided, as well as the proposed frequency and schedule for their provision.

Certification means the process by which the Secretary determines that an OTP is qualified to provide OUD treatment under the Federal Opioid Use Disorder treatment standards.

Certification application means the application filed by an OTP for purposes of obtaining certification from the Secretary, as described in § 8.11(b).

Certified opioid treatment program means an OTP that is the subject of a current, valid certification under § 8.11.

Comprehensive treatment is treatment that includes the continued use of MOUD provided in conjunction with an individualized range of appropriate harm reduction, medical, behavioral health, and recovery support services.

Conditional certification is a type of temporary certification granted to an OTP that has requested renewal of its certification and that has received temporary accreditation for one year by an approved accreditation body. The one-year accreditation period is to allow the OTP to address areas of non-conformance with accreditation standards that do not involve immediate, high-risk health and/or safety concerns.

Continuous medication treatment means the uninterrupted treatment for OUD involving the dispensing and administration of MOUD at stable dosage levels for a period in excess of 21 days.

Covered medications means the medications or combinations of such medications that are covered under 21 U.S.C. 823(g)(2)(C).

Dispense means to deliver a controlled medication to an ultimate user by, or pursuant to, the lawful order of, a practitioner, including the prescribing and administering of a controlled medication.

Diversion control plan means a set of documented procedures that reduce the possibility that controlled medications will be transferred or otherwise shared with others to whom the medication was not prescribed or dispensed.

Emergency situation means that an existing State, tribal, or local system for substance use disorder services is overwhelmed or unable to meet the existing need for the provision of MOUD as a direct consequence of a clear precipitating event. This precipitating event must have an abrupt onset, such as: practitioner incapacity; natural or human-caused disaster; an outbreak associated with drug use; and result in significant death, injury, exposure to life-threatening circumstances, hardship, suffering, loss of property, or loss of community infrastructure.

Federal Opioid Use Disorder treatment standards means the standards established by the Secretary in § 8.12 that are used to determine whether an OTP is qualified to engage in OUD treatment. The Federal Opioid Use Disorder treatment standards established in § 8.12 also include the standards established by the Secretary regarding the quantities of MOUD which may be provided for unsupervised use.

For-cause inspection means an inspection, by the Secretary, an accreditation body, or a State authority, of an OTP that may be operating in violation of Federal Opioid Use Disorder treatment standards, may be providing substandard treatment, may be serving as a possible source of diverted medications, or where patient well-being is at risk.

Harm reduction refers to practical, evidence-based strategies, including: overdose education; testing and intervention for infectious diseases,

including counseling and risk mitigation activities forming part of a comprehensive, integrated approach to address human immunodeficiency virus (HIV), viral hepatitis, sexually transmitted infections, and bacterial and fungal infections; distribution of opioid overdose reversal medications; linkage to other public health services; and connecting those who have expressed interest in additional support to peer services.

Individualized dose means the dose of a medication for opioid use disorder, ordered by an OTP practitioner and dispensed to a patient, that sufficiently suppresses opioid withdrawal symptoms. Individualized doses may also include split doses of a medication for opioid use disorder, where such dosing regimens are indicated.

Interim treatment means that on a temporary basis, a patient may receive services from an OTP, while awaiting access to more comprehensive treatment services. The duration of interim treatment is limited to 180 days.

Long-term care facilities mean those facilities that provide rehabilitative, restorative, and/or ongoing services to those in need of assistance with activities of daily living. Long-term care facilities include: extended acute care facilities; rehabilitation centers; skilled nursing facilities; permanent supportive housing; assisted living facilities; and chronic care hospitals.

Medical director means a physician, licensed to practice medicine in the jurisdiction in which the OTP is located, who assumes responsibility for all medical and behavioral health services provided by the program, including their administration. A medical director may delegate specific responsibilities to authorized program physicians, appropriately licensed non-physician practitioners with prescriptive authority functioning under the medical director's supervision, or appropriately licensed and/or credentialed non-physician healthcare professionals providing services in the OTP, in compliance with applicable Federal and State laws. Such delegations will not eliminate the medical director's responsibility for all medical and behavioral health services provided by the OTP.

Medication for Opioid Use Disorder or *MOUD* means medications, including opioid agonist medications, approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), for use in the treatment of OUD. As used in this part, ''continuous medication treatment'' is intended to be synonymous with the term ''maintenance'' treatment as used in 21 U.S.C. 823(g)(1), and the term ''withdrawal management'' is intended to be synonymous with the term ''detoxification'' as used in 21 U.S.C. 823(g)(1).

Medication unit means an entity that is established as part of, but geographically separate from, an OTP from which appropriately licensed OTP practitioners, contractors working on behalf of the OTP, or community pharmacists may dispense or administer MOUD, collect samples for drug testing or analysis, or provide other OTP services. Medication units can be a brick-and-mortar location or mobile unit.

Nationally recognized evidence-based guidelines mean a document produced by a national or international medical professional association, public health agency, such as the World Health Organization, or governmental body with the aim of assuring the appropriate use of evidence to guide individual diagnostic and therapeutic clinical decisions for the management of OUD and other health conditions that are widely recognized within the United States.

Opioid Treatment Program or *OTP* means a program engaged in OUD treatment of individuals with MOUD registered under 21 U.S.C. 823(g)(1).

Opioid Treatment Program certification means the process by which the Secretary determines that an OTP applicant is qualified to provide Opioid Use Disorder treatment under the Federal Opioid Use Disorder treatment standards described in § 8.12.

Opioid Use Disorder means a cluster of cognitive, behavioral, and physiological symptoms associated with a problematic pattern of opioid use that continues despite clinically significant impairment or distress within a 12-month period.

Opioid Use Disorder treatment means the dispensing of MOUD, along with the provision of a range of medical and behavioral health services, as clinically necessary and based on an individualized assessment and a mutually agreed-upon care plan, to an individual to alleviate the combination of adverse medical, psychological, or physical effects associated with an OUD.

Patient, for purposes of subparts B through D of this part, means any individual who receives continuous treatment or withdrawal management in an OTP. The word patient encompasses client, person in treatment, or any other definition accepted by the treatment community or those with lived experience. For purposes of subpart F of this part, *patient* means any individual who is dispensed or prescribed covered medications by a practitioner.

Patient limit means the maximum number of individual patients that a practitioner may dispense or prescribe covered medications to at any one time.

Physical and behavioral health services include services such as medical and psychiatric screening, assessments, evaluations, examinations, and interventions, counseling, health education, peer support services, and social services (*e.g.,* vocational and educational guidance, employment training), that are intended to help patients in OTPs achieve and sustain remission and recovery.

Practitioner, for purposes of this subpart and subparts B through D of this part, means a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse midwife who is appropriately licensed by a State to prescribe and/or dispense medications for opioid use disorder within an OTP. The term *practitioner,* for purposes of subpart F of this part, means a physician, physician assistant, nurse practitioner, clinical nurse specialist, certified registered nurse anesthetist, or certified nurse midwife who is appropriately licensed by a State to prescribe and/or dispense schedule III, IV, and V medications for opioid use disorder, and who possesses a waiver under 21 U.S.C. 823(g)(2).

Practitioner incapacity means the inability of a practitioner as a result of an involuntary event to physically or mentally perform the tasks and duties required to provide OUD treatment in accordance with nationally recognized evidence-based guidelines.

Program sponsor means the person named in the application for certification described in § 8.11(b) as responsible for the operation of the OTP and who assumes responsibility for all its employees, including any practitioners, agents, or other persons providing medical, behavioral health, or social services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall ensure that an actively licensed physician occupies the position of medical director within an OTP.

Recovery support services means:

(1) *Recovery* is the process of change through which people improve their health and wellness, live self-directed lives, and strive to reach their full potential.

(2) *Recovery support services* can include, but are not limited to, community-based recovery housing,

peer recovery support services, social support, linkage to and coordination among allied service providers and a full range of human services that facilitate recovery and wellness contributing to an improved quality of life. The services extend the continuum of care by strengthening and complementing substance use disorder (SUD) treatment interventions in different settings and stages.

Split dosing means dispensing of a single dose of MOUD as separate portions to be taken within a 24-hour period. Split dosing is indicated among, but not limited to, those patients who: possess a genetic variant which increases methadone metabolism; concurrently use other medications or alcohol that also induce hepatic enzymes leading to more rapid metabolism of methadone; who are pregnant; or for whom methadone or buprenorphine are being used to treat a concurrent pain indication in addition to the diagnosis of OUD. This leads to more stable, steady-state medication levels.

State Opioid Treatment Authority (SOTA) is the agency designated by the Governor of a State, or other appropriate official designated by the Governor, to exercise the responsibility and authority within the State or Territory for governing the treatment of OUD with MOUD in OTPs.

Telehealth or *telemedicine* is the delivery and facilitation of health and health-related services including medical care, counselling, practitioner, provider and patient education, health information services, and self-care via telecommunications and digital communication technologies. This includes Health Insurance Portability and Accountability Act (HIPAA)-compliant video and audio-only communication platforms.

Withdrawal management means the dispensing of a MOUD in decreasing doses to an individual to alleviate adverse physical effects incident to withdrawal from the continuous or sustained use of an opioid and as a method of bringing the individual to an opioid-free state within such period. Long-term withdrawal management refers to the process of medication tapering that exceeds 30 days.

Subpart B—Accreditation of Opioid Treatment Programs

§ 8.3 Application for approval as an accreditation body.

(a) *Eligibility.* Private nonprofit organizations, State or territorial governmental entities, or political subdivisions thereof, and Indian Tribes as defined by the Federally Recognized Indian Tribe List Act of 1994, that are capable of meeting the requirements of this part may apply for approval as an accreditation body.

(b) *Application for initial approval.* Electronic copies of an accreditation body application form [SMA–167] shall be submitted to: *https://dpt2.samhsa.gov/sma163/.* Accreditation body applications shall include the following information and supporting documentation:

(1) Name, address, and telephone number of the applicant and a responsible official for the accreditation body. The application shall be signed by the responsible official;

(2) Evidence of the nonprofit status of the applicant (*i.e.,* of fulfilling Internal Revenue Service requirements as a nonprofit organization) if the applicant is not a State or territorial governmental entity, Indian Tribe, or political subdivision;

(3) A set of the accreditation elements or standards and a detailed discussion showing how the proposed accreditation elements or standards will ensure that each OTP surveyed by the applicant is qualified to meet or is meeting each of the Federal opioid treatment standards set forth in § 8.12;

(4) A detailed description of the applicant's decision-making process, including:

(i) Procedures for initiating and performing onsite accreditation surveys of OTPs;

(ii) Procedures for assessing OTP personnel qualifications;

(iii) Copies of an application for accreditation, guidelines, instructions, and other materials the applicant will send to OTPs during the accreditation process, including a request for a complete history of prior accreditation activities and a statement that all information and data submitted in the application for accreditation is true and accurate, and that no material fact has been omitted;

(iv) Policies and procedures for notifying OTPs and the Secretary of deficiencies, for monitoring corrections of deficiencies by OTPs and for reporting corrections to the Secretary;

(v) Policies and procedures for determining OTPs level of adherence to this part and accrediting body standards and level of accreditation;

(vi) Policies and procedures for suspending or revoking an OTP's accreditation;

(vii) Policies and procedures that will ensure processing of applications for accreditation and applications for renewal of accreditation within a timeframe approved by the Secretary; and

(viii) A description of the applicant's appeals process to allow OTPs to contest adverse accreditation decisions;

(5) Policies and procedures established by the accreditation body to avoid conflicts of interest, or the appearance of conflicts of interest, by the applicant's board members, commissioners, professional personnel, consultants, administrative personnel, and other representatives;

(6) A description of the education, experience, and training requirements for the applicant's professional staff, accreditation survey team membership, and the identification of at least one licensed physician with experience treating OUD with MOUD on the applicant's staff;

(7) A description of the applicant's survey team training policies;

(8) Fee schedules, with supporting cost data;

(9) Satisfactory assurances that the body will comply with the requirements of § 8.4, including a contingency plan for investigating complaints under § 8.4(e);

(10) Policies and procedures established to protect confidential information the applicant will collect or receive in its role as an accreditation body; and

(11) Any other supporting information the Secretary may require.

(c) *Application for renewal of approval.* An accreditation body that intends to continue to serve as an accreditation body beyond its current term shall apply to the Secretary for renewal, or notify the Secretary of its intention not to apply for renewal, in accordance with the following procedures and schedule:

(1) At least 9 months before the date of expiration of an accreditation body's term of approval, the body shall inform the Secretary in writing of its intent to seek renewal.

(2) The Secretary will notify the applicant of the relevant information, materials, and supporting documentation required under paragraph (b) of this section that the applicant shall submit as part of the renewal procedure.

(3) At least 3 months before the date of expiration of the accreditation body's term of approval, the applicant shall send to the Secretary electronically a renewal application containing the information, materials, and supporting documentation requested by the Secretary under paragraph (c)(2) of this section.

(4) An accreditation body that does not intend to renew its approval shall so

notify the Secretary at least 9 months before the expiration of the body's term of approval.

(d) *Rulings on applications for initial approval or renewal of approval.* (1) the Secretary will grant an application for initial approval or an application for renewal of approval if it determines the applicant substantially meets the accreditation body requirements of this subpart.

(2) If the Secretary determines that the applicant does not substantially meet the requirements set forth in this subpart, the Secretary will notify the applicant of the deficiencies in the application and request that the applicant resolve such deficiencies within 90 days of receipt of the notice. If the deficiencies are resolved to the satisfaction of the Secretary within the 90-day time period, the body will be approved as an accreditation body. If the deficiencies have not been resolved to the satisfaction of the Secretary within the 90-day time period, the application for approval as an accreditation body will be denied.

(3) If the Secretary does not reach a final decision on a renewal application before the expiration of an accreditation body's term of approval, the approval will be deemed extended until the Secretary reaches a final decision, unless an accreditation body does not rectify deficiencies in the application within the specified time period, as required in paragraph (d)(2) of this section.

(e) *Relinquishment of approval.* An accreditation body that intends to relinquish its accreditation approval before expiration of the body's term of approval shall submit a letter of such intent to the Secretary, at the address in paragraph (b) of this section, at least 9 months before relinquishing such approval.

(f) *Notification.* An accreditation body that does not apply for renewal of approval, or is denied such approval by the Secretary, relinquishes its accreditation approval before expiration of its term of approval, or has its approval withdrawn, shall:

(1) Transfer copies of records and other related information as required by the Secretary to a location, including another accreditation body, and according to a schedule approved by the Secretary; and

(2) Notify, in a manner and time period approved by the Secretary, all OTPs accredited or seeking accreditation by the body that the body will no longer have approval to provide accreditation services.

(g) *Term of approval.* An accreditation body's term of approval is for a period not to exceed 5 years.

(h) *State, territorial, or Indian Tribe accreditation bodies.* State, territorial, and Indian Tribe entities, including political subdivisions thereof, may establish organizational units that may act as accreditation bodies, provided such units meet the requirements of this section, are approved by the Secretary under this section, and have taken appropriate measures to prevent actual or apparent conflicts of interest, including cases in which State or Federal funds are used to support MOUD.

§ 8.4 Accreditation body responsibilities.

(a) *Accreditation surveys and for cause inspections.* (1) Accreditation bodies shall conduct routine accreditation surveys for initial accreditation, and then at least every three years to allow for renewal of certification.

(2) Accreditation bodies must agree to conduct for-cause inspections upon the request of the Secretary.

(3) Accreditation decisions shall be fully consistent with the policies and procedures submitted as part of the approved accreditation body application.

(b) *Response to noncompliant programs.* (1) If an accreditation body receives or discovers information that suggests that an OTP is not meeting applicable accreditation or certification standards established or authorized under this part, or if a survey of the OTP by the accreditation body demonstrates that such standards are not being met, the accreditation body shall either require and monitor corrective action or shall suspend or revoke accreditation of the OTP, as appropriate based on the significance of the deficiencies.

(i) Accreditation bodies shall either not accredit or shall revoke the accreditation of any OTP that substantially fails to meet the Federal Opioid Use Disorder treatment standards.

(ii) Accreditation bodies shall notify the Secretary as soon as possible but in no case longer than 48 hours after becoming aware of any practice or condition in an OTP that may pose a serious risk to public health or safety or patient care.

(iii) If an accreditation body determines that an OTP is meeting the Federal Opioid Use Disorder treatment standards, as defined in § 8.12, but is not meeting one or more accreditation elements within 60 days of survey completion, the accreditation body shall determine the necessary corrective measures to be taken by the OTP, establish a schedule for implementation of such measures not to exceed 60 days, and notify the OTP in writing that it must implement such measures within the specified schedule in order to ensure continued accreditation. The accreditation body shall verify that the necessary corrective measures are implemented by the OTP within the schedule specified and that all accreditation elements are met within the specified schedule. Within 60 days after the specified schedule for implementation, the accreditation body will notify the Secretary, in writing, whether or not the OTP has completed the corrective measures.

(2) Nothing in this part shall prevent accreditation bodies from granting accreditation, contingent on the implementation of programmatic or performance changes, to OTPs with less substantial violations. Less substantial violations refers to non-conformance with accreditation standards that do not involve immediate, high-risk health and safety concerns. Such accreditation shall not exceed 12 months during which time a resurvey or reinspection must occur to determine whether the applicable changes have been implemented. OTPs that have been granted such accreditation must have their accreditation revoked if they fail to implement the applicable changes upon resurvey or reinspection.

(c) *Recordkeeping.* (1) Accreditation bodies shall maintain, and make available as requested by the Secretary, records of their accreditation activities for at least 5 years from the creation of the record. Such records must contain sufficient detail to support each accreditation decision made by the accreditation body.

(2) Accreditation bodies shall establish procedures to protect confidential information collected or received in their role as accreditation bodies that are consistent with, and that are designed to ensure compliance with, all Federal and State laws, including 42 CFR part 2.

(i) Information collected or received for the purpose of carrying out accreditation body responsibilities shall not be used for any other purpose or disclosed, other than to the Secretary or its duly designated representatives, unless otherwise required by law or with the consent of the OTP.

(ii) Nonpublic information that the Secretary shares with the accreditation body concerning an OTP shall not be further disclosed except with the written permission of the Secretary.

(d) *Reporting.* (1) Accreditation bodies shall provide to the Secretary any

documents and information requested by the Secretary within 5 days of receipt of the request.

(2) Accreditation bodies shall submit a summary of the results of each accreditation survey to the Secretary within 90 days following the survey visit. Such summaries shall contain sufficient detail to justify the accreditation action taken.

(3) Accreditation bodies shall provide the Secretary a list of each OTP surveyed, and the identity of all individuals involved in the conducting and reporting of survey results.

(4) Accreditation bodies shall submit to the Secretary the name of each OTP for which the accreditation body accredits conditionally, denies, suspends, or revokes accreditation, and the basis for the action, within 48 hours of the action.

(5) Notwithstanding any reports made to the Secretary under paragraphs (d)(1) through (4) of this section, each accreditation body shall submit to the Secretary semiannually, on January 15 and July 15 of each calendar year, a report consisting of a summary of the results of each accreditation survey conducted in the past year. The summary shall contain sufficient detail to justify each accreditation action taken.

(6) All reporting requirements listed in this section shall be provided to the Secretary at the address specified in § 8.3(b).

(e) *Complaint response.* Accreditation bodies shall have policies and procedures in place to respond to complaints received from the Secretary, patients, facility staff, and others within 5 business days from the receipt of the complaint. Accreditation bodies shall also agree to notify the Secretary within 5 business days of receipt of a complaint from a patient, facility, staff or others, and to inform the Secretary of their response to the complaint.

(f) *Modifications of accreditation elements.* Accreditation bodies shall obtain the Secretary's written authorization prior to making any substantive (*i.e.,* noneditorial) change in accreditation elements.

(g) *Conflicts of interest.* The accreditation body shall maintain and apply policies and procedures that the Secretary has approved in accordance with § 8.3 to reduce the possibility of actual conflict of interest, or the appearance of a conflict of interest, on the part of individuals who act on behalf of the accreditation body. Individuals who participate in accreditation surveys or otherwise participate in the accreditation decision or an appeal of the accreditation decision, as well as their spouses and minor children, shall not have a financial interest in the OTP that is the subject of the accreditation survey or decision.

(h) *Accreditation teams.* (1) An accreditation body survey team shall consist of healthcare professionals with expertise in OUD treatment. The accreditation body shall consider factors such as the size of the OTP, the anticipated number of survey non-compliance issues, and the OTP's accreditation history in determining the composition of the team. At a minimum, survey teams shall consist of at least two healthcare professionals whose combined expertise includes:

(i) The dispensing and administration of medications subject to control under the Controlled Substances Act (21 U.S.C. 801 *et seq.*);

(ii) Medical issues relating to the dosing and administration of MOUD for the treatment of OUD;

(iii) Psychosocial counseling of individuals receiving OUD treatment; and

(iv) Organizational and administrative issues associated with OTPs.

(2) Members of the accreditation team must be able to recuse themselves at any time from any survey in which either they or the OTP believes there is an actual conflict of interest or the appearance of a conflict of interest. Conflict or perceived conflict of interest must be documented by the accreditation body and made available to the Secretary.

(i) *Accreditation fees.* Fees charged to OTPs for accreditation shall be reasonable. the Secretary generally will find fees to be reasonable if the fees are limited to recovering costs to the accreditation body, including overhead incurred. Accreditation body activities that are not related to accreditation functions are not recoverable through fees established for accreditation.

(1) The accreditation body shall make public its fee structure, including those factors, if any, contributing to variations in fees for different OTPs.

(2) At the Secretary's request, accreditation bodies shall provide to the Secretary financial records or other materials, in a manner specified by the Secretary, to assist in assessing the reasonableness of accreditation body fees.

§ 8.5 Periodic evaluation of accreditation bodies.

The Secretary will periodically evaluate the performance of accreditation bodies primarily by inspecting a selected sample of the OTPs accredited by the accrediting body, and by evaluating the accreditation body's reports of surveys conducted, to determine whether the OTPs surveyed and accredited by the accreditation body are in compliance with applicable standards under this part. The evaluation will include a determination of whether there are major deficiencies in the accreditation body's performance that, if not corrected, would warrant withdrawal of the approval of the accreditation body under § 8.6.

§ 8.6 Withdrawal of approval of accreditation bodies.

If the Secretary determines that an accreditation body is not in substantial compliance with this subpart, the Secretary shall take appropriate action as follows:

(a) *Major deficiencies.* If the Secretary determines that the accreditation body has a major deficiency, such as commission of fraud, material false statement, failure to perform a major accreditation function satisfactorily, or significant noncompliance with the requirements of this subpart, the Secretary shall withdraw approval of that accreditation body.

(1) In the event of a major deficiency, the Secretary shall notify the accreditation body of the agency's action and the grounds on which the approval was withdrawn.

(2) An accreditation body that has lost its approval shall notify each OTP that has been accredited or is seeking accreditation that the accreditation body's approval has been withdrawn. Such notification shall be made within a time period and in a manner approved by the Secretary.

(b) *Minor deficiencies.* If the Secretary determines that the accreditation body has minor deficiencies in the performance of an accreditation function, that are less serious or more limited than the types of deficiencies described in paragraph (a) of this section, the Secretary will notify the body that it has 90 days to submit to the Secretary a plan of corrective action. The plan must include a summary of corrective actions and a schedule for their implementation. The Secretary may place the body on probationary status for a period of time determined by the Secretary, or may withdraw approval of the body if corrective action is not taken.

(1) If the Secretary places an accreditation body on probationary status, the body shall notify all OTPs that have been accredited, or that are seeking accreditation, of the accreditation body's probationary status

within a time period and in a manner approved by the Secretary.

(2) Probationary status will remain in effect until such time as the body can demonstrate to the satisfaction of the Secretary that it has successfully implemented or is implementing the corrective action plan within the established schedule, and the corrective actions taken have substantially eliminated all identified problems.

(3) If the Secretary determines that an accreditation body that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, the Secretary may withdraw approval of the accreditation body. The accreditation body shall notify all OTPs that have been accredited, or are seeking accreditation, of the accreditation body's loss of the Secretary's approval within a time period and in a manner approved by the Secretary.

(c) *Reapplication.* (1) An accreditation body that has had its approval withdrawn may submit a new application for approval if the body can provide information to the Secretary to establish that the problems that were grounds for withdrawal of approval have been resolved.

(2) If the Secretary determines that the new application demonstrates that the body satisfactorily has addressed the causes of its previous unacceptable performance, the Secretary may reinstate approval of the accreditation body.

(3) The Secretary may request additional information or establish additional conditions that must be met before the Secretary approves the reapplication.

(4) The Secretary may refuse to accept an application from a former accreditation body whose approval was withdrawn because of fraud, material false statement, or willful disregard of public health.

(d) *Hearings.* An opportunity to challenge an adverse action taken regarding withdrawal of approval of an accreditation body shall be addressed through the relevant procedures set forth in subpart C of this part, except that the procedures in § 8.28 for expedited review of an immediate suspension would not apply to an accreditation body that has been notified under paragraph (a) or (b) of this section of the withdrawal of its approval.

Subpart C—Certification and Treatment Standards for Opioid Treatment Programs

§ 8.11 Opioid Treatment Program certification.

(a) *General.* (1) An OTP must be the subject of a current, valid certification from the Secretary to be considered qualified by the Secretary under section 303(g)(1) of the Controlled Substances Act (21 U.S.C. 823(g)(1)) to dispense MOUD in the treatment of OUD. An OTP must be determined to be qualified under section 303(g)(1) of the Controlled Substances Act, and must be determined to be qualified by the Attorney General under section 303(g)(1), to be registered by the Attorney General to dispense MOUD to individuals for treatment of OUD.

(2) To obtain certification from the Secretary, an OTP must meet the Federal Opioid Use Disorder treatment standards in § 8.12, must be the subject of a current, valid accreditation by an accreditation body or other entity designated by the Secretary, and must comply with any other conditions for certification established by the Secretary.

(3) OTPs are expected to maintain certification with the Secretary and to comply with any other conditions for certification established by the Secretary. Certification shall be granted for a term not to exceed 3 years, except that certification may be renewed during the final certification year if the OTP applies for certification renewal in accordance with the steps outlined in paragraph (a)(4) of this section.

(4) OTPs who satisfy the criteria for certification under this section may apply for renewal of their certification. OTPs are expected to apply for certification renewal during the final year of the OTP's certification period. OTPs should take steps to ensure that administrative tasks associated with renewal are completed before the OTP's certification expires. OTPs may apply for certification renewal in accordance with the procedures as outlined in paragraph (b) of this section. If an OTP anticipates any delays in routine certification renewal, an extension may be requested by submitting to the Secretary a statement justifying the extension in accordance with paragraph (e) of this section.

(5) OTPs that are certified and are seeking certification renewal, and who have been granted accreditation for one year by an accreditation body as provided under § 8.4(b)(1)(iii), may receive a conditional certification for 1 year unless the Secretary determines that such conditional certification would adversely affect patient health. An OTP must obtain a standard 3-year accreditation, as described in paragraph (a)(3) of this section, within the 1-year conditional certification period. If standard accreditation is not obtained by the OTP within the 1-year conditional certification period, the OTP's conditional certification will lapse, and the Attorney General will be notified that the OTP's registration should be revoked.

(6) OTPs whose certification has expired, and who seek re-certification, will be considered ''new'' programs and will be required to apply for provisional certification in accordance with paragraph (d) of this section.

(b) *Application for initial or renewal certifications and re-certification.* Applications for certification must be submitted by the OTP using form SMA–162. The application for initial or renewal of certification shall include, as determined by the Secretary:

(1) A description of the current accreditation status of the OTP;

(2) A description of the organizational structure of the OTP;

(3) The names of the persons responsible for the OTP;

(4) The addresses of the OTP and of each medication unit or other facility under the of the OTP;

(5) The sources of funding for the OTP and the name and address of each governmental entity that provides such funding;

(6) A statement that the OTP will comply with the conditions of certification set forth in paragraph (g) of this section; and

(7) The application shall be signed by the program sponsor who shall certify that the information submitted in the application is truthful and accurate.

(8) Applications for re-certification shall include an explanation of why the OTP's most recent certification expired and information regarding the schedule for an accreditation survey.

(c) *Action on application.* (1) Following the Secretary's receipt of an application for certification of an OTP, and after consultation with the appropriate State authority regarding the qualifications of the applicant, the Secretary may grant the application for certification, or renew an existing certification, if the Secretary determines that the OTP has satisfied the requirements for certification or renewal of certification in this section.

(2) The Secretary may deny the application if the Secretary determines that:

(i) The application for certification is deficient in any respect;

(ii) The OTP will not be operated in accordance with the Federal Opioid Use Disorder treatment standards established under § 8.12;

(iii) The OTP will not permit an inspection or a survey to proceed, or will not permit in a timely manner access to relevant records or information; or

(iv) The OTP has made misrepresentations in obtaining accreditation or in applying for certification.

(3) Within 5 days after it reaches a final determination that an OTP meets the requirements for certification in this section, the Secretary will notify the Drug Enforcement Administration (DEA) that the OTP has been determined to be qualified to provide OUD treatment under section 303(g)(1) of the Controlled Substances Act.

(d) *Provisional certification.* New OTPs that have not received the Secretary's certification previously, except as provided in paragraph (a)(6) of this section, who are applying for certification from the Secretary, and who have applied for accreditation with an accreditation body, are eligible to receive provisional certification for up to 1 year. To receive provisional certification, an OTP shall submit the information required by paragraph (b) of this section to the Secretary along with a statement identifying the accreditation body to which the OTP has applied for accreditation, the date on which the OTP applied for accreditation, the dates of any accreditation surveys that have taken place or are expected to take place, and the expected schedule for completing the accreditation process. Provisional certification for up to 1 year will be granted, following receipt of the information described in this paragraph (d), unless the Secretary determines that patient health would be adversely affected by the granting of provisional certification.

(e) *Requirements for certification.* (1) OTPs shall comply with all pertinent State laws and regulations. Nothing in this part is intended to limit the authority of State and, as appropriate, local governmental entities to regulate the use of MOUD in the treatment of OUD. The provisions of this section requiring compliance with requirements imposed by State law, or the submission of applications or reports required by the State authority, do not apply to OTPs operated directly by the Department of Veterans Affairs, the Indian Health Service, or any other department or agency of the United States. Federal agencies operating OTPs have agreed to cooperate voluntarily with State agencies by granting permission on an informal basis for designated State representatives to visit Federal OTPs and by furnishing a copy of Federal reports to the State authority, including the reports required under this section.

(2) OTPs shall allow, in accordance with Federal controlled substances laws and Federal confidentiality laws, inspections and surveys by duly authorized employees of the Department of Health and Human Services or Substance Abuse and Mental Health Services Administration (SAMHSA), by accreditation bodies, by the DEA, and by authorized employees of any relevant State or Federal governmental authority.

(3) Disclosure of patient records maintained by an OTP is governed by the provisions of 42 CFR part 2 and 45 CFR parts 160 and 164, and every program must comply with these regulations, as applicable. Records on the receipt, storage, and distribution of MOUD are also subject to inspection under Federal controlled substances laws and under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.*). Federally sponsored treatment programs are subject to applicable Federal confidentiality statutes.

(4) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of the Department of Health and Human Services or SAMHSA to have access to and to copy all records on the use of MOUD in accordance with the provisions of 42 CFR part 2.

(5) OTPs shall notify the Secretary in writing within 3 weeks of any replacement or other change in the status of the program sponsor or medical director.

(6) OTPs shall comply with all regulations enforced by the DEA under 21 CFR chapter II, and must be registered by the DEA before administering or dispensing MOUD.

(7) OTPs must operate in accordance with Federal Opioid Use Disorder treatment standards and approved accreditation elements.

(f) *Conditions for interim treatment program approval.* (1) Before a public or nonprofit private OTP may provide interim treatment, the program must receive the approval of both the Secretary and the SOTA of the State in which the OTP operates.

(2) Before the Secretary may grant such approval, the OTP must provide the Secretary with documentation from the SOTA of the State in which the OTP operates demonstrating that:

(i) Such officer does not object to the providing of interim treatment in the State;

(ii) The OTP seeking to provide such treatment is unable to provide access for patients in a public or nonprofit private comprehensive treatment program within a reasonable geographic area within 14 days of the time patients seek treatment for OUD;

(iii) The authorization of the OTP to provide interim treatment will not otherwise reduce the capacity of comprehensive treatment programs in the State to admit individuals (relative to the date on which such officer so certifies); and

(iv) OTPs providing interim treatment will arrange for each individual's transfer to a comprehensive treatment program no later than 180 days from the date on which each individual first requested treatment. Individuals enrolled in interim treatment shall not be discharged without the approval of an OTP practitioner, which is to be documented in the patient record, while awaiting transfer to a comprehensive treatment program.

(3) The Secretary will provide notice to the OTP denying or approving the request to provide interim treatment. The OTP shall not provide such treatment until it has received such notice from the Secretary.

(g) *Exemptions.* An OTP may, at the time of application for certification or any time thereafter, request from the Secretary exemption from the regulatory requirements set forth under this section and § 8.12. An example of a case in which an exemption might be granted would be for a private practitioner who wishes to treat a limited number of patients in a non-metropolitan area with few physicians and no OUD treatment services geographically accessible, and requests exemption from some of the staffing and service standards. The OTP shall support the rationale for the exemption with thorough documentation, to be supplied in an appendix to the initial application for certification or in a separate submission. The Secretary will approve or deny such exemptions at the time of application, or any time thereafter, if appropriate. The Secretary shall consult with the appropriate State authority prior to taking action on an exemption request.

(h) *Medication units, long-term care facilities and hospitals.* (1) Certified OTPs may establish medication units that are authorized to dispense MOUD. Before establishing a medication unit, a certified OTP must notify the Secretary by submitting form SMA–162. The OTP must also comply with the provisions of 21 CFR part 1300 before establishing a medication unit. Medication units shall comply with all pertinent State laws and regulations.

(2) Specifically, any services that are provided in an OTP may be provided in the medication unit, assuming compliance with all applicable Federal, State, and local law, and the use of units that provide appropriate privacy and have adequate space.

(3) Certification as an OTP under this part will not be required for the continuous medication treatment or withdrawal management of a patient who is admitted to a hospital or long-term care facility for the treatment of medical conditions other than OUD and who requires medication continuity or withdrawal management during the period of their stay in that long-term care facility when such treatment is permitted under applicable Federal law. The term ''long-term care facility'' is defined in § 8.2. Nothing in this section is intended to relieve long-term care facilities from the obligation to obtain registration from the Attorney General, as appropriate, under section 303(g) of the Controlled Substances Act.

§ 8.12 Federal Opioid Use Disorder treatment standards.

(a) *General.* OTPs must provide treatment in accordance with the standards in this section and must comply with these standards as a condition of certification.

(b) *Administrative and organizational structure.* (1) An OTP's organizational structure and facilities shall be adequate to ensure quality patient care and to meet the requirements of all pertinent Federal, State, and local laws and regulations. At a minimum, each OTP shall formally designate a program sponsor and medical director. The program sponsor shall agree on behalf of the OTP to adhere to all requirements set forth in this part.

(2) The medical director shall assume responsibility for all medical and behavioral health services performed by the OTP. In addition, the medical director shall be responsible for ensuring that the OTP is in compliance with all applicable Federal, State, and local laws and regulations.

(c) *Continuous quality improvement.* (1) An OTP must maintain current quality assurance and quality control plans that include, among other things, annual reviews of program policies and procedures and ongoing assessment of patient outcomes.

(2) An OTP must maintain a current ''Diversion Control Plan'' or ''DCP'' as part of its quality assurance program that contains specific measures to reduce the possibility of diversion of dispensed MOUD, and that assigns specific responsibility to the OTP providers and administrative staff for carrying out the diversion control measures and functions described in the DCP.

(d) *Staff credentials.* Each person engaged in the treatment of OUD must have sufficient education, training, and experience, or any combination thereof, to enable that person to perform the assigned functions. All qualifying practitioners and other licensed/certified health care providers, including counselors, must comply with the credentialing and maintenance of licensure and/or certification requirements of their respective professions.

(e) *Patient admission criteria*—(1) *Comprehensive treatment.* An OTP shall maintain current procedures designed to ensure that patients are admitted to treatment by qualified personnel who have determined, using accepted medical criteria, that: The person meets diagnostic criteria for a moderate to severe OUD; the individual has an active moderate to severe OUD, or OUD in remission, or is at high risk for recurrence or overdose. Such decisions must be appropriately documented in the patient's clinical record. In addition, a qualifying health care practitioner shall ensure that each patient voluntarily chooses treatment with MOUD and that all relevant facts concerning the use of MOUD are clearly and adequately explained to the patient, and that each patient provides informed consent to treatment.

(2) *Comprehensive treatment for persons under age 18.* Except in States where State law grants persons under 18 years of age the ability to consent to OTP treatment without the consent of another, no person under 18 years of age may be admitted to OTP treatment unless a parent, legal guardian, or responsible adult designated by the relevant State authority consents in writing to such treatment.

(3) *Withdrawal management.* An OTP shall maintain current procedures that are designed to ensure that those patients who choose to taper from MOUD are provided the opportunity to do so with informed consent and at a mutually agreed-upon rate that minimizes taper-related risks. Such consent must be documented in the clinical record by the treating practitioner.

(f) *Required services*—(1) *General.* OTPs shall provide adequate medical, counseling, vocational, educational, and other screening, assessment, and treatment services to meet patient needs, with the combination and frequency of services tailored to each individual patient based on an individualized assessment and the patient's care plan that was created after shared decision making between the patient and the clinical team. These services must be available at the primary facility, except where the program sponsor has entered into a documented agreement with a private or public agency, organization, practitioner, or institution to provide these services to patients enrolled in the OTP. The program sponsor, in any event, must be able to document that these services are fully and reasonably available to patients.

(2) *Initial medical examination.* (i) OTPs shall require each patient to undergo an initial medical examination. The initial medical examination is comprised of two parts:

(A) A screening examination to ensure that the patient meets criteria for admission and that there are no contraindications to treatment with MOUD; and

(B) A full history and examination, to determine the patient's broader health status, with lab testing.

(ii) Assuming no contraindications, a patient may commence treatment with MOUD after the screening examination has been completed. Both the screening examination and full examination must be completed by an appropriately licensed practitioner. If the licensed practitioner is not an OTP practitioner, the screening examination must be completed no more than seven days prior to OTP admission. Where the examination is performed outside of the OTP, the written results and narrative of the examination, as well as available lab testing results, must be transmitted, consistent with applicable privacy laws, to the OTP, and verified by an OTP practitioner.

(iii) A full in person physical examination, including the results of serology and other tests, such as a pregnancy test, must be completed within 14 calendar days following a patient's admission to the OTP. The full exam can be completed by a non-OTP practitioner, if the exam is verified by a licensed OTP practitioner as being true and accurate and transmitted in accordance with applicable privacy laws.

(iv) Serology testing and other testing as deemed medically appropriate by the licensed OTP practitioner based on the screening or full history and examination, drawn not more than 30 days prior to admission to the OTP, may form part of the full history and examination.

(v) The screening and full examination may be completed via telehealth for those patients being admitted for treatment with either

buprenorphine or methadone, if a qualified practitioner or primary care provider, determines that an adequate evaluation of the patient can be accomplished via telehealth. When using telehealth, the following caveats apply:

(A) In evaluating patients for treatment with schedule II medications (such as Methadone), audio-visual telehealth platforms must be used, except when not available to the patient. When not available, it is acceptable to use audio-only devices, but only when the patient is in the presence of a licensed practitioner who is registered to prescribe (including dispense) controlled medications.

(B) In evaluating patients for treatment with schedule III medications (such as Buprenorphine) or medications not classified as a controlled medication (such as Naltrexone), audio-visual or audio only platforms may be used.

(3) *Special services for pregnant patients.* OTPs must maintain current policies and procedures that reflect the special needs and priority for treatment admission of patients with OUD who are pregnant. Pregnancy should be confirmed. Evidence-based treatment protocols for the pregnant patient, such as split dosing regimens, may be instituted after assessment by an OTP practitioner and documentation that confirms the clinical appropriateness of such an evidence-based treatment protocol. Prenatal care and other sex specific services, including reproductive health services, for pregnant and postpartum patients must be provided and documented either by the OTP or by referral to appropriate healthcare practitioners. Specific services, including reproductive health services, for pregnant and postpartum patients must be provided and documented either by the OTP or by referral to appropriate healthcare practitioners.

(4) *Initial and periodic physical and behavioral health assessment services.* (i) Each patient admitted to an OTP shall be given a physical and behavioral health assessment, which includes but is not limited to screening for imminent risk of harm to self or others, within 14 calendar days following admission, and periodically by appropriately licensed/credentialed personnel. These assessments must address the need for and/or response to treatment, adjust treatment interventions, including MOUD, as necessary, and provide a patient-centered plan of care. The full, initial psychosocial assessment must be completed within 14 calendar days of admission and include preparation of a care plan that includes the patient's goals and mutually agreed-upon actions for the patient to meet those goals, including harm reduction interventions; the patient's needs and goals in the areas of education, vocational training, and employment; and the medical and psychiatric, psychosocial, economic, legal, housing, and other recovery support services that a patient needs and wishes to pursue. The care plan also must identify the recommended frequency with which services are to be provided. The plan must be reviewed and updated to reflect responses to treatment and recovery support services, and adjustments made that reflect changes in the context of the person's life, their current needs for and interests in medical, psychiatric, social, and psychological services, and current needs for and interests in education, vocational training, and employment services.

(ii) The periodic physical examination should occur not less than one time each year and be conducted by an OTP practitioner. The periodic physical examination should include review of MOUD dosing, treatment response, other substance use disorder treatment needs, responses and patient-identified goals, and other relevant physical and psychiatric treatment needs and goals. The periodic physical examination should be documented in the patient's clinical record.

(5) *Counseling and psychoeducational services.* (i) OTPs must provide adequate substance use disorder counseling and psychoeducation to each patient as clinically necessary and mutually agreed-upon, including harm reduction education and recovery-oriented counseling. This counseling shall be provided by a program counselor, qualified by education, training, or experience to assess the psychological and sociological background of patients, and engage with patients, to contribute to the appropriate care plan for the patient and to monitor and update patient progress. Patient refusal of counseling shall not preclude them from receiving MOUD.

(ii) OTPs must provide counseling on preventing exposure to, and the transmission of, human immunodeficiency virus (HIV), viral hepatitis, and sexually transmitted infections (STIs) and either directly provide services and treatments or actively link to treatment each patient admitted or readmitted to treatment who has received positive test results for these conditions from initial and/or periodic medical examinations.

(iii) OTPs must provide directly, or through referral to adequate and reasonably accessible community resources, vocational training, education, and employment services for patients who request such services or for whom these needs have been identified and mutually agreed-upon as beneficial by the patient and program staff.

(6) *Drug testing services.* OTPs must provide drug tests that have received the Food and Drug Administration's (FDA) marketing authorization for commonly used and misused substances that may impact patient safety, recovery, or otherwise complicate substance use disorder treatment, at a frequency that is in accordance with generally accepted clinical practice and as indicated by a patient's response to and stability in treatment, but no fewer than eight random drug tests per year patient, allowing for extenuating circumstances at the individual patient level.

(g) *Recordkeeping and patient confidentiality.* (1) OTPs shall establish and maintain a recordkeeping system that is adequate to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to MOUD approved for use in treatment of OUD. All records are required to be kept confidential in accordance with all applicable Federal and State requirements.

(2) OTPs shall include, as an essential part of the recordkeeping system, documentation in each patient's record that the OTP made a good faith effort to determine whether the patient is enrolled in any other OTP. A patient enrolled in an OTP shall not be permitted to obtain treatment in any other OTP except in circumstances involving an inability to access care at the patient's OTP of record. Such circumstances include, but are not limited to, travel for work or family events, temporary relocation, or an OTP's temporary closure. If the medical director or program practitioner of the OTP in which the patient is enrolled determines that such circumstances exist, the patient may seek treatment at another OTP, provided the justification for the particular circumstances are noted in the patient's record both at the OTP in which the patient is enrolled and at the OTP that will provide the MOUD.

(h) *Medication administration, dispensing, and use.* (1) OTPs must ensure that MOUD are administered or dispensed only by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to administer or dispense MOUD, or by an agent of such a practitioner, supervised by and under the order of the licensed practitioner

and if consistent with Federal and State law.

(2) OTPs shall use only those MOUD that are approved by the Food and Drug Administration under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of OUD. In addition, OTPs who are fully compliant with the protocol of an investigational use of a drug and other conditions set forth in the application may administer a drug that has been authorized by the Food and Drug Administration under an investigational new drug application under section 505(i) of the Federal Food, Drug, and Cosmetic Act for investigational use in the treatment of OUD. Currently the following MOUD will be considered to be approved by the Food and Drug Administration for use in the treatment of OUD:

(i) Methadone;

(ii) Buprenorphine and buprenorphine combination products that have been approved for use in the treatment of OUD; and

(iii) Naltrexone.

(3) OTPs shall maintain current procedures that are adequate to ensure that the following dosage form and initial dosing requirements are met:

(i) Methadone shall be administered or dispensed only in oral form and shall be formulated in such a way as to reduce its potential for parenteral misuse.

(ii) For each new patient enrolled in a program, the initial dose of methadone shall be individually determined, and is not to exceed 30 milligrams, and the total dose for the first day shall not exceed 40 milligrams. Should this not be sufficient to suppress symptoms of withdrawal, the OTP practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to administer or dispense MOUD, must document in the patient's record a specific rationale indicating that 40 milligrams did not adequately suppress opioid withdrawal symptoms, and that a higher dose was clinically indicated and thus provided to the patient.

(4) OTPs shall maintain current procedures adequate to ensure that each MOUD used by the program is administered and dispensed in accordance with its FDA approved product labeling. The program must ensure that any significant deviations from the approved labeling, including deviations with regard to dose, frequency, or the conditions of use described in the approved labeling, are specifically documented in the patient's record.

(i) *Unsupervised or ''take home'' medication doses.* Unsupervised or ''take home'' medication doses may be provided under the following circumstances:

(1) Any patient in comprehensive treatment may receive their individualized take home doses as ordered for days that the clinic is closed for business, including one weekend day (*e.g.,* Sunday) and State and Federal holidays, no matter their length of time in treatment.

(2) Treatment program decisions on dispensing MOUD to patients for unsupervised use beyond that set forth in paragraph (i)(1) of this section shall be determined by an appropriately licensed OTP medical practitioner or the medical director. In determining which patients may receive unsupervised medication doses, the medical director or program medical practitioner shall consider, among other pertinent factors that indicate that the therapeutic benefits of unsupervised doses outweigh the risks, the following criteria:

(i) Absence of active substance use disorders, other physical or behavioral health conditions that increase the risk of patient harm as it relates to the potential for overdose, or the ability to function safely;

(ii) Regularity of attendance for supervised medication administration;

(iii) Absence of serious behavioral problems that endanger the patient, the public or others;

(iv) Absence of known recent diversion activity;

(v) Whether take home medication can be safely transported and stored; and

(vi) Any other criteria that the medical director or medical practitioner considers relevant to the patient's safety and the public's health.

(3) Such determinations and the basis for such determinations consistent with the criteria outlined in paragraph (i)(2) of this section shall be documented in the patient's medical record. If it is determined that a patient is safely able to manage unsupervised doses of MOUD, the dispensing restrictions set forth in paragraphs (i)(3)(i) through (iii) of this section apply. The dispensing restrictions set forth in paragraphs (i)(3)(i) through (iii) of this section do not apply to buprenorphine and buprenorphine products listed under paragraph (h)(2)(ii) of this section.

(i) During the first 14 days of treatment, the take home supply (beyond that of paragraph (i)(1) of this section) is limited to 7 days. It remains within the OTP practitioner's discretion to determine the number of take home doses up to 7 days, but decisions must be based on the criteria listed in paragraph (i)(2) of this section. The rationale underlying the decision to provide unsupervised doses of methadone must be documented in the patient's clinical record, consistent with paragraph (g)(2) of this section.

(ii) From 15 days of treatment, the take home supply (beyond that of paragraph (i)(1) of this section) is limited to 14 days. It remains within the OTP practitioner's discretion to determine the number of take home doses up to 14 days, but this determination must be based on the criteria listed in paragraph (i)(2) of this section. The rationale underlying the decision to provide unsupervised doses of methadone must be documented in the patient's clinical record, consistent with paragraph (g)(2) of this section.

(iii) From 31 days of treatment, the take home supply (beyond that of paragraph (i)(1) of this section) provided to a patient is not to exceed 28 days. It remains within the OTP practitioner's discretion to determine the number of take home doses up to 28 days, but this determination must be based on the criteria listed in paragraph (i)(2) of this section. The rationale underlying the decision to provide unsupervised doses of methadone must be documented in the patient's clinical record, consistent with paragraph (g)(2) of this section.

(4) OTPs must maintain current procedures adequate to identify the theft or diversion of take home medications, including labeling containers with the OTP's name, address, and telephone number. Programs also must ensure that each individual take home dose is packaged in a manner that is designed to reduce the risk of accidental ingestion, including child-proof containers (see Poison Prevention Packaging Act, Pub. L. 91–601 (15 U.S.C. 1471 *et seq.*)). Programs must provide education to each patient on: Safely transporting medication from the OTP to their place of residence; and the safe storage of take home doses at the individual's place of residence, including child and household safety precautions. The provision of this education should be documented in the patient's clinical record.

(j) *Interim treatment.* (1) The program sponsor of a public or nonprofit, private OTP may admit an individual, who is eligible for admission to comprehensive treatment, into interim treatment if comprehensive services are not readily available within a reasonable geographic area and within 14 days of the individual's seeking treatment. At least two drug tests shall be obtained from patients during the maximum of 180

days permitted for interim treatment. A program shall establish and follow reasonable criteria for establishing priorities for moving patients from interim to comprehensive treatment. These transition criteria shall be in writing and shall include, at a minimum, prioritization of pregnant patients in admitting patients to interim treatment and from interim to comprehensive treatment. Interim treatment shall be provided in a manner consistent with all applicable Federal and State laws, including sections 1923, 1927(a), and 1976 of the Public Health Service Act (21 U.S.C. 300x–23, 300x–27(a), and 300y–11).

(2) The program shall notify the SOTA when a patient begins interim treatment, when a patient leaves interim treatment, and before the date of transfer to comprehensive services, and shall document such notifications.

(3) The Secretary may revoke the interim authorization for programs that fail to comply with the provisions of this paragraph (j). Likewise, the Secretary will consider revoking the interim authorization of a program if the State in which the program operates is not in compliance with the provisions of § 8.11(h).

(4) All requirements for comprehensive treatment in this section apply to interim treatment with the following exceptions:

(i) A primary counselor is not required to be assigned to the patient, but crisis services should be available;

(ii) Interim treatment cannot be provided for longer than 180 days in any 12-month period;

(iii) By day 120, a plan for continuing treatment beyond 180 days must be created, and documented in the patient's clinical record; and

(iv) Formal counseling, vocational training, employment, and educational services described in paragraphs (f)(4) and (f)(5)(i) and (iii) of this section are not required to be offered to the patient. However, information pertaining to locally available, community-based resources for ancillary services should be made available to individual patients in interim treatment.

§ 8.13 Revocation of accreditation and accreditation body approval.

(a) *The Secretary's action following revocation of accreditation.* If an accreditation body revokes an OTP's accreditation, the Secretary may conduct an investigation into the reasons for the revocation. Following such investigation, the Secretary may determine that the OTP's certification should no longer be in effect, at which time the Secretary will initiate procedures to revoke the program's certification in accordance with § 8.14. Alternatively, the Secretary may determine that another action or combination of actions would better serve the public health, including the establishment and implementation of a corrective plan of action that will permit the certification to continue in effect while the OTP seeks reaccreditation.

(b) *Accreditation body approval.* (1) If the Secretary withdraws the approval of an accreditation body under § 8.6, the certifications of OTPs accredited by such body shall remain in effect for a period of 1 year after the date of withdrawal of approval of the accreditation body, unless the Secretary determines that to protect public health or safety, or because the accreditation body fraudulently accredited treatment programs, the certifications of some or all of the programs should be revoked or suspended or that a shorter time period should be established for the certifications to remain in effect. The Secretary may extend the time in which a certification remains in effect under this paragraph (b)(1) on a case-by-case basis.

(2) Within 1 year from the date of withdrawal of approval of an accreditation body, or within any shorter period of time established by the Secretary, OTPs currently accredited by the accreditation body must obtain accreditation from another accreditation body. The Secretary may extend the time period for obtaining reaccreditation on a case-by-case basis.

§ 8.14 Suspension or revocation of certification.

(a) *Revocation.* Except as provided in paragraph (b) of this section, the Secretary may revoke the certification of an OTP if the Secretary finds, after providing the program sponsor with notice and an opportunity for a hearing in accordance with this subpart, that the program sponsor, or any employee of the OTP:

(1) Has been found guilty of misrepresentation in obtaining the certification;

(2) Has failed to comply with the Federal Opioid Use Disorder treatment standards in any respect;

(3) Has failed to comply with reasonable requests from the Secretary or from an accreditation body for records, information, reports, or materials that are necessary to determine the continued eligibility of the OTP for certification or continued compliance with the Federal Opioid Use Disorder treatment standards; or

(4) Has refused a reasonable request of a duly designated inspector, DEA Inspector, State Inspector, or accreditation body representative for permission to inspect the program or the program's operations or its records.

(b) *Suspension.* Whenever the Secretary has reason to believe that revocation may be required and that immediate action is necessary to protect public health or safety, the Secretary may immediately suspend the certification of an OTP, and notify the Attorney General that the OTP's registration should be suspended, before holding a hearing under this subpart. The Secretary may immediately suspend as well as propose revocation of the certification of an OTP before holding a hearing under this subpart if the Secretary makes a finding described in paragraph (a) of this section and also determines that:

(1) The failure to comply with the Federal Opioid Use Disorder treatment standards presents an imminent danger to the public health or safety;

(2) The refusal to permit inspection makes immediate suspension necessary; or

(3) There is reason to believe that the failure to comply with the Federal Opioid Use Disorder treatment standards was intentional or was associated with fraud.

(c) *Written notification.* In the event that the Secretary suspends the certification of an OTP in accordance with paragraph (b) of this section or proposes to revoke the certification of an OTP in accordance with paragraph (a) of this section, the Secretary shall promptly provide the sponsor of the OTP with written notice of the suspension or proposed revocation by facsimile transmission, personal service, commercial overnight delivery service, or certified mail, return receipt requested. Such notice shall state the reasons for the action and shall state that the OTP may seek review of the action in accordance with the procedures in this subpart.

(d) *Procedure.* (1) If the Secretary suspends certification in accordance with paragraph (b) of this section:

(i) The Secretary will immediately notify DEA that the OTP's registration should be suspended under 21 U.S.C. 824(d); and

(ii) The Secretary will provide an opportunity for a hearing under this subpart.

(2) Suspension of certification under paragraph (b) of this section shall remain in effect until the agency determines that:

(i) The basis for the suspension cannot be substantiated;

(ii) Violations of required standards have been corrected to the agency's satisfaction; or

(iii) The OTP's certification shall be revoked.

§ 8.15 Forms.

(a) SMA–162—Application for Certification to Use Medications for Opioid Use Disorder.

(b) SMA–163—Application for Becoming an Accreditation Body under § 8.3.

Subpart D—Procedures for Review of Suspension or Proposed Revocation of OTP Certification, and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body

§ 8.21 Applicability.

The procedures in this subpart apply when:

(a) The Secretary has notified an OTP in writing that its certification under the regulations in subpart B of this part has been suspended or that the Secretary proposes to revoke the certification; and

(b) The OTP has, within 30 days of the date of the notification or within 3 days of the date of the notification when seeking an expedited review of a suspension, requested in writing an opportunity for a review of the suspension or proposed revocation.

(c) The Secretary has notified an accreditation body of an adverse action taken regarding withdrawal of approval of the accreditation body under the regulations in subpart A of this part; and

(d) The accreditation body has, within 30 days of the date of the notification, requested in writing an opportunity for a review of the adverse action.

§ 8.22 Definitions.

The following definitions apply to this subpart:

Appellant means:

(1) The OTP which has been notified of its suspension or proposed revocation of its certification under the regulations of this part and has requested a review of the suspension or proposed revocation; or

(2) The accreditation body which has been notified of adverse action regarding withdrawal of approval under the regulations of this subpart and has requested a review of the adverse action.

Respondent means SAMHSA.

Reviewing official means the person or persons designated by the Secretary who will review the suspension or proposed revocation. The reviewing official may be assisted by one or more Department of Health and Human Services (HHS) officers or employees or consultants in assessing and weighing the scientific and technical evidence and other information submitted by the appellant and respondent on the reasons for the suspension and proposed revocation.

§ 8.23 Limitation on issues subject to review.

The scope of review shall be limited to the facts relevant to any suspension, or proposed revocation, or adverse action, the necessary interpretations of the facts, the regulations in this subpart, and other relevant law.

§ 8.24 Specifying who represents the parties.

The appellant's request for review shall specify the name, address, and phone number of the appellant's representative. In its first written submission to the reviewing official, the respondent shall specify the name, address, and phone number of the respondent's representative.

§ 8.25 Informal review and the reviewing official's response.

(a) *Request for review.* Within 30 days of the date of the notice of the suspension or proposed revocation, the appellant must submit a written request to the reviewing official seeking review, unless some other time period is agreed to by the parties. A copy must also be sent to the respondent. The request for review must include a copy of the notice of suspension, proposed revocation, or adverse action, a brief statement of why the decision to suspend, propose revocation, or take an adverse action is incorrect, and the appellant's request for an oral presentation, if desired.

(b) *Acknowledgment.* Within 5 days after receiving the request for review, the reviewing official will send an acknowledgment and advise the appellant of the next steps. The reviewing official will also send a copy of the acknowledgment to the respondent.

§ 8.26 Preparation of the review file and written arguments.

The appellant and the respondent each participate in developing the file for the reviewing official and in submitting written arguments. The procedures for development of the review file and submission of written argument are:

(a) *Appellant's documents and brief.* Within 30 days after receiving the acknowledgment of the request for review, the appellant shall submit to the reviewing official the following (with a copy to the respondent):

(1) A review file containing the documents supporting appellant's argument, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not to exceed 20 double-spaced pages, explaining why respondent's decision to suspend or propose revocation of appellant's certification or to take adverse action regarding withdrawal of approval of the accreditation body is incorrect (appellant's brief).

(b) *Respondent's documents and brief.* Within 30 days after receiving a copy of the acknowledgment of the request for review, the respondent shall submit to the reviewing official the following (with a copy to the appellant):

(1) A review file containing documents supporting respondent's decision to suspend or revoke appellant's certification, or approval as an accreditation body, tabbed and organized chronologically, and accompanied by an index identifying each document. Only essential documents should be submitted to the reviewing official.

(2) A written statement, not exceeding 20 double-spaced pages in length, explaining the basis for suspension, proposed revocation, or adverse action (respondent's brief).

(c) *Reply briefs.* Within 10 days after receiving the opposing party's submission, or 20 days after receiving acknowledgment of the request for review, whichever is later, each party may submit a short reply not to exceed 10 double-spaced pages.

(d) *Cooperative efforts.* Whenever feasible, the parties should attempt to develop a joint review file.

(e) *Excessive documentation.* The reviewing official may take any appropriate steps to reduce excessive documentation, including the return of or refusal to consider documentation found to be irrelevant, redundant, or unnecessary.

(f) *Discovery.* The use of interrogatories, depositions, and other forms of discovery shall not be allowed.

§ 8.27 Opportunity for oral presentation.

(a) *Electing oral presentation.* If an opportunity for an oral presentation is desired, the appellant shall request it at the time it submits its written request for review to the reviewing official. The reviewing official will grant the request if the official determines that the decision-making process will be substantially aided by oral presentations and arguments. The reviewing official may also provide for an oral presentation at the official's own

initiative or at the request of the respondent.

(b) *Presiding official.* The reviewing official or designee will be the presiding official responsible for managing the oral presentations.

(c) *Preliminary conference.* The presiding official may hold a prehearing conference (usually a telephone conference call) to consider any of the following: Simplifying and clarifying issues; stipulations and admissions; limitations on evidence and witnesses that will be presented at the hearing; time allotted for each witness and the hearing altogether; scheduling the hearing; and any other matter that will assist in the review process. Normally, this conference will be conducted informally and off the record; however, the presiding official may, at the presiding official's discretion, produce a written document summarizing the conference or transcribe the conference, either of which will be made a part of the record.

(d) *Time and place of oral presentation.* The presiding official will attempt to schedule the oral presentation within 45 days of the date appellant's request for review is received or within 15 days of submission of the last reply brief, whichever is later. The oral presentation will be held at a time and place determined by the presiding official following consultation with the parties.

(e) *Conduct of the oral presentation*—(1) *General.* The presiding official is responsible for conducting the oral presentation. The presiding official may be assisted by one or more HHS officers or employees or consultants in conducting the oral presentation and reviewing the evidence. While the oral presentation will be kept as informal as possible, the presiding official may take all necessary steps to ensure an orderly proceeding.

(2) *Burden of proof/standard of proof.* In all cases, the respondent bears the burden of proving by a preponderance of the evidence that its decision to suspend, propose revocation, or take adverse action is appropriate. The appellant, however, has a responsibility to respond to the respondent's allegations with evidence and argument to show that the respondent is incorrect.

(3) *Admission of evidence.* The rules of evidence do not apply and the presiding official will generally admit all testimonial evidence unless it is clearly irrelevant, immaterial, or unduly repetitious. Each party may make an opening and closing statement, may present witnesses as agreed upon in the pre-hearing conference or otherwise, and may question the opposing party's witnesses. Since the parties have ample opportunity to prepare the review file, a party may introduce additional documentation during the oral presentation only with the permission of the presiding official. The presiding official may question witnesses directly and take such other steps necessary to ensure an effective and efficient consideration of the evidence, including setting time limitations on direct and cross-examinations.

(4) *Motions.* The presiding official may rule on motions including, for example, motions to exclude or strike redundant or immaterial evidence, motions to dismiss the case for insufficient evidence, or motions for summary judgment. Except for those made during the hearing, all motions and opposition to motions, including argument, must be in writing and be no more than 10 double-spaced pages in length. The presiding official will set a reasonable time for the party opposing the motion to reply.

(5) *Transcripts.* The presiding official shall have the oral presentation transcribed and the transcript shall be made a part of the record. Either party may request a copy of the transcript and the requesting party shall be responsible for paying for its copy of the transcript.

(f) *Obstruction of justice or making of false statements.* Obstruction of justice or the making of false statements by a witness or any other person may be the basis for a criminal prosecution under 18 U.S.C. 1001 or 1505.

(g) *Post-hearing procedures.* At the presiding official's discretion, the presiding official may require or permit the parties to submit post-hearing briefs or proposed findings and conclusions. Each party may submit comments on any major prejudicial errors in the transcript.

§ 8.28 Expedited procedures for review of immediate suspension.

(a) *Applicability.* When the Secretary notifies an OTP in writing that its certification has been immediately suspended, the appellant may request an expedited review of the suspension and any proposed revocation. The appellant must submit this request in writing to the reviewing official within 10 days of the date the OTP received notice of the suspension. The request for review must include a copy of the suspension and any proposed revocation, a brief statement of why the decision to suspend and propose revocation is incorrect, and the appellant's request for an oral presentation, if desired. A copy of the request for review must also be sent to the respondent.

(b) *Reviewing official's response.* As soon as practicable after the request for review is received, the reviewing official will send an acknowledgment with a copy to the respondent.

(c) *Review file and briefs.* Within 10 days of the date the request for review is received, but no later than 2 days before an oral presentation, each party shall submit to the reviewing official the following:

(1) A review file containing essential documents relevant to the review, tabbed, indexed, and organized chronologically; and

(2) A written statement, not to exceed 20 double-spaced pages, explaining the party's position concerning the suspension and any proposed revocation. No reply brief is permitted.

(d) *Oral presentation.* If an oral presentation is requested by the appellant or otherwise granted by the reviewing official in accordance with § 8.27(a), the presiding official will attempt to schedule the oral presentation within 20 to 30 days of the date of appellant's request for review at a time and place determined by the presiding official following consultation with the parties. The presiding official may hold a pre-hearing conference in accordance with § 8.27(c) and will conduct the oral presentation in accordance with the procedures of § 8.27(e) through (g).

(e) *Written decision.* The reviewing official shall issue a written decision upholding or denying the suspension or proposed revocation and will attempt to issue the decision within 7 to 10 days of the date of the oral presentation or within 3 days of the date on which the transcript is received or the date of the last submission by either party, whichever is later. All other provisions set forth in § 8.33 apply.

(f) *Transmission of written communications.* Because of the importance of timeliness for the expedited procedures in this section, all written communications between the parties and between either party and the reviewing official shall be sent by facsimile transmission, personal service, or commercial overnight delivery service.

§ 8.29 Ex parte communications.

Except for routine administrative and procedural matters, a party shall not communicate with the reviewing or presiding official without notice to the other party.

§ 8.30 Transmission of written communications by reviewing official and calculation of deadlines.

(a) *Timely review.* Because of the importance of a timely review, the

reviewing official should normally transmit written communications to either party by facsimile transmission, personal service, or commercial overnight delivery service, or certified mail, return receipt requested, in which case the date of transmission or day following mailing will be considered the date of receipt. In the case of communications sent by regular mail, the date of receipt will be considered 3 days after the date of mailing.

(b) *Due date.* In counting days, include Saturdays, Sundays, and holidays. However, if a due date falls on a Saturday, Sunday, or Federal holiday, then the due date is the next Federal working day.

§ 8.31 Authority and responsibilities of the reviewing official.

In addition to any other authority specified in this subpart, the reviewing official and the presiding official, with respect to those authorities involving the oral presentation, shall have the authority to issue orders; examine witnesses; take all steps necessary for the conduct of an orderly hearing; rule on requests and motions; grant extensions of time for good reasons; dismiss for failure to meet deadlines or other requirements; order the parties to submit relevant information or witnesses; remand a case for further action by the respondent; waive or modify the procedures in this subpart in a specific case, usually with notice to the parties; reconsider a decision of the reviewing official where a party promptly alleges a clear error of fact or law; and to take any other action necessary to resolve disputes in accordance with the objectives of the procedures in this subpart.

§ 8.32 Administrative record.

The administrative record of review consists of the review file; other submissions by the parties; transcripts or other records of any meetings, conference calls, or oral presentation; evidence submitted at the oral presentation; and orders and other documents issued by the reviewing and presiding officials.

§ 8.33 Written decision.

(a) *Issuance of decision.* The reviewing official shall issue a written decision upholding or denying the suspension, proposed revocation, or adverse action. The decision will set forth the reasons for the decision and describe the basis for that decision in the record. Furthermore, the reviewing official may remand the matter to the respondent for such further action as the reviewing official deems appropriate.

(b) *Date of decision.* The reviewing official will attempt to issue the decision within 15 days of the date of the oral presentation, the date on which the transcript is received, or the date of the last submission by either party, whichever is later. If there is no oral presentation, the decision will normally be issued within 15 days of the date of receipt of the last reply brief. Once issued, the reviewing official will immediately communicate the decision to each party.

(c) *Public notice and communications to the DEA.* (1) If the suspension and proposed revocation of OTP certification are upheld, the revocation of certification will become effective immediately and the public will be notified by publication of a notice in the **Federal Register**. The Secretary will notify DEA within 5 days that the OTP's registration should be revoked.

(2) If the suspension and proposed revocation of OTP certification are denied, the revocation will not take effect and the suspension will be lifted immediately. Public notice will be given by publication in the **Federal Register**. The Secretary will notify DEA within 5 days that the OTP's registration should be restored, if applicable.

§ 8.34 Court review of final administrative action; exhaustion of administrative remedies.

Before any legal action is filed in court challenging the suspension, proposed revocation, or adverse action, respondent shall exhaust administrative remedies provided under this subpart, unless otherwise provided by Federal law. The reviewing official's decision, under § 8.28(e) or § 8.33(a), constitutes final agency action as of the date of the decision.

Subpart E [Reserved]

Subpart F—Authorization To Increase Patient Limit to 275 Patients

§ 8.610 Practitioner eligibility requirements for a 3-year 275-patient limit.

The total number of patients that a practitioner may dispense or prescribe covered medications to at any one time for purposes of 21 U.S.C. 823(g)(2)(B)(iii) is 275 if:

(a) The practitioner possesses a current waiver to treat up to 100 patients with OUD under section 303(g)(2) of the Controlled Substances Act (21 U.S.C. 823(g)(2)) and has maintained the waiver in accordance with applicable statutory requirements without interruption for at least one year since the practitioner's notification of intent (NOI) under section 303(g)(2)(B) to treat up to 100 patients was approved;

(b) The practitioner:

(1) Holds additional credentialing as defined in § 8.2; or

(2) Provides OUD treatment utilizing covered medications in a qualified practice setting as defined in § 8.615;

(c) The practitioner has not had his or her enrollment and billing privileges in the Medicare program revoked under § 424.535 of this title; and

(d) The practitioner has not been found to have violated the Controlled Substances Act pursuant to 21 U.S.C. 824(a).

§ 8.615 Definition of a qualified practice setting.

A qualified practice setting is a practice setting that:

(a) Provides professional coverage for patient medical emergencies during hours when the practitioner's practice is closed;

(b) Provides access to case-management services for patients including referral and follow-up services for programs that provide, or financially support, the provision of services such as physical, behavioral, social, housing, employment, educational, or other related services;

(c) Uses health information technology (health IT) systems such as electronic health records, if otherwise required to use these systems in the practice setting. Health IT means the electronic systems that health care professionals and patients use to store, share, and analyze health information;

(d) Is registered for their State prescription drug monitoring program (PDMP) where operational and in accordance with Federal and State law. PDMP means a statewide electronic database that collects designated data on controlled medications dispensed in the State. For practitioners providing care in their capacity as employees or contractors of a Federal Government agency, participation in a PDMP is required only when such participation is not restricted based on their State of licensure and is in accordance with Federal statutes and regulations; and

(e) Accepts third-party payment for costs in providing health services, including written billing, credit, and collection policies and procedures, or Federal health benefits.

§ 8.620 Applying for a 275-patient limit.

In order for a practitioner to receive approval for a 3-year patient limit of 275, a practitioner must meet all of the requirements specified in § 8.610 and submit a Request for Patient Limit Increase to the Secretary that includes all of the following:

(a) Completed Request for Patient Limit Increase form;

(b) Statement certifying that the practitioner:

(1) Will adhere to nationally recognized evidence-based guidelines for the treatment of patients with OUD;

(2) Will provide patients with necessary behavioral health services as defined in § 8.2 or through an established formal agreement with another entity to provide behavioral health services;

(3) Will provide appropriate releases of information, in accordance with Federal and State laws and regulations, including the Health Information Portability and Accountability Act Privacy Rule (45 CFR part 160 and 45 CFR part 164, subparts A and E) and 42 CFR part 2, if applicable, to permit the coordination of care with behavioral health, medical, and other service practitioners;

(4) Will use patient data to inform the improvement of outcomes;

(5) Will adhere to a diversion control plan to manage the covered medications and reduce the possibility of diversion of covered medications from prescribed treatment use;

(6) Has considered how to assure continuous access to care in the event of practitioner incapacity or an emergency-situation that would impact a patient's access to care as defined in § 8.2; and

(7) Will notify all patients above the 100-patient level, in the event that the request for the higher patient limit is not renewed or the renewal request is denied, that the practitioner will no longer be able to provide buprenorphine treatment to them and make every effort to transfer patients to other treatment providers; and

(c) Any additional documentation to demonstrate compliance with § 8.610 as requested by the Secretary.

§ 8.625 Processing a 275 Request for Patient Limit Increase.

(a) Not later than 45 days after the date on which the Secretary receives a practitioner's Request for Patient Limit Increase as described in § 8.620, or renewal Request for Patient Limit Increase as described in § 8.640, the Secretary shall approve or deny the request.

(1) A practitioner's Request for Patient Limit Increase will be approved if the practitioner satisfies all applicable requirements under §§ 8.610 and 8.620. The Secretary will thereafter notify the practitioner who requested the patient limit increase, and the DEA, that the practitioner has been approved to treat up to 275 patients using covered medications. A practitioner's approval to treat up to 275 patients under this section will extend for a term not to exceed 3 years.

(2) The Secretary may deny a practitioner's Request for Patient Limit Increase if the Secretary determines that:

(i) The Request for Patient Limit Increase is deficient in any respect; or

(ii) The practitioner has knowingly submitted false statements or made misrepresentations of fact in the practitioner's Request for Patient Limit Increase.

(b) If the Secretary denies a practitioner's Request for Patient Limit Increase (or renewal), the Secretary shall notify the practitioner of the reasons for the denial.

(c) If the Secretary denies a practitioner's Request for Patient Limit Increase (or renewal) based solely on deficiencies that can be resolved, and the deficiencies are resolved to the satisfaction of the Secretary in a manner and time period approved by the Secretary, the practitioner's Request for Patient Limit Increase will be approved. If the deficiencies have not been resolved to the satisfaction of the Secretary within the designated time period, the Request for Patient Limit Increase may be denied.

§ 8.630 Practitioner requirements to maintain a 275-patient limit.

A practitioner whose Request for Patient Limit Increase is approved in accordance with § 8.625 shall maintain all eligibility requirements specified in § 8.610, and all attestations made in accordance with § 8.620(b), during the practitioner's 3-year approval term. Failure to do so may result in the Secretary withdrawing its approval of a practitioner's Request for Patient Limit Increase.

§ 8.640 Renewal process for a 3-year 275 Request for Patient Limit Increase.

(a) Practitioners who intend to continue to treat up to 275 patients beyond their current 3-year approval term must submit a renewal Request for Patient Limit Increase in accordance with the procedures outlined under § 8.620 no more than 30 days before the expiration of their current approval term.

(b) If the Secretary does not reach a final decision on a renewal Request for Patient Limit Increase before the expiration of a practitioner's approval term, the practitioner's existing approval term will be deemed extended until the Secretary reaches a final decision.

§ 8.645 Practitioner responsibility when no renewal request for patient limit increase is submitted, or whose renewal request is denied.

Practitioners who are approved to treat up to 275 patients in accordance with § 8.625, but who do not renew their Request for Patient Limit Increase, or whose renewal request is denied, shall notify, under § 8.620(b)(7) in a time period specified by the Secretary, all patients affected above the 100-patient limit, that the practitioner will no longer be able to provide OUD treatment services using covered medications and make every effort to transfer patients to other treatment providers.

§ 8.650 Suspension or revocation of the Secretary's approval of a practitioner's request for patient limit increase.

The Secretary, at any time during a practitioner's 3-year approval term, may suspend or revoke its approval of a practitioner's Request for Patient Limit Increase under § 8.625 if it is determined that:

(a) Immediate action is necessary to protect public health or safety;

(b) The practitioner made misrepresentations in the practitioner's Request for Patient Limit Increase;

(c) The practitioner no longer satisfies the requirements of this subpart; or

(d) The practitioner has been found to have violated the CSA pursuant to 21 U.S.C. 824(a).

§ 8.655 Temporary increase to treat up to 275 patients in emergency situations.

(a) Practitioners with a current waiver to prescribe up to 100 patients and who are not otherwise eligible to treat up to 275 patients under § 8.610 may request a temporary increase of 6-months to treat up to 275 patients in order to address emergency situations as defined in § 8.2. Practitioners may not be granted more than 2 consecutive emergency 275-patient limit requests. To apply for a 6-month emergency 275-patient limit, the practitioner must provide information and documentation that:

(1) Describes the emergency situation in sufficient detail so as to allow a determination to be made regarding whether the situation qualifies as an emergency situation as defined in § 8.2, and that provides a justification for an immediate increase in that practitioner's patient limit;

(2) Identifies a period of time, not longer than 6 months, in which the higher patient limit should apply, and provides a rationale for the period of time requested; and

(3) Describes an explicit and feasible plan to meet the public and individual

health needs of the impacted persons once the practitioner's approval to treat up to 275 patients expires.

(b) Prior to taking action on a practitioner's request under this section, the Secretary shall consult, to the extent practicable, with the appropriate governmental authorities in order to determine whether the emergency situation that a practitioner describes justifies an immediate increase in the higher patient limit.

(c) If the Secretary determines that a practitioner's request under this section should be granted, the Secretary will notify the practitioner that his or her request has been approved. The period of such approval shall not exceed six months.

(d) If practitioners wish to receive an extension of the approval period granted under this section, they must submit a request to the Secretary at least 30 days before the expiration of the six-month period and certify that the emergency situation as defined in § 8.2 necessitating an increased patient limit continues. Prior to taking action on a practitioner's extension request under this section, the Secretary shall consult, to the extent practicable, with the appropriate governmental authorities in order to determine whether the emergency situation that a practitioner describes justifies an extension of an increase in the higher patient limit.

(e) Except as provided in this section and § 8.650, requirements in other sections under this subpart do not apply to practitioners receiving waivers in this section.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–27193 Filed 12–13–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 87 Friday,
No. 241 December 16, 2022

Part V

Department of the Interior

Fish and Wildlife Service
50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Endangered Species Status and Designation of Critical Habitat for Tiehm's Buckwheat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2020–0017; FF09E21000 FXES11110900000 234]

RIN 1018–BF94

Endangered and Threatened Wildlife and Plants; Endangered Species Status and Designation of Critical Habitat for Tiehm's Buckwheat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for Tiehm's buckwheat (*Eriogonum tiehmii*), a plant species native to Nevada in the United States. We also designate critical habitat. In total, we designate approximately 910 acres (368 hectares) in one unit in Nevada as critical habitat for Tiehm's buckwheat. This rule adds the species to the List of Endangered and Threatened Plants and extends the Act's protections to the species.

DATES: This rule is effective January 17, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov at* Docket No. FWS–R8–ES–2020–0017.

Availability of supporting materials: For the critical habitat designation, the coordinates or plot points or both from which the critical habitat maps are generated are available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0017. Any additional supporting information that we developed for this critical habitat designation will be available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Justin Barrett, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Reno Ecological Services Field Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502; telephone 775–861–6300. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered in the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that Tiehm's buckwheat meets the definition of an endangered species; therefore, we are listing it as such and designating critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This document lists Tiehm's buckwheat as an endangered species and designates critical habitat for this species under the Act, in a portion of Esmeralda County, Nevada. In total, we designate approximately 910 acres (ac; 368 hectares (ha)) in one unit in Nevada as critical habitat for Tiehm's buckwheat.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that Tiehm's buckwheat is primarily at risk of extinction due to the destruction, modification, or curtailment of its habitat and range from mineral exploration and development; road development and off-highway vehicle (OHV) use; livestock grazing; nonnative, invasive plant species; and herbivory. Climate change may further influence the degree to which some of these threats (herbivory and nonnative invasive plant species), individually or collectively, may affect Tiehm's buckwheat. In addition, existing regulatory mechanisms may be inadequate to protect the species.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Abbreviations and Acronyms Used in This Final Rule

For the convenience of the reader, a list of the abbreviations and acronyms used in this final rule follows:

Act = Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended
AUM = animal unit month
BLM = Bureau of Land Management
CBD = Center for Biological Diversity
CFR = Code of Federal Regulations
DoD = Department of Defense
FLPMA = Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.)
FR = Federal Register
GLM = general linear model
HCP = habitat conservation plan
IEc = Industrial Economics, Incorporated
IEM = incremental effects memorandum
INRMP = integrated natural resources management plan
Ioneer = Ioneer USA Corporation
NDF = Nevada Division of Forestry
NDNH = Nevada Division of Natural Heritage
NEPA = National Environmental Policy Act (42 U.S.C. 4321 et seq.)
PBFs = physical and biological features
PECE = Policy for Evaluation of Conservation Efforts
PoO = Plan of Operations
RCP = representative concentration pathway
Service = U.S. Fish and Wildlife Service
SSA = species status assessment

Previous Federal Actions

For more information on the species, general information about Tiehm's buckwheat habitat, and previous Federal actions associated with final listing and final critical habitat for Tiehm's buckwheat, refer to the 12-

month finding published in the **Federal Register** on June 4, 2021 (86 FR 29975), the proposed listing rule published in the **Federal Register** on October 7, 2021 (86 FR 55775), and the proposed critical habitat rule published in the **Federal Register** on February 3, 2022 (87 FR 6101). The species status assessment (SSA) and associated supporting documents available online at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0017.

Summary of Changes From the Proposed Rule

Based on review of the public comments, State agency comments, peer review comments, and new scientific information that became available since the proposed rules published, we updated information in our SSA (Service 2022, entire), including:

1. Updating the petition history;
2. Adding a discussion of the Bureau of Land Management's (BLM) Mitigation Manual MS–1794 and Handbook H–1794;
3. Updating genetics information;
4. Updating vegetation community and soil requirements of Tiehm's buckwheat;
5. Adding a discussion on pollinators, including pollinator efficiency and flight distances;
6. Updating abundance and populations demographics;
7. Adding information on a fence constructed by the BLM to restrict off-highway vehicle (OHV) access;
8. Updating nonnative, invasive species information;
9. Updating herbivory information; and
10. Updating mine exploration and development information.

We also modified our description of physical and biological features (PBFs) 1 and 4 to reflect the habitat needs of the species more accurately. PBF 1 still addresses the plant community needed by Tiehm's buckwheat but has been updated to include additional associated species to maintain plant–plant interactions and ecosystem resiliency needed by the species. PBF 4 still addresses suitable soils but has been updated with new scientific information related to the soils used by the species. These changes to the SSA are also reflected in the rule portion of this document in paragraph (2).

Supporting Documents

The Service prepared a SSA report (Service 2022, entire), 12-month finding (86 FR 29975; June 4, 2021), proposed listing rule (86 FR 55775; October 7, 2021), and proposed critical habitat rule (87 FR 6101; February 3, 2022) for Tiehm's buckwheat. We prepared version 1.0 of the SSA (Service 2021a) and placed it on *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0017 at the time we published the proposed listing rule. Version 1.0 of the SSA was also supporting information for the proposed critical habitat rule under that same docket number. In responding to comments on the proposed listing and proposed critical habitat rules, we updated the SSA to version 2.0 (Service 2022, entire), which is also available on *https://www.regulations.gov* along with this document (which combines the final listing and final critical habitat rules) under Docket No. FWS–R8–ES–2020–0017.

The SSA team was composed of Service biologists, in consultation with other species experts, that collected and analyzed the best available information to support this final listing and final critical habitat designation. The science provided in the SSA report, the 12-month finding, the proposed listing rule, and the proposed critical habitat rule is the basis for this final listing and final critical habitat rule. The SSA report, 12-month finding, proposed listing rule, and proposed critical habitat rule represent a compilation of the best scientific and commercial data available regarding a full status assessment of the species, including past, present, and future impacts (both negative and positive) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, the SSA report underwent independent peer review by three of the four scientists that we requested for peer review with expertise in botany, rare plant conservation, and plant ecology. The Service also sent the SSA report to three partner agencies, the Nevada Division of Forestry (NDF), the Nevada Division of Natural Heritage (NDNH), and the BLM, for review. We received comments from NDNH and BLM. In addition, we requested peer review of the proposed critical habitat rule for Tiehm's buckwheat from six scientists, and we did not receive any responses. The purpose of peer and partner review of the SSA report and proposed critical habitat rule is to ensure that our listing and critical habitat determination is based on scientifically sound data, assumptions, and analyses. Comments we received during peer and partner review were considered and incorporated into our SSA report.

I. Final Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of Tiehm's buckwheat is presented in the SSA report (Service 2022, pp. 13–26). A summary of the SSA is provided below.

Species Description, Habitat, and Needs

Tiehm's buckwheat was first discovered in 1983 and described in 1985. All available taxonomic and genetic research information indicates that Tiehm's buckwheat is a valid and recognizable taxon and represents a distinct species (Reveal 1985, pp. 277–278; Grady 2012, entire; Davis *in litt.* 2019; Wolf 2021, entire). Tiehm's buckwheat is a low-growing perennial herb, with blueish gray leaves and pale, yellow flowers that bloom from May to June and turn red with age. Seeds ripen in late-June through mid-July (Reveal 1985, pp. 277–278; Morefield 1995, pp. 6–7).

Tiehm's buckwheat occurs between 5,906 and 6,234 feet (ft; 1,800 and 1,900 meters (m)) in elevation and on all aspects with slopes ranging from 0–50 degrees (Ioneer 2020a, p. 5; Morefield 1995, p. 11). The species occurs on dry, upland sites, subject only to occasional saturation by rain and snow and is not found in association with free surface or subsurface waters (Morefield 1995, p. 11). Although there is no information on Tiehm's buckwheat's specific water needs during its various life stages (*i.e.,* dormant seed, seedling, juvenile, adult), Tiehm's buckwheat appears to be primarily dependent on occasional precipitation for its moisture supply (Morefield 1995, p. 11).

Like most terrestrial plants, Tiehm's buckwheat requires soil for physical support and as a source of nutrients and water. Tiehm's buckwheat is a soil specialist or edaphic endemic specifically adapted to grow on its preferred soil type. The species occurs on soil with a high percentage (70–95 percent) of surface fragments that is classified as clayey, smectitic, calcareous, mesic Lithic Torriorthents; clayey-skeletal, smectitic, mesic Typic Calcicargids; and clayey, smectitic, mesic Lithic Haplargids (United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS 2022, entire). The A horizon is thin (0–5.5 inches (in) (0–14 centimeters (cm))); B horizons are present as Bt (containing illuvial layer of lattice clays) or Bw (weathered); C horizons are not always present; and soil depths to bedrock range from 3.5 to 20 in (9 to 51 cm; USDA NRCS 2022, entire). The soil pH is greater than 7.6 (*i.e.,* alkaline) in

all soil horizons (USDA NRCS 2022, entire). All horizons effervesce to varying degrees using hydrochloric acid, indicating the presence of calcium carbonate throughout the soil profile (USDA NRCS 2022, entire). Soil horizons are characterized by a variety of textures and include gravelly clay loam, sand, clay, very gravelly silty clay, and gravelly loam (USDA NRCS 2022, entire).

Where Tiehm's buckwheat grows, the vegetation varies from exclusively Tiehm's buckwheat plants to sparse associations with a few other low-growing herbs and grass species. The abundance and diversity of arthropods (insects, mites, and spiders) observed in Tiehm's buckwheat subpopulations is especially high (1,898 specimens from 12 orders, 70 families, and 129 species were found in 2020) for a plant community dominated by a single native herb species (McClinton et al. 2020, p. 11). Primary insect visitors to Tiehm's buckwheat include bees, wasps, beetles, and flies (McClinton et al. 2020, p. 18). A combination of pitfall traps, flower—insect observations, and pollinator exclusion studies demonstrate that Tiehm's buckwheat benefits from insect visitors and that the presence of an intact pollinator community is important for maintaining the species (Service 2022, pp. 15–21).

Tiehm's buckwheat is a narrow-ranging endemic known from only one population, comprising eight subpopulations, in the Rhyolite Ridge area of Silver Peak Range in Esmeralda County, Nevada. The single population of Tiehm's buckwheat is restricted to approximately 10 ac (4 ha) across a 3-square-mile area, located entirely on public lands administered by BLM. The subpopulations are separated by a rural, unpaved, county road where subpopulations 1, 2, and 8 occur north of the road, and subpopulations 3, 4, 5, 6, and 7 occur south of the road (figure 1). A 2019 survey estimated that the total Tiehm's buckwheat population was 43,921 individual plants (table 1; Kuyper 2019, p. 2). Multiple survey efforts have not detected additional populations of the species.

In 2021, the first complete census of Tiehm's buckwheat was systematically conducted following an herbivory event (described in *Summary of Biological Status and Threats,* below, under *Herbivory*) that impacted the population in 2020 (Fraga 2021a, entire). During the census, living plants observed within each subpopulation were counted, totaling 15,757 living plants (table 1; Fraga 2021a, p. 5). Based on the number of plants counted during the 2021 census, the 2019 estimates in subpopulations 4 and 6 were likely overestimated. Because the survey methods used varied between surveyed years, we are unable to infer population trends over time. However, the 2021 census provides the best estimate of Tiehm's buckwheat plants to date as it was a direct count of living individuals.

BILLING CODE 4333–15–P

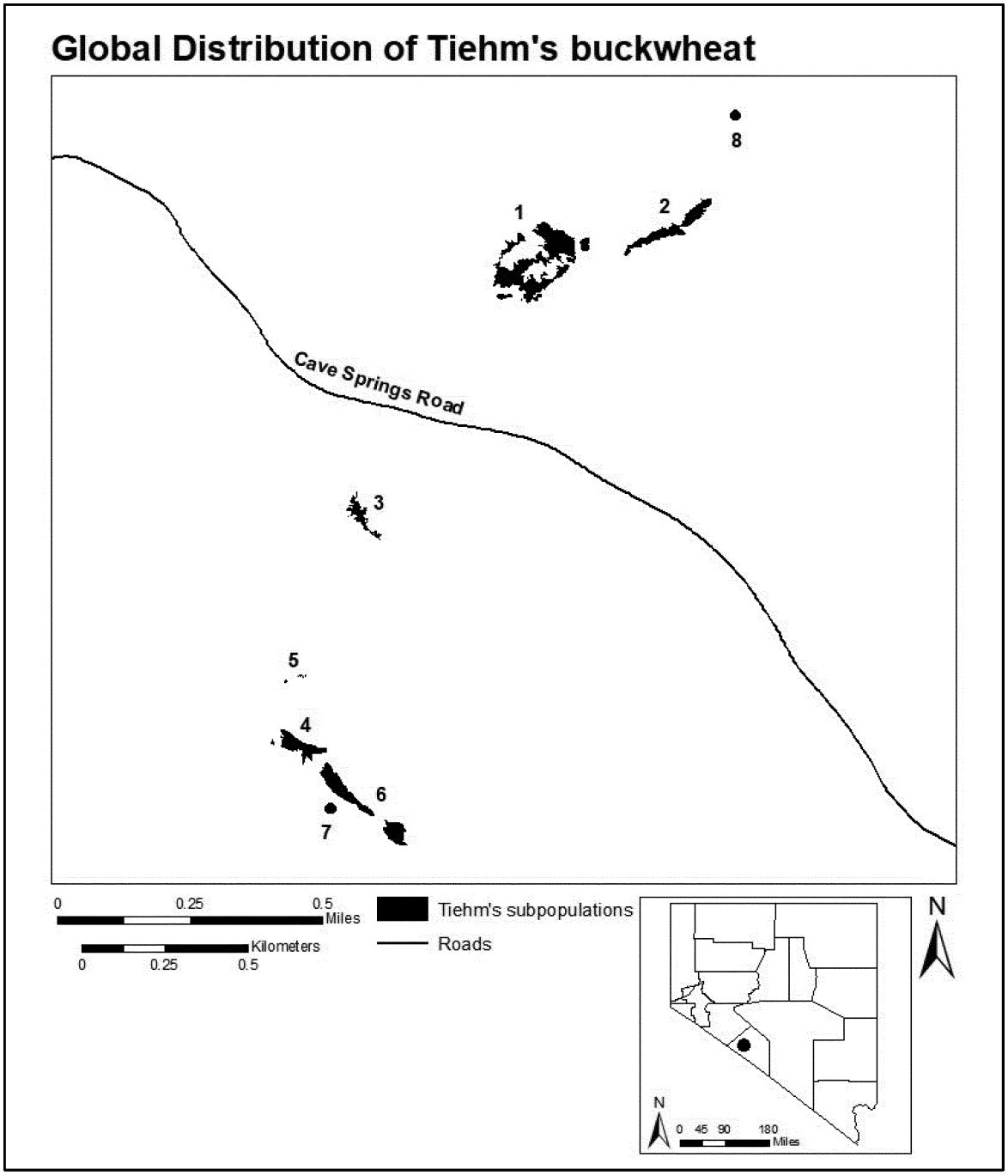


Figure 1—Global distribution of Tiehm's buckwheat. The single population comprises eight subpopulations, indicated by the corresponding numbers on the map.

TABLE 1—SUMMARY OF TIEHM'S BUCKWHEAT INDIVIDUALS AND OCCUPIED HABITAT

Population	Subpopulation	Estimated number of plants				Occupied habitat (acres)	
		1994 [a]	2008/2010 [b]	2019 [c]	2021 [e]	2008/2010	2019
1	1	7,000+	15,380	9,240	4,420	4.71	4.81
	2	3,000+	4,000	4,541	1,719	1.17	1.56
	3	500+	4,000	1,860	1,165	0.62	0.63
	4	500+	1,960	8,159	649	0.58	1.04
	5	15	100	[d] 199	3	0.03	0.04
	6	6,000+	11,100	19,871	7,787	1.64	1.88

TABLE 1—SUMMARY OF TIEHM'S BUCKWHEAT INDIVIDUALS AND OCCUPIED HABITAT—Continued

Population	Subpopulation	Estimated number of plants				Occupied habitat (acres)	
		1994 [a]	2008/2010 [b]	2019 [c]	2021 [e]	2008/2010	2019
	7	n/a	n/a	[d] 50	14	n/a	0.004
	8	n/a	n/a	[d] 1	not censused in 2021	n/a	(1 plant)
Total		17,015+	36,540	43,921	15,757	8.75	9.97

[a] Ocular estimate.
[b] Method employed: ''Estimating Population Size Based on Average Central Density'' (Morefield 2008, entire: Morefield 2010, entire).
[c] Method employed: Modified density sampling methodology in BLM technical reference ''Sampling Vegetation Attributes'' (BLM 1999, Appendix B) and ''Measuring and Monitoring Plant Subpopulations'' (Elzinga et al. 1998).
[d] Direct count.
[e] Census of all living plants (Fraga 2021a, entire).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). At the same time the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019). We collectively refer to these actions as the 2019 regulations.

As with the proposed rule, we are applying the 2019 regulations for this final rule because the 2019 regulations are the governing law just as they were when we completed the proposed rule. Although there was a period in the interim—between July 5, 2022, and September 21, 2022—when the 2019 regulations became vacated and the pre-2019 regulations therefore governed, the 2019 regulations are now in effect and govern listing and critical habitat decisions (*see Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD* v. *Haaland*) (vacating the 2019 regulations and thereby reinstating the pre-2019 regulations)); *In re: Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's order vacating the 2019 regulations until the district court resolved a pending motion to amend the order); *Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–5206–JST, Doc. Nos. 197, 198 (N.D. Cal. Nov. 16, 2022) (granting plaintiffs' motion to amend July 5, 2022 order and granting government's motion for remand without vacatur).

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable

predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R8–ES–2020–0017 on *https://www.regulations.gov*.

To assess Tiehm's buckwheat viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (*e.g.,* wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (*e.g.,* droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (*e.g.,* climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Biological Status and Threats

Here we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

For Tiehm's buckwheat to maintain viability, its populations or some portion thereof must be resilient. The resiliency of Tiehm's buckwheat is influenced by the availability of suitable habitat, species abundance, and recruitment. The species' resiliency is discussed in detail in the SSA report (Service 2022, entire) and summarized here.

Summary of Biological Status and Threats

We reviewed the potential threats that could be affecting Tiehm's buckwheat now and in the future. In this final rule, we will discuss only those threats in detail that could meaningfully impact the status of the species. We evaluated the potential for all threats under the five listing factors in the SSA and found that overutilization for commercial and scientific purposes (Factor B) and disease (Factor C), are not affecting the species; therefore, these threats are not discussed here. The primary threats affecting the status of Tiehm's buckwheat are physical alteration of habitat due to mineral exploration and development, road development and OHV use, livestock grazing, and nonnative, invasive plant species (all Factor A threats); herbivory (Factor C); and climate change (Factor E). Climate change may further influence the degree to which these threats, individually or collectively, may affect Tiehm's buckwheat. While we generally discuss these threats individually, threats can also occur simultaneously, thus additively affecting the resiliency of Tiehm's buckwheat. Where different individual threats occur at the same time and place, we will describe how they may interact with one another in the threats discussion below. Threats may be reduced through the implementation of existing regulatory mechanisms or other conservation efforts that benefit Tiehm's buckwheat and its habitat, and so we also summarize and discuss how the existing regulatory mechanisms (Factor D) address these threats.

Herbivory

The naturally occurring Tiehm's buckwheat population (represented by one population with eight subpopulations) and a seedling transplant experiment suffered detrimental herbivory in 2020. The naturally occurring population experienced greater than 60 percent damage or loss of individual plants, while almost all experimental transplants were lost to rodent herbivores in a 2-week period (Service 2020, pp. 29–33). An environmental DNA analysis (*i.e.,* trace DNA found in soil, water, food items, or other substrates with which an organism has interacted) conducted on damaged Tiehm's buckwheat roots, nearby soils, and rodent scat strongly linked small mammal herbivory to the widespread damage and loss of the naturally occurring Tiehm's buckwheat population (Grant 2020, entire). This instance was the first time herbivory was documented on the species, although, prior to 2019, surveys of the population were infrequent. The significance of herbivory in the naturally occurring population depends not only on its frequency and intensity, but also on whether damaged plants can recover and survive, as we are uncertain if the species will be able to recover from this damage and loss. Rodent herbivory precluded seedling survival in experimental plots. Further studies and monitoring need to be conducted to determine if management to reduce rodent herbivory is necessary to maintain Tiehm's buckwheat individuals and subpopulations, or if this significant herbivory event was only a random catastrophic event that is not likely to occur on a regular basis.

The 2020 herbivory event that Tiehm's buckwheat experienced was extensive enough to compromise the long-term viability of individuals, subpopulations, and the overall population. One possible explanation for why this event occurred is that a

changing climate is leading to temperature increases and changes in moisture availability. Total precipitation was above average in the Rhyolite Ridge area from 2015 through 2019, whereas in 2020, it was significantly below average. Increases in precipitation are typically followed by increases in rodent populations (Beatley 1976, entire; Brown and Ernest 2002, pp. 981–985; Gillespie et al. 2008, pp. 78–81; Randel and Clark 2010; entire). This sudden shift from above- to below-average precipitation may have impacted the abundance and behavior of the local rodent population at Rhyolite Ridge; rodents in drought conditions may have been seeking water from whatever source was available and, in this case, found the shallow taproots of mature Tiehm's buckwheat plants (Boone 2020, entire; Morefield 2020, p. 12). If herbivory was driven by a water-stressed rodent population, future alteration of temperature and precipitation patterns may create climate conditions for this situation to happen again, resulting in further damage or loss of Tiehm's buckwheat individuals.

To better understand damage to Tiehm's buckwheat, all living plants within each subpopulation were counted in June 2021 (Fraga 2021a, pp. 5–6). A high proportion of plants appeared to be recovering from damage, especially in subpopulations 1, 2, and 4. However, the approximate number of plants recovering from damage was difficult to determine (Fraga 2021a, p. 5). Subpopulations 5 and 7 were presumed to be extirpated in 2020, but 3 individuals in subpopulation 5 and 14 individuals in subpopulation 7 were observed (Fraga 2021a, p. 6). Subpopulation 4 was the most severely impacted, with only 649 of the estimated 8,159 individuals remaining—a 92 percent decrease (Fraga 2021a, p. 6). Based on the 2021 census, it is estimated that all subpopulations, except for subpopulation 3, were reduced by 50 percent or more due to the 2020 herbivory event (table 3; Service 2022 p. 36; Fraga 2021a, p. 6). Regardless of whether the 2019 or 2021 population estimates are used to measure damage to Tiehm's buckwheat subpopulations, 60 percent or more plants were negatively impacted by the 2020 herbivory event.

Tiehm's buckwheat subpopulations were monitored throughout 2021, and no new widespread damage to plants was observed (BLM 2021a, entire; BLM 2021b, entire; BLM 2021c, entire; BLM 2021d, entire; BLM 2021e, entire; BLM 2021f, entire; BLM 2021g, entire; BLM 2021h, entire; BLM 2021i, entire; Fraga 2021a, p. 6; Garrison and Siebert 2021a, entire; Garrison and Siebert 2021b, entire; Heston 2021, entire; Kindred 2021, entire).

Mineral Exploration and Development

The specialized soils on which Tiehm's buckwheat occurs overlie and are developed directly from a sedimentary layer rich in mineralized lithium and boron, making this location of high interest for mineral development. Trenches and mine shafts associated with mineral exploration and development have already impacted subpopulations 1, 2, 3, 4, and 6, resulting in the loss of some of Tiehm's buckwheat habitat (Morefield 1995, p. 15). Future mineral exploration and development would be expected to result in similar or more detrimental impacts to the species. The BLM lands on which Tiehm's buckwheat occurs are subject to the operation of the Mining Law of 1872, as amended (30 U.S.C. 22–54). Under BLM's regulations, operators may explore and cause a surface disturbance of up to 5 acres after an operator gives notice to BLM and waits 15 days (43 CFR 3809.21(a)). By contrast, if a federally proposed or listed species or their proposed or designated critical habitat is present, unless BLM allows for other action under a formal land-use plan or threatened or endangered species recovery plan, an operator must submit a mining plan of operation and obtain BLM approval for any surface disturbance greater than casual use (43 CFR 3809.11(c)(6)).

In May 2020, Ioneer USA Corporation (Ioneer) submitted a plan of operations (2020 PoO) to BLM for the proposed Rhyolite Ridge lithium-boron project. The 2020 PoO, if permitted as proposed, would result in the complete loss of Tiehm's buckwheat habitat and subpopulations 4, 5, 6, and 7, even with the voluntary protection measures included in Ioneer's project proposal. The voluntary protection measures included in Ioneer's project proposal are summarized below in Conservation Measures and Regulatory Mechanisms (protection measures are described more thoroughly in Service 2022, pp. 39–42). The potential impact from the project proposed in the 2020 PoO would reduce the remaining Tiehm's buckwheat population by 54 percent, or from 15,757 individuals to roughly 7,305 individuals, and remove 30 percent of its total habitat (2.96 ac (1.2 ha); Ioneer 2020a, figure 4, p. 29). At the end of the project as proposed, areas previously occupied by Tiehm's buckwheat in subpopulations 4–7 would be underwater within the boundaries of a quarry lake (Ioneer 2020b, pp. 71–72). In the 2020 PoO, Ioneer proposed to remove and salvage all remaining plants in subpopulations 4, 5, 6, and 7 (approximately 8,453 plants) and translocate them to another location. However, Tiehm's buckwheat is a soil specialist or edaphic endemic and adjacent, unoccupied sites are not suitable for all early life-history stages (McClinton et al. 2020, entire; NewFields 2021, entire). The results of that research combined with herbivore impacts on transplanted seedlings, a lack of understanding of factors influencing demographic processes, a lack of understanding of dispersal mechanisms and seedling recruitment, and a lack of testing and multiyear monitoring on the feasibility of transplanting the species, results in a high level of uncertainty regarding the potential for success of translocation efforts (*e.g.,* Godefroid et al. 2011, entire; Maschinski and Haskins 2012, entire; Albrecht et al. 2018, entire; Ward et al. 2021, entire).

Subpopulation 6 may be the most resilient of the eight Tiehm's buckwheat subpopulations because it has the most individuals, produces a higher average density of flowers (correlating to a higher seed output), supports high pollinator diversity, and supports a variety of size classes, including having the most individuals in the smallest size class indicating that this subpopulation is likely experiencing the most recruitment (Kuyper 2019, p. 3; Ioneer 2020a, pp. 7–8; McClinton et al. 2020, pp. 23, 51). Loss of this subpopulation to the proposed Rhyolite Ridge lithium-boron project may have an immense impact on the overall resiliency and continued viability of the species, beyond just the loss of individuals (representation).

Rare plant species, like Tiehm's buckwheat, that have restricted ranges, specialized habitat requirements, and limited recruitment and dispersal, have a higher risk of extinction due to demographic uncertainty and random environmental events (Shaffer 1987, pp. 69–75; Lande 1993, pp. 911–927; Hawkins et al. 2008, pp. 41–42; Caicco 2012, pp. 93–94; Kaye et al. 2019, p. 2; Corlett and Tomlinson 2020, entire; Hulshof and Spasojevic 2020, entire). Additionally, habitat fragmentation poses specific threats to species through genetic factors such as increases in genetic drift and inbreeding, together with a potential reduction in gene flow from neighboring individuals or subpopulations (Jump and Peñuelas 2005, pp. 1015–1016). The effects of habitat fragmentation from the proposed Rhyolite Ridge lithium-boron project on Tiehm's buckwheat may be

compounded by the inherently poor dispersal of the species and its specific soil requirements.

In November 2021, Ioneer met with BLM and the Service to discuss proposed revisions to their 2020 PoO for the Rhyolite Ridge lithium-boron project (Service 2021b, entire) including adjustments to the proposed quarry location. On May 27, 2022, Ioneer provided the Service with a memorandum further describing the proposed revisions to their 2020 PoO (Ioneer 2022a, entire). On July 18, 2022, Ioneer submitted their revised PoO to BLM and provided the Service with a copy on August 8, 2022. On August 17, 2022, BLM determined the revised PoO was complete under 43 CFR 3809.401(b); however, BLM resource specialists are still in the process of receiving and reviewing baseline data reports that further explain the details of the 2022 revised PoO. BLM will analyze the environmental impacts of approving the project under National Environmental Policy Act (NEPA), and BLM may initiate consultation with the Service under section 7 of the Act.

The 2022 revised PoO includes modifications such as relocating the quarry to avoid individual Tiehm's buckwheat plants and implementing 13–127 ft (4–39 m) buffers with fencing around each subpopulation (Ioneer 2022b, p. 14 and Appendix J). An explosives storage area is proposed adjacent to subpopulation 1 (Ioneer 2022b, Figure 4). To the east, subpopulations 3, 4, 5, 6, and 7 would be concerningly close to a 960-ft (293 m) deep open-pit quarry and when mining is complete, a terminal quarry lake (Ioneer 2022b, p. 24, 74). In addition, over-burden storage facilities are proposed on the west side of subpopulations 3, 4, 5, 6, and 7 (Ioneer 2022b, p. 25). The combination of the quarry development and over-burden storage facilities are projected to disturb and remove up to 38 percent of critical habitat for this species, impacting pollinator populations, altering hydrology, removing soil, and risking subsidence.

Road Development and Off-Highway Vehicle Use

Ecological impacts of roads and ground-disturbing activities like OHV use include altered hydrology, pollution, sedimentation, silt erosion and dust deposition, habitat fragmentation, reduced species diversity, and altered landscape patterns (Forman and Alexander 1998, entire; Spellerberg 1998, entire). OHV impacts have occurred in subpopulations 1, 4, 5, and 6 (Caicco and Edwards 2007, entire; Donnelly and Fraga 2020, p. 1; Ioneer 2020a, p. 10; Donnelly 2021a entire; Donnelly 2021b, entire; Fraga 2021a, p. 7; Heston 2021, p. 1; Kindred 2021, p. 1) and can compact soil, crush plants, and modify habitat through fragmentation. Mining and mineral exploration activities that grade, improve, and widen roads in the Rhyolite Ridge area may allow easier and greater access for OHVs and recreational use. Additionally, road development and increased vehicle traffic associated with the proposed mine may create conditions that further favor the establishment of nonnative, invasive species within Tiehm's buckwheat habitat.

Ioneer's proposed Rhyolite Ridge lithium-boron project would construct and maintain service and haul roads within the Rhyolite Ridge area. Cave Springs Road (as seen on figure 1) is currently maintained by Esmeralda County and bisects Tiehm's buckwheat subpopulations. Realignment of this road is proposed to accommodate haul roads. It is expected that the rerouted road would be transferred to the county at closure, as an amendment to the county's existing right-of-way with BLM (Ioneer 2020b, p. 44). The expected amount of truck traffic associated with providing needed materials and supplies and product transport for the proposed project is anticipated to be 100 round trips per day, 365 days per year (Ioneer 2020b, p. 7).

Dust deposition, often a result of vehicle traffic on roads, negatively affects the physiological processes of plants including photosynthesis, reproduction, transpiration, water use efficiency, leaf hydraulic conductance, and stomatal disruption that impedes the ability of the stomata to open and close effectively (Hirano et al. 1995, pp. 257–260; Vardaka et al. 1995, pp. 415–418; Wijayratne et al. 2009, pp. 84–87; Lewis 2013, pp. 56–79; Sett 2017, entire). Physiological disruption to Tiehm's buckwheat individuals from dust generated from vehicular traffic associated with the proposed Rhyolite Ridge lithium-boron project would likely negatively affect the overall health and physiological processes of the population.

To restrict access of OHVs into subpopulations of Tiehm's buckwheat, the BLM constructed two pipe rail fences in December of 2021 (BLM 2021j, entire). One fence, approximately 1,500 ft (457 m) long, was constructed along the unnamed wash road southeast of subpopulation 1 (BLM 2021j, pp. 4–5). A second fence was installed at the entrance of the intersection of Cave Springs Road and a mine exploration road, preventing OHV access to subpopulations 3, 4, 5, 6, and 7 (BLM 2021j, pp. 4–5). BLM will monitor the effectiveness of the fences and plans to add signage to notify the public of the sensitive resources in the area (BLM 2021j, pp. 4–5).

Livestock Grazing

Livestock grazing has the potential to result in negative impacts to Tiehm's buckwheat individuals, subpopulations, and/or the population, depending on factors such as stocking rate and season of use. Livestock grazing may result in direct impacts to individual Tiehm's buckwheat plants due to trampling of vegetation and soil disturbance (compaction) in ways that can render habitat unsuitable to established plants, while also discouraging population recruitment (by discouraging seed retention, seed germination, and seedling survival). Patterns of soil disturbance associated with grazing can also create conditions conducive to the invasion of nonnative plant species (Young et al. 1972, entire; Hobbs and Huenneke 1992, p. 329; Loeser et al. 2007, pp. 94–95).

Tiehm's buckwheat occurs in the BLM Silver Peak livestock grazing allotment (BLM 1997, p. 15, map 17). The grazing permit for the Silver Peak allotment (NV00097) was reauthorized on September 9, 2020, with a 4-year term that expires on September 24, 2024 (BLM 2021k, entire). No grazing exclosures are associated with Tiehm's buckwheat within this BLM allotment, and trampling and cow manure have been observed in subpopulation 1 (Donnelly 2022, entire). Although some Tiehm's buckwheat individuals may be impacted by this threat, current grazing damage to Tiehm's buckwheat has not been observed. In January 2022, the permittee agreed to move the livestock west of the subpopulations to avoid any further impacts to Tiehm's buckwheat (Truax, BLM, pers. comm. 2022). Currently, 658 active AUMs (animal unit months) and 2,507 temporarily suspended AUMs are associated with the Silver Peak allotment due to stocking water range improvements that have fallen out of repair.

Upon expiration of the Silver Peak allotment grazing permit, BLM will consider reauthorization and/or changing the number of active AUMs. Range improvements are in progress, and additional AUMs may be returned on this allotment (Truax, pers. comm. 2020). However, grazing impacts could potentially increase in the future if additional AUMs are returned to this allotment.

Nonnative, Invasive Plant Species

Nonnative, invasive plant species could negatively affect Tiehm's buckwheat individuals, subpopulations, and/or the population through competition, displacement, and degradation of the quality and composition of its habitat (Gonzalez et al. 2008, entire; Simberloff et al. 2013, entire). Surveys of Tiehm's buckwheat conducted between 1994 and 2010 did not document any occurrences of nonnative, invasive species in its habitat (Morefield 1995, entire; Caicco and Edwards 2007, entire; Morefield 2008, entire; Morefield 2010, entire). However, saltlover (*Halogeton glomeratus*) has since become established to some degree and is part of the associated plant community in all subpopulations of Tiehm's buckwheat (CBD 2019, pp. 20–21; Ioneer 2020a, pp. 9–10 Fraga 2021b, pp. 3–4; WestLand Engineering & Environmental Services, Inc (WestLand) 2021, pp. 23–25). Vehicles can carry the seeds of nonnative, invasive plant species into the area, and soil disturbances, such as mineral exploration activities, can encourage the spread of saltlover, which alters the substrate by making the soil more saline and less suitable as habitat for Tiehm's buckwheat. In 2021, ocular estimates of saltlover observed between subpopulations 1 and 2 was 20–25 percent in an area that had been used in mining exploration and 10–15 percent near subpopulations 4 and 5 along a reclaimed exploration road (Fraga 2021b, p. 3). As of 2021, saltlover is the most abundant nonnative, invasive species within and adjacent to all subpopulations of Tiehm's buckwheat, especially in areas disturbed from mining exploration activities (CBD 2019, pp. 20–21; Fraga 2021b, p. 3).

Road development and vehicle traffic associated with the proposed mine as well as livestock grazing, which currently occurs within Tiehm's buckwheat population as part of BLM's Silver Peak allotment, may create conditions that further favor the establishment of nonnative, invasive species within Tiehm's buckwheat habitat. For example, Ioneer's Rhyolite Ridge lithium-boron project proposes to construct and operate a quarry, processing plant, overburden storage facility, spent ore storage facility, and access roads (Ioneer 2020b, p. 11). If the project is approved, and these ground-disturbing activities occur, there is a potential for increase in spread of nonnative, invasive plant species. However, this possible increase would depend on conditions associated with approval of the proposed project. Under NEPA (42 U.S.C. 4321 *et seq.*), BLM has the discretion to analyze best management practices to help reduce the likelihood that nonnative, invasive plant species are introduced and spread in Tiehm's buckwheat habitat.

Climate Change

Tiehm's buckwheat occurs in the Great Basin Desert of Nevada (the largest contiguous area of watersheds with no outlets in North America that spans nearly all of Nevada, much of Utah, and portions of California, Idaho, and Oregon), where the effects of climatic changes depend largely on the interaction of temperature and precipitation. Between 1895 and 2011, temperatures in the Great Basin have increased 1.2 to 2.5 °F (0.7 to 1.4 °C), with a greater increase in the southern portion (where Tiehm's buckwheat occurs) than in the northern portion (Snyder et al. 2019, p. 3). Temperatures are increasing more at night than during the day and more in winter than in summer, leading to fewer cold snaps, more heatwaves, fewer frosty days and nights, less snow, and earlier snowmelt (Stewart et al. 2005, p. 1152; Mote et al. 2005, entire; Knowles et al. 2006, p. 4557; Abatzoglou and Kolden 2013, entire; Padgett et al. 2018, p. 167; Snyder et al. 2019, p. 3). Although these observed trends provide information as to how climate has changed in the past, climate models can be used to simulate and develop future climate projections.

Simulations using downscaled methods from 20 global climate models project mean average temperature during December, January, and February for the Rhyolite Ridge area will increase by 2.3 °F (1.3 °C) by 2060 and 3.4 °F (1.9 °C) by 2099 under moderate emission scenarios (RCP 4.5; Hegewisch and Abatzoglou 2020a). Under high emission scenarios (RCP 8.5), mean average temperatures during winter months increase by 3.6 °F (2 °C) by 2060 and 7.1 °F (3.9 °C) by 2099. Likewise, these models project maximum average temperatures during June, July, and August for the Rhyolite Ridge area to increase by 2.9 °F (1.6 °C) by 2060 and 4.1 °F (2.3 °C) by 2099 under moderate emission scenarios (RCP 4.5). Under high emission scenarios (RCP 8.5), maximum average temperatures during summer months increased by 4.6 °F (2.6 °C) by 2060 and 8.9 °F (4.9 °C) by 2099 (Hegewisch and Abatzoglou 2020a).

Additionally, simulations using these downscaling methods from multiple models project annual precipitation for the Rhyolite Ridge area to increase by 0.4 in (10.16 millimeters (mm)) by 2060 and 0.6 in (15.24 mm) by 2099 under moderate emission scenarios (RCP 4.5). Under high emission scenarios (RCP 8.5), annual precipitation increases by 0.3 in (7.62 mm) by 2060 and 0.7 in (17.78 mm) by 2099 (Hegewisch and Abatzoglou 2020a). Total precipitation was above average in the Rhyolite Ridge area during the period 2015–2019, ranging from 6.1 to 8.7 in (15.5 to 22 cm) a year (Hegewisch and Abatzoglou 2020b). Whereas, in 2020, total average precipitation for the same area was 2.7 in (6.8 cm; Hegewisch and Abatzoglou 2020c).

Tiehm's buckwheat is adapted to dry, upland sites, subject only to occasional saturation by rain and snow. Increasing temperature can affect precipitation patterns. The fraction of winter precipitation (November–March) that falls as snow versus rain is declining in the western United States (Palmquist et al. 2016, pp. 13–16). When temperatures are cold enough to limit water losses from plant transpiration and soils are not frozen, shifts from snow to rain may have minimal impact on deep soil water storage. If rainfall replaces snow and temperatures are increased enough to thaw soils to stimulate plant growth and physiological activity earlier in the year, this scenario would result in less deep soil water recharge (*i.e.,* less soil water infiltration and more evaporation) and potential changes in plant community composition (Huxman et al. 2005, entire).

Fire is a naturally occurring phenomenon that impacts the distribution and structure of vegetation (Willis 2017, p. 52). However, due to increasing temperatures and reductions in precipitation, the severity and frequency of wildfires is likely to increase (Chambers and Wisdom 2009, pp. 709–710; Comer et al. 2013, pp. 130–135; Snyder et al. 2019, p. 8). While the Great Basin is extremely prone to fires, with 14 million ac (5.6 million ha) burning in the last 20 years, there are no reported accounts of fire within Tiehm's buckwheat habitat or in the surrounding Rhyolite Ridge area (BLM 2020a, entire). We currently do not have any data to indicate what level of effect wildfire could have on Tiehm's buckwheat; however, it could result in habitat loss or habitat fragmentation and/or remove Tiehm's buckwheat individuals.

The direct, long-term impact from climate change to Tiehm's buckwheat is yet to be determined. The timing of phenological events, such as flowering, are often related to environmental variables such as temperature. Large-scale patterns of changing plant distributions, flowering times, and novel community assemblages in response to rising temperatures and changing rainfall patterns are apparent

in many vegetation biomes (Parmesan 2006, entire; Burgess et al. 2007, entire; Hawkins et al. 2008, entire; Munson and Long 2017, entire; Willis 2017, pp. 44–49). However, we do not know if or how climate change may alter the phenology of Tiehm's buckwheat or cause changes in pollinator behavior.

In summary, Tiehm's buckwheat is adapted to dry, upland sites, subject only to occasional saturation by rain and snow. Under climate change predictions, we anticipate alteration of precipitation and temperature patterns, as models forecast warmer temperatures and slight increases in precipitation. The timing and type of precipitation received (snow vs. rain) may impact plant transpiration and the soil water recharge needed by Tiehm's buckwheat. Additionally, variability in interannual precipitation combined with increasing temperatures, as recently seen from 2015 through 2020, may make conditions less suitable for Tiehm's buckwheat by bolstering local rodent populations. High rodent abundance combined with high temperatures and drought may have contributed to the herbivore impacts in 2020 in both the transplant experiment and native population. Thus, climate change may exacerbate impacts from rodent herbivory currently affecting this species and its habitat.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Measures and Regulatory Mechanisms

BLM

Tiehm's buckwheat is listed and managed as a BLM sensitive species which are defined as ''species that require special management or considerations to avoid potential future listing under the Act'' (BLM 2008a, pp. 1–48). Under this policy, BLM may initiate proactive conservation measures including programs, plans, and management practices to reduce or eliminate threats affecting the status of the species or improve the condition of the species' habitat on BLM-administered lands (BLM 2008a, Glossary, p. 2). BLM's regulations do not require conservation measures for sensitive species as a condition for exploring for, or developing minerals subject to disposal under, the Mining Law of 1872, as amended (30 U.S.C. 22–54; Mining Law). Under BLM's handbook, the Silver Peak allotment permits grazing across 281,489 ac (113,915 ha) that also encompass the area occupied by Tiehm's buckwheat. Under the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), BLM has the discretion to establish and implement special management areas, such as areas of critical environmental concern, to reduce or eliminate actions that adversely affect sensitive species, such as Tiehm's buckwheat. Although Tiehm's buckwheat is a BLM sensitive species, there are no special restrictions or terms and conditions regarding livestock use within the Silver Peak allotment where this species occurs. BLM has best management practices (BMPs) for invasive and nonnative species that focus on the prevention of further spread and/or establishment of these species (BLM 2008b, pp. 76–77). BMPs should be considered and applied where applicable to promote healthy, functioning native plant communities, or to meet regulatory requirements. BMPs include inventorying weed infestations, prioritizing treatment areas, minimizing soil disturbance, and cleaning vehicles and equipment (BLM 2008b, pp. 76–77). However, incorporation or implementation of BMPs is at the discretion of an authorized BLM officer.

In response to the 2020 herbivory event on Tiehm's buckwheat subpopulations, BLM has been monitoring the species, and photo plots were established near undamaged plants in subpopulations 1, 3, and 6 to help determine whether herbivory is continuing (Crosby, BLM, pers. comms. 2020a; Crosby, BLM, pers. comms. 2020b; BLM 2020b, entire; BLM 2020c, entire; BLM 2021a, entire; BLM 2021b, entire; BLM 2021c, entire; BLM 2021d, entire; BLM 2021e, entire; BLM 2021f, entire; BLM 2021g, entire; BLM 2021h, entire; BLM 2021i, entire). Ocular estimates from the photo plots indicate that herbivory is not ongoing (BLM 2020b, entire; BLM 2020c, entire; BLM 2021a, entire; BLM 2021b, entire; BLM 2021c, entire; BLM 2021d, entire; BLM 2021e, entire; BLM 2021f, entire; BLM 2021g, entire; BLM 2021h, entire; BLM 2021i, entire).

To restrict access of OHVs to subpopulations of Tiehm's buckwheat, the BLM constructed two pipe rail fences in December of 2021 (BLM 2021j, entire). One fence, approximately 1,500 ft (457 m) long, was constructed along the unnamed wash road southeast of subpopulation 1 (BLM 2021j, pp. 4–5). A second fence was installed at the entrance of the intersection of Cave Springs Road and a mine exploration road, preventing OHV access to subpopulations 3, 4, 5, 6, and 7 (BLM 2021j, pp. 4–5). BLM will monitor the effectiveness of the fences and plans to add signage to notify the public of the sensitive resources in the area (BLM 2021j, pp. 4–5).

Ioneer

As part of the proposed Rhyolite Ridge lithium-boron project, Ioneer is developing a conservation plan for Tiehm's buckwheat with the intent to protect and preserve the continued viability of the species on a long-term basis. The conservation plan is in the early stages of development (Ioneer 2020c, entire; Barrett, Service, pers. comm. 2021; Tress, WestLand, pers. comm. 2021a; Tress, WestLand, pers. comm. 2021b; Tress, WestLand, pers. comm. 2021c; Barrett, Service, pers. comm. 2022).

Ioneer has also implemented or proposed various protection measures for Tiehm's buckwheat as part of the 2020 PoO for the Rhyolite Ridge lithium-boron project. Ioneer funded the development of a habitat suitability model to identify additional potential habitat for Tiehm's buckwheat through field surveys (Ioneer 2020a, p. 12). In addition, a demographic monitoring program was initiated in 2019 to detect and document trends in population size, acres inhabited, size class distribution, and cover with permanent monitoring transects established in subpopulations 1, 2, 3, 4, and 6 (Ioneer 2020a, p. 16). Ioneer also funded collection of Tiehm's buckwheat seed in 2019 (Ioneer 2020a, pp. 13–14). Some of this seed was used by the University of Nevada, Reno, for a propagation trial and transplant study (Ioneer 2020a, p. 14). The remainder of this seed is in long-term storage at Rae Selling Berry Seed Bank at Portland State University (Ioneer 2020a, p. 13). Ioneer's 2020 PoO included avoiding subpopulations 1, 2, 3, and 8

(approximately 7,305 plants; Ioneer 2020a, p. 11), installing fences and signage around subpopulations 1 and 2 (Ioneer 2020a, p. 11), and removing and salvaging all remaining plants in subpopulations 4, 5, 6, and 7 (approximately 8,453 plants) and translocating them to another location (Ioneer 2020a, p. 15). However, in July 2022, Ioneer submitted a revised mining PoO, and the proposed project may or may not be permitted by BLM as proposed; thus, the project as proposed, and these protection measures, may or may not be fully implemented.

Summary of Current Condition

Globally, Tiehm's buckwheat is known from eight subpopulations that make up a single population (table 1). Tiehm's buckwheat substantially supports the high abundance and diversity of arthropods and pollinators found in the Rhyolite Ridge area. A specific set of soil conditions are required for the growth of Tiehm's buckwheat, as the species is specifically adapted to grow on its preferred soil type (McClinton et al. 2020, pp. 29–32; NewFields 2021, pp. 17–24, table 3; USDA NRCS 2022, entire).

Tiehm's buckwheat occurs entirely on 10 ac (4 ha) of Federal lands with sparse associations of other plant species. Tiehm's buckwheat is considered a rare plant species that has a restricted range, specialized habitat requirements, and limited recruitment and dispersal, which results in a higher risk of extinction due to demographic uncertainty and random environmental events. Under current conditions, primary threats to the species include mineral exploration and development; road development and OHV use; livestock grazing; nonnative, invasive plant species; herbivory; and climate change. Many of the threats currently affecting the species have the potential to work in combination. For example, mineral exploration, road development and OHV use, and livestock grazing can introduce nonnative, invasive plant species, which in turn can directly compete with and displace Tiehm's buckwheat within its habitat. With only one population (eight subpopulations), the risks to a small plant population like Tiehm's buckwheat include losses in reproductive individuals, declines in seed production and viability, loss of pollinators, loss of genetic diversity, and Allee effects (Eisto et al. 2000, pp. 1418–1420; Berec et al. 2007, entire; Willis 2017, pp. 74–77), which will impact a species that already has very limited redundancy and representation.

Data about Tiehm's buckwheat population dynamics are sparse, as research and monitoring to better understand the species are still in their infancy (Grant 2020, entire; Ioneer 2020a, pp. 11–18; McClinton et al. 2020, entire; Service 2020, entire). As a result, the best available data do not allow us to determine population trends such as growth, survival, or reproductive rates. Therefore, our assessment of current condition is based upon the current population estimates, the condition of the habitat, and what is known regarding current and future threats likely to occur within the range of the species.

Summary of Comments and Recommendations

In the proposed listing rule published on October 7, 2021 (86 FR 55775), we requested that all interested parties submit written comments by December 6, 2021, and in the proposed critical habitat rule published February 3, 2022 (87 FR 6101), we requested that all interested parties submit written comments by April 4, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposals. Newspaper notices inviting general public comment were published in the Las Vegas Review-Journal (on October 22, 2021, for the proposed listing rule and on February 11, 2022, for the proposed critical habitat rule) and the Mineral County Independent-News (on October 14, 2021, for the proposed listing rule and on February 10, 2022, for the proposed critical habitat rule). We did not receive any requests for a public hearing. All substantive information received during comment periods has either been incorporated directly into this final determination or is addressed below.

Peer Reviewer Comments

As discussed in Supporting Documents above, we received comments from three peer reviewers on the SSA and no comments from peer reviewers on the proposed critical habitat. We also sent the SSA report to two State agencies (NDF and NDNH) and the Federal agency (BLM) with whom we work with on Tiehm's buckwheat conservation. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer and partner reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final SSA report, including information on subpopulations, seed dispersal, agency policies, updating future scenarios, clarifications on herbivory, and other editorial suggestions. Peer and partner reviewer comments were addressed in version 1.0 of the SSA report, which was made available for public review at *https://www.regulations.gov* under Docket No. FWS–ES–R8–2020–0017 when the October 7, 2021, proposed rule (85 FR 55775) was published.

Federal Agency, States, and Tribes

We did not receive any comments from Federal agencies, States, or Tribes during the public comment periods.

Public Comments

We received comments from 28 individuals on the proposed listing rule and comments from 24 individuals on the proposed critical habitat rule. We reviewed all comments we received for substantive issues and new information. We received some of the same comments on the proposed listing rule as we did on the proposed critical habitat rule, and we provide our responses below. Comments unique to the proposed listing rule and proposed critical habitat rules and our responses subsequently follow.

Comment 1: Several commenters noted that the Service did not post SSA peer review comments on *https://www.regulations.gov* during the proposed listing rule public comment period and stated that the Service was not being transparent.

Our response: We included a summary of peer review on Tiehm's buckwheat SSA in our proposed rule to list Tiehm's buckwheat as endangered, and the peer review comments and responses are now posted on our Science Applications website under peer review at *https://www.fws.gov/program/science-applications,* which also is accessible to the public.

Comment 2: Several commenters asserted that BLM policies and guidance (FLPMA, H–1740–2, MS–6840) enforce sensitive species protective measures for mining operations and that the Service's assertion that they are not adequate assurances or do not provide certainty that Ioneer or BLM will actively conserve Tiehm's buckwheat is incorrect.

Our response: BLM sensitive species are those species requiring special management consideration to promote their conservation and reduce the likelihood and need for future listing under the Act (BLM 2008a, pp. 1–48). Tiehm's buckwheat faces several threats, including herbivory and small population size, that existing regulatory mechanisms are unlikely to adequately

address even though BLM has policies that protect sensitive species. Additionally, BLM's mining regulations at 43 CFR 3809.420 listing performance standards for mining plans of operation do not take into account impacts to sensitive species, only adverse impacts to threatened or endangered species and their habitat, which may be affected by operations. Existing regulatory mechanisms are described in section 1.4.2 in the SSA.

Comment 3: One commenter stated that there is no data or locations to support the conclusion that Tiehm's buckwheat occurs in pure or monotypic stands and that the Service incorrectly interpreted Morefield 1995 and McClinton et al. 2020.

Our response: We do not use the term ''monotypic stand'' in our SSA or proposed listing rule. In these documents, we describe community structure as ''open plant community with low plant cover and stature'' where ''the vegetation varies from pure stands of Tiehm's buckwheat to sparse associations with a few other low growing herbs and grass species.'' We reviewed additional information provided during the public comment period (WestLand 2021, pp. 23–27) and appropriately incorporated this information in the SSA. What comprises a pure stand depends on scale. To avoid confusion, we updated the SSA (Service 2022, p. 17) and removed the phrase ''pure stands'' and replaced it with the word ''exclusively,'' as in ''the vegetation varies from exclusively Tiehm's buckwheat plants to spare associations with a few other low growing herbs and grass species.''

Our interpretation of Morefield 1995 and McClinton et al. 2020 support these characterizations. Morefield 1995 (pp. 30–32) includes photos of Tiehm's buckwheat with other Tiehm's buckwheat plants in the background and others show the barren habitat at subpopulations 1 and 2 with a dozen or so Tiehm's buckwheat plants interspersed with its associates. Likewise, data in McClinton et al. 2020 (p. 22) support the high density of Tiehm's buckwheat where it occurs.

Comment 4: Two commenters noted that some of the literature cited in the SSA, including the genetic data that would be useful for assessing the uniqueness of Tiehm's buckwheat, is not publicly accessible. They requested that unpublished studies be made publicly available.

Our response: We have considered the best available scientific and commercial genetic data for assessing Tiehm's buckwheat in our SSA. We have provided information, including genetic data, that is not publicly accessible at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0017.

Public Comments on Proposed Listing

Comment 5: One commenter stated that we should have determined that listing Tiehm's buckwheat was precluded because the economic development and national security benefits of the proposed mining project could be considered a ''higher priority action'' than listing Tiehm's buckwheat as endangered. In addition, efforts being made to relocate the species to a different habitat where it is not threatened constitute ''expeditious progress'' in support of a precluded finding.

Our response: In making a determination as to whether a species meets the Act's definition of an endangered or threatened species, under section 4(a)(1)(A) of the Act the Secretary is to make that determination based solely on the basis of the best scientific and commercial data. A species that we find warrants listing as endangered or threatened, but for which listing is precluded by higher priority listing activities, is referred to as a candidate species. The provision in the Act that allows the Service to make a ''warranted, but precluded'' finding refers to listing being precluded by pending proposals to determine whether other species should be listed as endangered species or a threatened species, not to economic development or national security benefits. Likewise, ''expeditious progress'' being made to add or remove species from the Lists of Endangered and Threatened Wildlife and Plants under the Act refers to the Service's progress in making listing determinations, a function of workload, not whether expeditious progress is being made on conservation actions for the species. Under the Act, the Service may evaluate economic impacts and impacts to national security only in association with the designation of critical habitat under section 4(b)(2).

Comment 6: Several commenters were concerned with the scientific data used in the SSA and proposed listing rule. They requested that the Service reassess the key characteristics of Tiehm's buckwheat and its habitat requirements in light of the best available science and correct perceived erroneous conclusions in the SSA. They also requested that the Service reassess the threats to the species in light of the best available science and current plans for mineral development.

Our response: Our Policy on Information Standards under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines (*www.fws.gov/informationquality/*), provide criteria and guidance, and establish procedures to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for SSAs and listing rules.

Primary or original information sources are those that are closest to the subject being studied, as opposed to those that cite, comment on, or build upon primary sources. The Act and our regulations do not require us to use only peer-reviewed literature, but instead they require us to use the ''best scientific data available'' in a proposed listing rule. We use information from many different sources, including articles in peer-reviewed journals, scientific status surveys and studies completed by qualified individuals, Master's thesis research that has been reviewed but not published in a journal, other unpublished governmental and nongovernmental reports, reports prepared by industry, personal communication about management or other relevant topics, conservation plans developed by States and counties, biological assessments, other unpublished materials, experts' opinions or personal knowledge, and other sources. We have relied on published articles, unpublished research, habitat modeling reports, digital data publicly available on the internet, and the expert opinion of subject biologists for the SSA and listing rule for Tiehm's buckwheat.

Also, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited peer review from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. Additionally, we requested comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties concerning the proposed rule. Comments and information we received helped inform this final rule.

Comment 7: One commenter did not agree with the Service's conclusion that Tiehm's buckwheat provides an

unusually high contribution to the arthropod community and stated that data collected by McClinton et al. 2020 indicate that beetles, wasps, and flies are important pollinators for Tiehm's buckwheat and there are no apparent specialist pollinators. The commenter also stated that the SSA and proposed listing rule should disclose that McClinton et al. 2020, concluded that occupied and unoccupied sites were similarly abundant and diverse; the presence of Tiehm's buckwheat had no bearing on the overall abundance and diversity of the arthropod community.

Our response: The native plant species that co-occur with Tiehm's buckwheat that have average percent cover equal or greater than Tiehm's buckwheat are shrubs and grasses (as described in WestLand 2021, pp. 23–27). All of these species—shadscale saltbush (*Atriplex confertifolia*), black sagebrush (*Artemisia nova*), Nevada mormon tea (*Ephedra nevadensis*), James' galleta (*Hilaria jamesii* (formerly *Pleuraphis jamesii*), and alkali sacaton (*Sporobolus airoides*)—are wind pollinated, making Tiehm's buckwheat the dominant insect-pollinated flowering plant in the plant community in which it occurs. With this information, we can conclude that Tiehm's buckwheat contributes substantially to arthropod abundance and diversity because Tiehm's buckwheat is the dominant insect-pollinated plant species in its habitat where it occurs. As we described in the SSA, the abundance and diversity of arthropods in Tiehm's buckwheat subpopulations are especially high for a plant community dominated by a single native herb species, as compared to sites with more diverse insect-pollinated plant species (those that are unoccupied by Tiehm's buckwheat; as described in McClinton et al. 2020, pp. 9–24). We agree with the commentor, that at this time, scientific information does not indicate any specialist pollinators of Tiehm's buckwheat.

Comment 8: We received multiple comments related to the genetics of Tiehm's buckwheat. Some commenters questioned the validity of the species, while others supported the species distinction, providing various interpretations of science in support of their views. Three commenters stated that the gene tree analysis by Grady (2012, entire) does not show a distinct grouping of Tiehm's buckwheat separate from other species of buckwheat, and that Tiehm's buckwheat is a population of Shockley's buckwheat. One commenter stated that Tiehm's buckwheat is morphologically distinct from other members of the genus and the validity of the taxon has never been called into question since it was first described by Reveal. Another commenter stated that they were not aware of any plant systematist who has questioned the validity of Tiehm's buckwheat, and, although Grady (2012, entire) narrowed the possible close relatives of Tiehm's buckwheat, phylogenetic relationships vary by gene region and analysis; in no phylogenetic tree is Tiehm's buckwheat nested within samples from another species.

Our response: We have updated the SSA with some additional genetic information provided to us during the public comment period. The Act requires us to use the best scientific and commercial data available in our listing determinations. We solicited peer review of our evaluation of the available data, including genetic information, and our peer reviewers supported our determination that Tiehm's buckwheat is a valid species.

Within the wild buckwheat (*Eriogonum*) genus, Tiehm's buckwheat is placed in the subgenus *Eucycla (*Morefield 1995, p 8; Reveal 2012, pp. 256–261). Grady (2012, entire) examined the molecular phylogenetic patterns of narrow endemism relating to edaphic factors in wild buckwheat. This study indicates that Tiehm's buckwheat is morphologically distinct, geographically isolated, and ecologically specialized (Grady 2012, p. 127). Grady (2012, p. 124) found that there is a clade or group composed of three narrowly endemic species—*E. tiehmii, E. soredium* (Frisco buckwheat), and *E. holmgrenii* (Snake Range buckwheat)—that shows some similarities with distributions coinciding with a particular soil substrate, which may point to a lineage of *Eriogonum* that is preferentially adapted to specific soil substrates.

Grady (2012, entire) used only a single sample of Tiehm's buckwheat when conducting his sequencing, not fully allowing the conclusion to be made that Tiehm's buckwheat is genetically distinct. Consensus trees constructed from Grady's analyses (2012, entire) also indicate a close relationship between Tiehm's buckwheat and Shockley's buckwheat (*Eriogonum shockleyi*), which is widespread and has a history of hybridization with other *Eriogonum* species.

Due to this, a genetic analysis was recently conducted to determine the genetic uniqueness of Tiehm's buckwheat when compared to cushion buckwheat (*Eriogonum ovalifolium*), and money buckwheat (*Eriogonum nummulare*), two that co-occur with Tiehm's buckwheat in the project area and Shockley's buckwheat, the closest genetic relative (per Grady 2012) that is within the geographic vicinity (the Silver Peak Range) (Davis *in litt.* 2019; Ioneer 2020a, p. 20). Results from this study indicate that Tiehm's buckwheat is genetically distinct, although most similar to Shockley's buckwheat (Figure 3; Davis *in litt.* 2019). Therefore, based on the best available science, we consider Tiehm's buckwheat to be a valid and recognizable taxon, representing a distinct species.

Comment 9: Two commenters stated their views that the Service failed to address additional soil studies and relied too much on McClinton et al. 2020 in the SSA and proposed listing rule. They do not believe that high lithium and boron concentrations are associated with the presence of Tiehm's buckwheat. They assert that the presence of Tiehm's buckwheat is not related to chemical constituent, but rather other soil characteristics and the species is not a soil specialist. They also do not agree with our statement that that there are no unoccupied soils favorable for all three early life history stages (emergence, survival, and seedling growth) of Tiehm's buckwheat. They state that statistical analyses provided by McClinton et al. 2020 indicated that occupied and unoccupied sites did not differ in emergence or survival. They continue that neither the SSA nor the proposed listing rule disclose, much less discuss, these statistical findings but rather, the SSA, proposed listing rule, and subsequent Service statements rely on a correlation between emergence and survival of seedlings in occupied sites and a lack of this correlation in unoccupied sites as evidence that only occupied sites provide the soils required by the species. The commenter also noted that seedlings grown in the greenhouse that were transplanted to unoccupied site PTS–A in the field had an 83.1 percent survival rate after 2 months and that, in the greenhouse study, that site had the third worst plant survival rate of all the soil samples studied.

Our response: We received additional information related to the soils of Tiehm's buckwheat (NewFields 2021, entire; WestLand 2021, entire; USDA NRCS 2022; entire). However, this information was either received late in our initial proposed rule decision-making process or during our public comment period. We considered this input to be new scientific information and have incorporated these references into the Tiehm's buckwheat SSA and in our decision process where appropriate, including in the rule portion of this

document. We still consider this species to meet the definition of a soil specialist or edaphic endemic because it occurs predominantly on challenging soil that differs from the surrounding soil matrix and grows better on soils with these conditions (Mason 1964, entire; Gankin and Major 1964, entire; Rajakaruna and Bohm 1999, entire; Rajakaruna 2004, entire; Palacio *et al.* 2007, entire; Escudero *et al.* 2014, entire). We provide additional details and citations in our SSA report (Service, 2022, entire).

As stated in McClinton et al. 2020 and in the SSA, there was variation in soils among subpopulations and tested, adjacent, unoccupied sites. For example, McClinton et al. 2020 did find that, on average, boron levels on Tiehm's buckwheat soils were higher than in tested, unoccupied sites. Additionally, NewFields 2021 (table 3) shows that boron is more abundant on Tiehm's buckwheat soils than soils unoccupied by the species. However, subsequent analysis by NewFields found boron to be correlated with other variables, particularly clay, leaving it unclear which variables matter most to Tiehm's buckwheat. Additionally, maps provided to us displaying the lithology underlying Tiehm's buckwheat habitat as in Ioneer 2020b (appendix C–1), NewFields 2021 (figures 1, 2a, 2b, and 2c), and WestLand 2021 (figures 1a–3a) show moderate to high lithium and boron mineralization in rocks underlying Tiehm's buckwheat habitat, from which the soil the species inhabits is directly formed via weathering. Chemical soil properties alone do not determine suitable habitat for any plant species, and these results do not necessarily imply a physiological dependence on a particular mineral but are simply characteristics that may be helpful to describe where the species occurs and the species' habitat needs, to possibly identify additional suitable habitat for the species.

For McClinton et al. 2020 to find that Tiehm's buckwheat has specific soil requirements is persuasive, particularly because of the results of the plant–soil relationship greenhouse study. Simply measuring emergence in the tested occupied or unoccupied soil does not determine soil preference, because emergence is different than survival. As we state in the SSA and described in McClinton et al. 2020 (p. 36), some of the tested unoccupied soils were individually favorable for emergence, survival, or seedling growth, but there were no tested unoccupied soils that were favorable for all three life history stages of Tiehm's buckwheat. This does not mean there are no unoccupied soils favorable for all three life history stages, just not among those that were tested.

Unoccupied site PTS–A is within potential dispersal distance from other subpopulations; however, Tiehm's buckwheat does not occur at this site. The low survival and biomass observed in seedlings growing in this soil in ideal greenhouse conditions may indicate a potential barrier to establishment during early life history stages. Even if herbivory did not occur and the transplanted seedlings survived, the lack of an extant subpopulation here indicates that it may be unlikely for seeds potentially generated by the transplanted seedlings to recruit and establish a self-sustaining subpopulation.

Comment 10: Several commenters were skeptical that attempts to relocate or transplant Tiehm's buckwheat would be successful, while several other commenters believe the species can be transplanted and translocated, providing various explanations for their views. One commenter interpreted the greenhouse study to conclude that transplantation and translocation were likely to be unsuccessful. Another commenter stated that transplantation of Tiehm's buckwheat has been significantly more fruitful than initially believed. One commenter stated that, even with short-term success, it is premature to declare the transplanting a success because longer term monitoring (several years to a decade or longer) is needed to determine long-term survival at a new site. One commenter stated that the SSA and proposed listing rule should acknowledge that successful translocations of mat-buckwheat species have been documented. One commenter stated that translocation of individual plants in lieu of protecting them in their native habitat is fundamentally at odds with the principles of conservation.

Our response: Translocation of Tiehm's buckwheat would not be being considered if it was not for the proposed Rhyolite Ridge lithium-boron project. Translocation should be considered as a mitigation measure and analyzed as part of BLM's NEPA process and as part of a Section 7 consultation. We conclude that, as a first step, direct seeding and/or seedling transplantation experiments in unoccupied but potentially favorable sites should be designed to test if dispersal mechanisms are restricting the species' range. Direct seeding and/or transplanting are much lower risk than translocating mature plants as they do not impact naturally occurring plants and subpopulations. Only if success is achieved with direct seeding or transplanting of seedlings into unoccupied sites, should translocation be considered. In either case, we would not consider these efforts to be successful until an introduced population can carry on its basic life history processes—establishment (seeds germinate and seedlings are able to grow into adults), reproduction (plants are producing viable seed), and dispersal (seeds are able to produce new seedlings)—such that the probability of complete extinction due to random environmental events is low.

While it is true that translocations have occurred for other mat-buckwheat species in Nevada, to our knowledge, monitoring data that speaks to the success of these efforts does not exist or cannot be located. Without monitoring data we are unable to conclude if these translocations represent viable, self-sustaining populations. We also cannot assume that Tiehm's buckwheat will respond in the same manner to translocation as other mat buckwheats and therefore are unable to make assumptions from this anecdotal information on the efficacy of translocating Tiehm's buckwheat.

Comment 11: We received multiple comments about Ioneer's revised mine PoO and the need for the Service to update and revise the SSA's current and future threats analyses on mineral exploration and development.

Our response: In November 2021, Ioneer met with BLM and the Service to discuss proposed revisions to their 2020 PoO for the Rhyolite Ridge Lithium-Boron project (Service 2021b, entire) including adjustments to the proposed quarry location. On May 27, 2022, Ioneer provided the Service with a memorandum further describing the proposed revisions to their 2020 PoO (Ioneer 2022a, entire). On July 18, 2022, Ioneer submitted their revised PoO to BLM and Ioneer provided the Service with a copy on August 8, 2022. On August 17, 2022, BLM determined the revised PoO was complete under 43 CFR 3809.401(b); however, BLM resource specialists are still in the process of receiving and reviewing baseline data reports that further explain the details of the 2022 revised PoO. BLM will analyze the environmental impacts of approving the project under National Environmental Policy Act (NEPA), and BLM may initiate consultation with the Service under section 7 of the Act. We have considered and incorporated the 2022 revised PoO, which includes indirect impacts to individual plants and proposed loss of 38 percent of critical habitat, into our analysis, and we find that the threat of mining continues to be of such magnitude that taken in combination with other threats

described in this rule, Tiehm's buckwheat is in danger of extinction throughout all of its range. This final rule reflects the best available information that existed at the time we made this final determination.

Comment 12: One commenter stated that the proposed listing rule wrongly states that trenching in the past (before Ioneer's involvement) has resulted in the loss of some of Tiehm's buckwheat habitat. The commenter said that this statement is misleading because the only mineshaft present is in an area that is not occupied by the species. They state that there are exploration trenches (pre-Ioneer) within some of the subpopulations where Tiehm's buckwheat is currently growing in higher concentrations than in the surrounding area. Thus the commenter states that some level of disturbance may be a key habitat characteristic for Tiehm's buckwheat, as has been recognized for other buckwheat species.

Our response: As described in our SSA, Morefield (1995, p. 15) documented that subpopulations 1, 2, 3, 4, and 6 were all impacted by trenches, or mine shafts associated with past mineral exploration, or by surface disturbance associated with the placement of mining claim markers (pre-Ioneer) that resulted in a cumulative loss of about 0.10 ac (0.04 ha) of habitat. However, the observed trenches and mine shafts did not appear to be recent because Tiehm's buckwheat colonized some of the bottoms of trenches as well as the edges of debris piles (Morefield 1995, p. 15). During the public comment period, we were provided with observational data (WestLand 2021, p. 29) comparing density in disturbed (trenches) and undisturbed Tiehm's buckwheat habitat. For example, WestLand 2021 (p. 29) stated that within subpopulation 1, the density of Tiehm's buckwheat within trenches is between 4 and 10 times higher than the density of buckwheat within subpopulation 1. However, detailed methods and plant estimates between disturbed and undisturbed habitat were not provided, so we are unable to draw conclusions on Tiehm's buckwheat density in disturbed and undisturbed habitat, the level of disturbance the species may be able to withstand, or time since disturbance the species may be able to re-establish within its habitat. We welcome further science and monitoring data related to this topic.

Comment 13: One commenter stated that all comments about potential future impacts from mineral exploration are speculative at best; they are not reasonably foreseeable and cannot form the basis for a decision to list Tiehm's buckwheat. They also stated that the Service is wrong to assume that mining impacts are likely to occur without taking into account the ways in which Ioneer's proposed protective measures would mitigate those threats.

Our response: BLM received a 2020 PoO and a revised 2022 PoO, both containing detailed mining plans, which the Service considered in determining the severity and immediacy of threats currently impacting the species now and those which are likely to occur in the near term. The Service considered Ioneer's proposed protective measures included in the 2020 PoO and the 2022 revised PoO. We understand the proposed project may or may not be permitted by BLM as proposed and therefore it is uncertain whether or not these mining plans and protection measures will be fully implemented as described. However, we used the best available information regarding the impacts of the mine and the threat of mining in our analysis.

Comment 14: One commenter stated that increased drought may be causing more herbivory in the region, postulating that placing a large drinking trough for desert bighorn sheep (*Ovis canadensis nelsoni*) and pronghorn (*Antilocapra americana*) next to the site could have helped subsidize possible herbivory.

Our response: The Service is unaware of a large drinking trough in close proximity to occupied habitat. Cervid (deer) eDNA was present in samples from damaged plants following the herbivory event in 2020. However, due to eDNA data and morphological evidence of rodent incisor marks on the roots of damaged plants, we conclude that a diurnal rodent in the genus *Ammospermophilus* was largely responsible for the damage to Tiehm's buckwheat. This conclusion is further described in Section 3.1.2 Herbivory in the SSA.

Comment 15: Several commenters were concerned about climate change impacts to Tiehm's buckwheat. One commenter stated that emissions from construction as well as vegetation clearing may create a localized heat island effect, increasing temperature and decreasing humidity and thereby adding more stress to Tiehm's buckwheat, and asked how temperature increases will impact this species. Another commenter stated that permitting the extraction of lithium for battery applications would reduce carbon dioxide emissions from vehicles and electricity generation, indirectly benefitting all species beyond the population of Tiehm's buckwheat.

Our response: As described in the SSA Section 4.1.3 Climate Change, the implications of climate change to Tiehm's buckwheat will depend largely on the interaction of temperature and precipitation. Analyzing the reduction in carbon dioxide emissions from electric vehicles is outside the scope of our SSA analysis, which is focused on the threat of climate change to Tiehm's buckwheat.

Comment 16: One commenter stated that assuming climate change exacerbates the risk of herbivory, climate change does not pose the sort of immediate threat to Tiehm's buckwheat that justifies listing the species as endangered.

Our response: Our listing decision was not solely based on the threat of climate change. As described in the proposed listing rule, we found that Tiehm's buckwheat is in danger of extinction due to the present or threatened destruction, modification, or curtailment of its habitat or range including habitat loss and degradation due to mineral exploration and development, road development and OHV use, livestock grazing, and nonnative, invasive plant species (all Factor A threats); herbivory (Factor C); and climate change (Factor E). Of these, we consider mineral exploration and development and herbivory to be the greatest threats to Tiehm's buckwheat. The existing regulatory mechanisms (Factor D) are inadequate to protect the species from these threats to the level that listing is not warranted. We did not identify threats to the continued existence of Tiehm's buckwheat due to overutilization for commercial, recreational, scientific, or educational purposes (Factor B) or disease (Factor C).

Comment 17: One commenter was concerned about the impacts of trampling on Tiehm's buckwheat. The commenter stated that the conservation status of the species and ensuing controversy has drawn numerous parties from across the country to the site, for scientific purposes, for curiosity, or other purposes. Repeated visitation has led to clearly delineated social trails and other areas of human impact. Compaction of soils from human trampling poses a threat to Tiehm's buckwheat by directly impacting or killing individual plants, providing a limiting factor on recruitment, increasing erosion, and altering precipitation and runoff dispersal.

Our response: BLM recently installed fences to restrict access of OHVs to subpopulations of Tiehm's buckwheat, which may restrict human visitation as

well. BLM will monitor the effectiveness of the fences and plans to add signage to notify the public of the sensitive resources in the area (BLM 2021j, pp. 4–5). The Service will continue to watch for anthropogenic impacts to the species including from human visitation.

Comment 18: One commenter stated that conservation benefits for Tiehm's buckwheat will only occur if Ioneer's project proceeds. They stated that under the Service's Policy for Evaluation of Conservation Efforts (PECE), the Service must evaluate the certainty that conservation efforts that have not yet been implemented will actually occur. The commenter stated that the Service should be evaluating two conservation efforts: Ioneer's protection measures that have already been implemented and a conservation plan that is being developed. However, the commenter stated that because the terms of the conservation plan are still under development, it is not appropriate for the Service to evaluate them under its Policy for Evaluation of Conservation Efforts (PECE).

Our response: We agree the PECE policy is not applicable at this time because the conservation plan is still under development as described in Section 4.2 Conservation Measures and Regulatory Mechanisms of our SSA. The Service considered Ioneer's proposed protective measures included in the 2020 PoO and the 2022 revised PoO. We understand the proposed project may or may not be permitted by BLM as proposed and therefore it is uncertain whether or not these mining plans and protection measures will be fully implemented as described. However, we used the best available information regarding the impacts of the mine and threat of mining in our analysis. Further, after the listing of a species, conservation agreements or partnerships to conserve the species can continue to be developed.

Public Comments on Proposed Critical Habitat

Comment 19: One commenter stated that the Rhyolite Ridge lithium-boron project is expected to employ 400 to 500 workers during the construction phase and 320 to 350 during operation. When considering the life of the mine (30 to 50 years under current technology) and the direct, indirect, and induced jobs created, the Rhyolite Ridge lithium-boron project will be transformative for the people, children, and businesses of Esmeralda County and its communities. They requested that, in considering a critical habitat designation, the Service consider the economic and social benefits of the project.

Our response: The Service appreciates the information on the regional economic significance of the Rhyolite Ridge lithium-boron project. This issue is examined in our economic analysis. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as Tiehm's buckwheat. Regardless of whether critical habitat is designated, if the species is listed as endangered, any section 7 consultation on the mine would consider the potential for the project to result in jeopardy to the listed species, and project modifications would be recommended to avoid jeopardy to Tiehm's buckwheat. With the designation of critical habitat, future section 7 consultations stemming from the mine project would additionally consider the potential for the project to result in adverse modification of its critical habitat. Project modifications could be recommended to avoid jeopardy and adverse modification. Given that there is only one critical habitat unit being designated, and it is occupied, we do not anticipate that a consultation on this project would generate different project modifications due to the designation of critical habitat.

Comment 20: One commenter asked if it is logical to extend protections to the habitat of Tiehm's buckwheat since the species is already classified as ''proposed endangered.'' They stated that some may see the proposed critical habitat rule as misguided because the designation overlaps with a potential area of an open pit lithium mine.

Our response: According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. We have determined that critical habitat is both prudent and determinable for Tiehm's buckwheat. Therefore, as required by the Act, we proposed for critical habitat those areas occupied by the species at the time of listing and that contain the PBFs essential to the conservation of the species, which may require special management considerations or protection.

Comment 21: Several commenters thought that the critical habitat designation should be larger in size to better address the pollinators, hydrology, invasive species, and mining impacts like dust and air pollutants. One commenter recommended we include all habitat within a mile of the Tiehm's buckwheat population. One commenter recommended that the Service use performance standards to determine effective buffer widths for the types of impacts that may affect Tiehm's buckwheat. One commentor recommended considering depth for our critical habitat boundary due to the proposed Rhyolite Ridge lithium-boron project.

Our response: Under the Act and its implementing regulations, in areas occupied at the time of listing, we are required to identify the PBFs essential to the conservation of the species for which we propose critical habitat. To determine critical habitat, the Service identified the physical or biological habitat features needed to provide for the life history processes of Tiehm's buckwheat. These include but are not limited to: space for individual and population growth for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding and rearing offspring; and habitats that are protected from disturbances or are representative of the historic geographical and ecological distributions of the species.

Tiehm's buckwheat is dependent on pollinators for reproduction. Thus, preserving the interaction between the buckwheat and its pollinators is integral for survival. Through our analysis, we found that a 1,640 ft (500 m) pollination area was sufficient to support the maximum foraging distance of primary insect visitors—bees, wasps, beetles, and flies—that are presumed to be the pollinators of Tiehm's buckwheat. This 1,640 ft (500 m) area encompasses the PBFs necessary to the conservation of Tiehm's buckwheat. We do not have information suggesting that a larger area around plants is necessary to maintain and support plant–pollinator interactions.

Soil depth was considered in our physical and biological features for Tiehm's buckwheat. Suitable soils for Tiehm's buckwheat have soil depths to bedrock that range from 3.5 to 20 in (9 to 51 cm; USDA NRCS 2022, entire). This, among other physical and biological features, is included in what we have determined to be essential to the conservation of Tiehm's buckwheat.

The various other elements that commenters sought to address, such as the threats from invasive species, altered hydrology and mining impacts like dust and air pollutants are not considered to be physical or biological features essential to the conservation of Tiehm's buckwheat. These potential threats would be evaluated in section 7 consultations on projects that may affect the species and its critical habitat.

Comment 22: One commenter stated that the Service has designated critical habitat for only five of eight other buckwheat (*Eriogonum*) species. They stated that for only one of those species did the Service include protection for pollinators; therefore, they found our inclusion of a PBF for pollination to be inconsistent with our other critical habitats for buckwheat species. The commenter goes on to state that the proposed 1,640 ft (500 m) buffer is inconsistent with what the Service has done for other buckwheat species; Umtanum desert buckwheat (*Eriogonum codium*)) had a 98 ft (30 m) buffer and clay-loving buckwheat (*Eriogonum pelinophilum*) had a recommended (but not required) protection of 656–820 ft (200–250 m) for the conservation of native pollinators. The commenter believes that the failure to provide a reasoned explanation for these departures renders the proposed designation of protection for pollinator habitat arbitrary and capricious.

Our response: We considered the best scientific and commercial data available regarding Tiehm's buckwheat to evaluate its potential status and designation of critical habitat under the Act. Science is a cumulative process, and the body of knowledge is ever-growing. We recognize that over time as we evaluate each species under the Act, scientific information is continually evolving based on new studies and research, and, therefore, to determine critical habitat for Tiehm's buckwheat, the Service used the best available science to inform the physical or biological habitat features needed to support the life history processes of this species. In this instance, the Service used pollinator studies on pollinator efficiency and flight and foraging distances of bees, wasps, beetles, and flies, and concluded the 1640-ft (500-m) pollination area was sufficient to support the maximum foraging distance of pollinators and insect visitors. This area provides the essential habitat configuration that contains the PBFs essential to the conservation of Tiehm's buckwheat and is supported by the best scientific and commercial data currently available.

Comment 23: One commenter stated that the use of a uniform buffer creates distortions due to the significant difference in the size and geographic distribution of various subpopulations of Tiehm's buckwheat. The commenter recommended the Service tailor the boundaries of the critical habitat designation so that the total area of the buffer associated with individual subpopulations is proportional to subpopulation size and avoids distortions resulting from the separation between subpopulation 3 and the other subpopulations. The commenter recommended that the Service reduce the buffer around subpopulation 3 so that the protected area associated with that subpopulation is proportional to the area protected for other subpopulations.

Our response: The final rule designating critical habitat for Tiehm's buckwheat has retained a unit boundary that has a symmetrical shape because we are using the best available nesting, egg-laying, and foraging information for bee, wasp, beetle, and fly pollinator and insect visitors of Tiehm's buckwheat to define the critical habitat boundary. Principles of conservation biology stress the importance of maintaining the largest areas of contiguous habitat possible with the least amount of fragmentation. We considered other boundary options for critical habitat; however, our boundary captures pollinator and insect visitor overlap among subpopulations as well as other PBFs necessary to the conservation of Tiehm's buckwheat.

Comment 24: One commenter stated that a much smaller buffer would adequately protect habitat for the pollinators that serve Tiehm's buckwheat because bees are relatively infrequent visitors and the pollinators that dominate visitation to Tiehm's buckwheat flowers are either likely to fly short distances or are unlikely to be limited by flight distances. Far more pollinators than solitary bees have been detected in Tiehm's buckwheat habitat, and it's unclear that the solitary bee is an appropriate proxy for other pollinators.

Our response: As described in sections 2.3 and 2.4 of our SSA, a combination of pitfall traps, flower–insect observations, and pollinator exclusion studies demonstrate that Tiehm's buckwheat benefits from insect visitors and that the presence of an intact pollinator community is important for maintaining the species (McClinton et al. 2020, pp. 9–24). However, not all floral visitors are pollinators and not all pollinators are equally effective in their pollinator services (Senapathi et al. 2015, entire; Garratt et al. 2016, entire; Wang et al. 2017, entire). For example, a plant visited frequently by flies and only occasionally by bees could still be pollinated primarily by the bees if the bees transfer larger quantities of pollen per visit. Studies that look at pollen loads (the number of pollen attached to a pollinator's body) and insect visitor frequency with pollinator effectiveness or performance (the ability of a floral visitor to remove and deposit pollen) have not been done for any of the insect visitors to Tiehm's buckwheat. Therefore, we looked at the best available science for all insect visitors to Tiehm's buckwheat to ensure our recommendations capture all of their needs.

Comment 25: One commenter stated that megafauna such as desert bighorn sheep and pronghorn spend substantial time within Tiehm's buckwheat habitat as evidenced by the presence of their scat within the area, implying they provide nutrient cycling services in an otherwise nutrient-limited highly mineralized soil. The commenter stated that a 1,640 ft (500 m) buffer would not be large enough to maintain the ecosystem functions and limit disruption of behavior of large ungulates and recommended that the Service consider a 1 mile (5,280 ft (1,609 m)) buffer.

Our response: We are aware that desert bighorn sheep and pronghorn spend time within Tiehm's buckwheat habitat; however, we are not aware of any data on their scat and nutrient cycling services that it may provide to Tiehm's buckwheat. Therefore, we are not able to identify the benefit that might be associated with expanding the unit boundary to accommodate the potential benefit of these species to Tiehm's buckwheat.

Comment 26: One commenter stated that suitable unoccupied habitat exists because the Service is erroneous in its understanding of the habitat needs of Tiehm's buckwheat. They also recommended the Service revisit its decision regarding the designation of areas outside the currently occupied locations as critical habitat.

Our response: Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it is listed are included in a critical habitat designation if they contain PBFs (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. In the case of Tiehm's buckwheat, which is known from only one geographic area, we are

designating critical habitat under the first prong of the Act. Other unoccupied locations may have similar physical and biological features that may support life history requirements for Tiehm's buckwheat; however, until direct seeding or transplant studies are conducted (*i.e.,* to increase the species dispersal) in these locations, we do not have any scientific evidence to support the theory that Tiehm's buckwheat has the ability to grow and persist at locations other than where it currently occurs. Because we determined that occupied areas are sufficient to conserve the species, no unoccupied areas are essential for the conservation of the species. Therefore, we did not identify any unoccupied areas that may qualify as units of critical habitat and are not designating any areas outside the geographical area occupied by the species.

Comment 27: Two commenters had concerns related to the plant community PBFs. One commenter stated that the Service has not adequately shown the relationship of associated plant species to Tiehm's buckwheat survivability. Another commenter stated that Tiehm's buckwheat is found in previously disturbed areas like former exploration trenches, countering the false impression that the species requires an area free from anthropogenic disturbance.

Our response: While Tiehm's buckwheat has shown some adaptive characteristics such as colonizing some disturbed areas within otherwise occupied subpopulations, the best available science for this species continues to demonstrate that PBFs and habitat characteristics, including soil type and plant community associations, are required to sustain the species' life history processes. See also, our response to comment 12 related to previously disturbed areas.

Comment 28: One commenter stated that Ioneer intends to collect data during the 2022 flowering season on flying insects at various distances from Tiehm's buckwheat subpopulations. They state the Service should consider this data before finalizing the critical habitat for Tiehm's buckwheat.

Our response: We welcome additional data to characterize the pollinator community associated with Tiehm's buckwheat. However, we cannot delay our decision to allow for the development of additional data and have used the best available scientific and commercially available data in our critical habitat designation.

Ioneer collected pollinator data during the 2022 flowering season and provided the Service an initial findings report on July 5, 2022. However, this report did not provide sufficient analyses to include in this final rule with preliminary findings similar to those described in McClinton et al. 2020.

Comment 29: One commenter stated that BLM-approved seed mixes have not been proven effective in increasing native plant cover and preventing dust deposition. They state that empirical evidence from Rhyolite Ridge reveals that sites disturbed during the exploration phase of the proposed Rhyolite Ridge lithium-boron project have not been effectively ''reclaimed'' or restored. Another commenter stated that Ioneer scraped a large area for water bladders along an existing road. This area is within the proposed critical habitat and is now covered in the noxious weed, saltlover. They asked if the proposed critical habitat will be weeded and seeded and if disturbed areas will be reclaimed and made weed-free.

Our response: In accordance with BLM's regulations at 43 CFR 3809.420(b)(3), at the earliest feasible time, operators shall reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization. The BLM identifies seed mixes based upon the project area which are designed to facilitate reclamation. BLM has BMPs for invasive and nonnative species that focus on the prevention of further spread and/or establishment of these species (BLM 2008b, pp. 76–77). BMPs should be considered and applied where applicable to promote healthy, functioning native plant communities, or to meet regulatory requirements. BMPs include inventorying weed infestations, prioritizing treatment areas, minimizing soil disturbance, and cleaning vehicles and equipment (BLM 2008b, pp. 76–77). However, incorporation or implementation of BMPs are at the discretion of the authorized BLM officer.

Determination of Tiehm's Buckwheat Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines endangered species as a species ''in danger of extinction throughout all or a significant portion of its range,'' and threatened species as a species ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that the population occurs in an extremely small area, has specialized habitat requirements, and has limited recruitment and dispersal. Our analysis revealed that the species is vulnerable to ongoing and future threats that affect both individual plants and their habitat.

We have carefully assessed the best scientific and commercial information available regarding the current and future threats to Tiehm's buckwheat. We considered the five factors identified in section 4(a)(1) of the Act in determining whether Tiehm's buckwheat meets the definition of an endangered species (section 3(6)) or threatened species (section 3(20)). We find that Tiehm's buckwheat is in danger of extinction due to the present or threatened destruction, modification, or curtailment of its habitat or range including habitat loss and degradation due to mineral exploration and development, road development and OHV use, livestock grazing, and nonnative, invasive plant species (all Factor A threats); herbivory (Factor C); and climate change (Factor E). Of these, we consider mineral exploration and development and herbivory to be the greatest threats to Tiehm's buckwheat. The existing regulatory mechanisms (Factor D) are inadequate to protect the species from these threats. We did not identify threats to the continued existence of Tiehm's buckwheat due to overutilization for commercial, recreational, scientific, or educational purposes (Factor B) or disease (Factor C).

In 2020, a detrimental herbivory event caused greater than 60 percent damage or loss of individual Tiehm's buckwheat plants across the population. The proposed Rhyolite Ridge lithium-boron project (if permitted by BLM as proposed in the 2020 PoO) would reduce the remaining Tiehm's buckwheat population by 54 percent, or from 15,757 individuals to roughly 7,305 individuals as we do not know yet

if translocating plants is feasible. Road development and vehicle traffic associated with the proposed mine as well as livestock grazing may further affect the overall health and physiological processes of individual Tiehm's buckwheat plants and create conditions that further favor the establishment of nonnative, invasive species within the species' habitat. Increased temperatures and alteration of precipitation patterns due to climate change may impact plant transpiration and soil water recharge needed by Tiehm's buckwheat, as well as bolstering local rodent populations. High rodent abundance combined with high temperatures and drought may have contributed to the herbivore impacts in 2020.

We find that Tiehm's buckwheat is in danger of extinction throughout all of its range due to the severity and immediacy of threats currently impacting the species now and those which are likely to occur in the near term. We have considered and incorporated the 2022 revised PoO, which includes indirect impacts to individual plants and proposed loss of 38 percent of critical habitat, into our analysis and we find that the threat of mining continues to be of such a magnitude that, taken in combination with other threats described in this rule, Tiehm's buckwheat is in danger of extinction throughout all of its range.

We find that a threatened species status is not appropriate because the threats are severe and imminent, and Tiehm's buckwheat is in danger of extinction now, as opposed to likely to become endangered in the future. Therefore, on the basis of the best available scientific and commercial information, we determine that Tiehm's buckwheat is in danger of extinction throughout all of its range and are listing Tiehm's buckwheat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that Tiehm's buckwheat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because Tiehm's buckwheat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity (CBD)* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. Jan. 28, 2020) because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that Tiehm's buckwheat meets the Act's definition of an endangered species. Therefore, we are adding Tiehm's buckwheat to the List of Endangered and Threatened Plants as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public after publication of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/endangered*), or from our Reno Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

Following publication of this final rule, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Nevada could be eligible for Federal funds to implement management actions that promote the protection or recovery of Tiehm's buckwheat. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Please let us know if you are interested in participating in recovery efforts for Tiehm's buckwheat. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service. Consultation may be informal (the proposed action may affect, but is not likely to adversely affect listed species or critical habitat) or formal (the proposed action may affect, and is likely to adversely affect listed species or critical habitat). The standard for consultation is ''may affect,'' which means that a proposed action may pose any effects on listed species or designated critical habitat.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to: import or export; remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce an endangered plant. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a final listing on proposed and ongoing activities within the range of a listed species. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations; this list is not comprehensive:

(1) OHV or other vehicle use on existing roads and trails in compliance with the BLM's Tonopah Resource Management Plan.

(2) Recreational use with minimal ground disturbance (*e.g.,* hiking, walking).

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Removing, maliciously damaging or destroying, or collecting of Tiehm's buckwheat on Federal land; and

(2) Removing, cutting, digging up, or damaging or destroying Tiehm's buckwheat in knowing violation of any law or regulation of the State of Nevada or in the course of any violation of a State criminal trespass law.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Reno Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

II. Critical Habitat Designation

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species.

Although this critical habitat designation was proposed when the regulatory definition of habitat (85 FR 81411; December 16, 2020) and the 4(b)(2) exclusion regulations (85 FR 82376; December 18, 2020) were in place and in effect, those two regulations have been rescinded (87 FR 37757; June 24, 2022 and 87 FR 43433; July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for this final rule designating critical habitat for Tiehm's buckwheat, we apply the regulations at 50 CFR 424.19 and the 2016 Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016) as described in the 4(b)(2) recission rule (87 FR 43433; July 21, 2022).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must

implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain PBFs (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those PBFs that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those PBFs that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) when designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those PBFs essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from an SSA report, listing rule, and other information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species, if one has been developed; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, may continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome (*i.e.,* if new information sufficiently justifies the proposed conservation effort).

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate critical habitat from within the geographical area occupied by the species at the time of listing, we consider the PBFs that are essential to the conservation of the species and that may require special management considerations or protection.

The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to: (1) Space for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing (or development) of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Using the species' habitat, ecology, and life history, which are summarized below and are described more fully in the proposed listing rule (86 FR 55775; October 7, 2021) and the SSA report (Service 2022, entire) that was developed to supplement the proposed listing rule, which are available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2020–0017, we consider the following habitat characteristics to derive the specific PBFs essential for the conservation of Tiehm's buckwheat.

Habitat Characteristics

Tiehm's buckwheat occurs between 5,906 and 6,234 feet (ft) (1,800 and 1,900 meters (m)) in elevation and on all aspects with slopes ranging from 0 to 50 degrees (Ioneer 2020a, p. 5; Morefield 1995, p. 11). The species occurs on dry, upland sites, subject only to occasional saturation by rain and snow, and is not found in association with free surface or subsurface waters (Morefield 1995, p. 11). Tiehm's buckwheat is the dominant native herb in the sparsely vegetated community in which it occurs, resulting in an open plant community with low plant cover and stature (Morefield 1995, p. 12). Where Tiehm's buckwheat grows, the vegetation varies from exclusively Tiehm's buckwheat to sparse associations with a few other low-growing herbs and grass species, suggesting the species is not shade-tolerant and requires direct sunlight. The most common associates of Tiehm's buckwheat with and in the surrounding area are species found in salt desert shrubland communities such as shadscale saltbush, black sagebrush, Nevada mormon tea, James' galleta, and alkali sacaton (Morefield 1995, p. 12; Cedar Creek Associates 2021, p. 1; WestLand 2021, p. 25). The nonnative forb saltlover has recently become established and is now part of the associated plant community in all subpopulations of Tiehm's buckwheat (See section 3.1.1 in Service 2022 for further discussion; CBD 2019, pp. 20–21; Ioneer 2020a, pp. 9–10; Fraga 2021b, pp. 3–4; WestLand 2021, pp. 23–25).

Like most terrestrial plants, Tiehm's buckwheat requires soil for physical support and as a source of nutrients and water. Tiehm's buckwheat occurs on soil with a high percentage (70–95 percent) of surface fragments that is classified as clayey, smectitic, calcareous, mesic Lithic Torriorthents; clayey-skeletal, smectitic, mesic Typic Calcicargids; and clayey, smectitic, mesic Lithic Haplargids (United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS 2022, entire). The A horizon is thin (0–5.5 in (0–14 cm)); B horizons are present as Bt (containing illuvial layer of lattice clays) or Bw (weathered); C horizons are not always present; and soil depths to bedrock range from 3.5 to 20 in (9 to 51 cm; USDA NRCS 2022, entire). The soil pH is greater than 7.6 (*i.e.,* alkaline) in all soil horizons (USDA NRCS 2022, entire). All horizons effervesce to varying degrees using hydrochloric acid, indicating the presence of calcium carbonate throughout the soil profile (USDA NRCS 2022, entire). Soil horizons are characterized by a variety of textures, and include gravelly clay loam, sand, clay, very gravelly silty clay, and gravelly loam (USDA NRCS 2022, entire).

Tiehm's buckwheat is distributed on these soils along an outcrop of lithium clay and boron in exposed former lake beds (Ioneer 2020a, p. 5; Ioneer 2020b, appendix C–1; Newfields 2021, figure 1; WestLand 2021, figure 1a–1c). Initial soil sample analyses demonstrate that boron and carbonates were commonly present at excessive levels and sulfur, calcium, and potassium were commonly present at high levels (Ioneer 2020a, p. 6). Two further analyses indicate differences in soil chemistry and texture among soils that are occupied and unoccupied by Tiehm's buckwheat (McClinton 2020, pp. 29–32; NewFields 2021, pp. 17–24, table 3). Soils occupied by Tiehm's buckwheat have high clay and silt content as well as high pH (McClinton *et al.* 2020, pp. 35, 55; NewFields 2021, p. 21). McClinton et al. 2020 (p. 35) found significant differences in soil chemistry between soils occupied and unoccupied by Tiehm's buckwheat, including potassium, zinc, sulfur, and magnesium, which were on average lower in occupied soils, and boron, bicarbonate, and pH, which were, on average, higher, though there was variation among subpopulations and adjacent, unoccupied sites (McClinton et al. 2020, pp. 35, 53). For example, boron was higher in Tiehm's buckwheat subpopulations 1, 2, and 3 than in subpopulations 4, 5, 6, 7, and 8 (McClinton et al. 2020, p. 30). NewFields 2021 (p. 18, table 3) found that active carbon, boron, lithium, magnesium, sodium, and total kjeldahl nitrogen were significantly different between soils occupied and unoccupied by Tiehm's buckwheat. However, many soil variables were correlated to each other in the NewFields 2021 (pp. 10–25) dataset, leaving it unclear which ones are most important to Tiehm's buckwheat (*i.e.,* if two variables were highly correlated, one variable was chosen for subsequent analyses) using general linear models (GLMs). For example, boron was a soil variable that was significantly different between occupied and unoccupied soils (NewFields 2021, p. 18, table 3), but was excluded from the GLM because it was correlated with other variables that were chosen to be used in the model instead, particularly clay (NewFields 2021, pp. 10–25).

High rates of endemism are characteristic of plants growing on unusual soils (Mason 1964, pp. 218–222; Rajakaruna 2004, entire; Hulshof and Spasojevic 2020, pp. 2–3). Taking all soil components into consideration, there is a range of soil conditions in which Tiehm's buckwheat thrives that is different from adjacent, unoccupied soils. Tiehm's buckwheat meets the definition of a soil specialist or edaphic endemic because it occurs primarily or exclusively on challenging soils that differ from the surrounding soil matrix and grows better on soils with these conditions (Mason 1964, entire; Gankin and Major 1964, entire; Rajakaruna and Bohm 1999, entire; Rajakaruna 2004, entire; Palacio et al. 2007, entire; Escudero et al. 2014, entire).

Soil specialists or edaphic endemics are under different selection regimes compared with non-specialists because they are generally subjected to stressful physical and chemical properties such as increased metal concentrations, lower water availability, lower nutrient availability, higher light levels, and/or poor soil structure (Palacio et al. 2007, entire; Boisson et al. 2017, entire; Hulshof and Spasojevic 2020, p. 7). Like many other soil specialists or edaphic endemics, colonization of unoccupied, but suitable habitat by Tiehm's buckwheat may be limited by dispersal (Palacio et al. 2007, entire; Hulshof and Spasojevic 2020, entire; McClinton et al. 2020, p. 37). As described in Service 2022 (pp. 15–17), Tiehm's buckwheat seeds likely do not travel far from the parent plant as the species lacks effective animal dispersers.

Taking all soil components into consideration as well as results of greenhouse propagation experiments (McClinton et al. 2020, p. 36), current research suggests that there is a range of soil conditions in which Tiehm's buckwheat thrives that is different from adjacent unoccupied soils (Service 2022, pp. 17–21).

Tiehm's buckwheat is a perennial plant species that is not rhizomatous or otherwise clonal. Therefore, like other buckwheat species, reproduction in Tiehm's buckwheat is presumed to occur via sexual means (*i.e.,* seed production and recruitment). As with most plant species, Tiehm's buckwheat does not require separate sites for reproduction other than the locations in which parent plants occur and any area necessary for pollinators and seed dispersal. The primary seed dispersal agents of Tiehm's buckwheat are probably gravity, wind, and water (Morefield 1995, p. 14). Upon maturation of the fruit, seeds are likely to fall to the ground in the immediate vicinity of the parent plant, becoming lodged in the soil surface (Ioneer 2020a, p. 4). The number of seeds produced by individual Tiehm's buckwheat plants is

variable, ranging from 50 to 450 seeds per plant per growing season (McClinton et al. 2020, p. 22; Service 2022, pp. 15–17). We have no information on the longevity and viability of Tiehm's buckwheat seed in the soil seed bank (*i.e.,* natural storage of seeds within the soil of ecosystems) or what environmental cues are needed to trigger germination. However, many arid plants possess seed dormancy, enabling them to delay germination until receiving necessary environmental cues (Pake and Venable 1996, pp. 1432–1434; Jurado and Flores 2005, entire).

Buckwheat, in general, are sexual reproducers and insects are the most common pollinators (Gucker and Shaw 2019, pp. 5–6). Buckwheat flowers can be pollinated by everything from beeflies and closely related spider predators (the Acroceridea (Cyrtidae)) to specialist pollinators, while other buckwheat species are also capable of self-pollination (Moldenke 1976, pp. 20–25; Archibald et al. 2001, p. 612; Neel and Ellstrand 2003, p. 339). Tiehm's buckwheat may be able to produce some seed when pollinators are excluded (through wind pollination or selfing), but open pollination significantly increased seed production, averaging 7.3 times as many seeds as inflorescences where pollinators were excluded (McClinton et al. 2020, p. 22). The increase in seed set when pollinators have open access to flowers strongly suggests that the presence of an intact pollinator community is important for maintaining Tiehm's buckwheat, as insects significantly increased the number of seeds produced by the plants (McClinton et al. 2020, pp. 9–24). Primary insect visitors (insects that visit a plant to feed on pollen, nectar, or other flower parts, but may not necessarily play a role in pollination) to Tiehm's buckwheat flowers include bees, wasps, beetles, and flies, and have an abundance and diversity exceptionally high for a plant community dominated by a native herb species (McClinton et al. 2020, pp. 11–22; Service 2022, pp. 16–17).

Not all floral visitors are pollinators and not all pollinators are equally effective in their pollination services (Senapathi et al. 2015, entire; Garratt et al. 2016, entire; Wang et al. 2017, entire). Bees (Hymenoptera) are considered the most effective and important pollinators for many plant species (Garratt et al. 2016, entire; Ballantyne et al. 2017, entire; Willmer et al. 2017; Khalifa et al. 2021, entire). Wasps (Hymenoptera) are globally widespread, but their pollination services are not well understood. Adult wasps feed on nectar from flowers and may inadvertently transfer pollen between flowers; however, the efficiency of pollen transfer depends on the wasps' behaviors during and after visits to a flower as well as the wasps' morphology (*e.g.,* pubescence) and relative size (O'Neill 2019, pp. 143–151; Brock et al. 2021, pp. 1655–1657). Beetles (Coleoptera) are abundant flower visitors that feed on pollen, nectar, or floral structures, eat flower-visiting insects, or mate and lay eggs (Gottsberger 1977, entire; Mawdsley 2003, entire; Kirmse and Chaboo 2020, entire). Flowers pollinated exclusively by beetles tend to be large, flat to bowl shaped, and have a strong odor; however, some beetle visitors have pubescence that trap pollen grains, which are transported to other flowers while they are feeding, visiting, or mating (Gottsberger 1977, entire; Mawdsley 2003, entire). Flies (Diptera) are also often prevalent floral visitors and have frequently been reported as the most common visitors to flowers from a variety of plant families (Inouye et al. 2015, table 1; Raguso 2020, entire); however, flies generally carry and deliver fewer pollen grains than bees (Kearns 1992, entire; Tepedino et al. 2011, entire; Bischoff et al. 2013, entire; Ballantyne et al. 2017, entire; Willmer et al. 2017). This means that a plant visited frequently by flies and only occasionally by bees could still be pollinated primarily by the bees if the bees transfer larger quantities of pollen per visit.

Successful transfer of pollen among Tiehm's buckwheat subpopulations may be inhibited if subpopulations are separated by distances greater than pollinators can travel and/or a pollinator's nesting or foraging habitat and behavior is negatively affected (BLM 2012a, p. 2; Cranmer et al. 2012, p. 562; Dorchin et al. 2013, entire). Flight distances are generally correlated with body size in bees; larger bees are able to fly farther than smaller bees (Gathmann and Tscharntke 2002, entire; Greenleaf et al. 2007, pp. 592–594). Some evidence suggests that larger bees, which are able to fly longer distances, do not need their habitat to remain contiguous, but it is more important that the protected habitat is large enough to maintain floral diversity (BLM 2012a, p. 18). While researchers have reported long foraging distance for solitary bees, the majority of individuals remain close to their nest, thus foraging distance tends to be 1,640 ft (500 m) or less (BLM 2012a, p. 19; Danforth et al. 2019, p. 207; Antoine and Forrest 2021, p. 152). Nest building is common in some solitary wasps (such as Sphecidae and Pompilidae, which were observed at Tiehm's buckwheat subpopulations). The distances between hunting sites and nests are unknown for wasps, but many wasps probably hunt close to their nest (within 3 to 66 ft (1 to 20 m)) (O'Neill 2019, pp. 108–111, 152). Most butterflies, flies, and beetles find egg laying and feeding sites as they move across the landscape. The most common bee and wasp pollinators have a fixed location for their nest, and thus their nesting success is dependent on the availability of resources within their flight range (Xerces 2009, p. 14).

Many insect communities are known to be influenced not only by local habitat conditions, but also the surrounding landscape condition (Klein et al. 2004, p. 523; Xerces 2009, pp. 11–26; Tepedino et al. 2011, entire; Dorchin et al. 2013, entire; Inouye et al. 2015, pp. 119–121). In order for genetic exchange of Tiehm's buckwheat to occur, insect visitors and pollinators must be able to move freely between subpopulations. Alternative pollen and nectar sources (other plant species within the surrounding vegetation) are needed to support pollinators during times when Tiehm's buckwheat is not flowering. Conservation strategies that maintain plant–pollinator interactions, such as maintenance of diverse, herbicide-free nectar resources, would serve to attract a wide array of insects, including pollinators of Tiehm's buckwheat (BLM 2012a, pp. 5–6, 19; Cranmer et al. 2012, p. 567; Senapathi et al. 2015, entire).

Summary of Essential Physical or Biological Features

Based on our current knowledge of the PBFs and habitat characteristics required to sustain the species' life-history processes, we determine that the following PBFs are essential to the conservation of Tiehm's buckwheat:

1. *Plant community.* A plant community that supports all life stages of Tiehm's buckwheat includes:

a. Open to sparsely vegetated areas with low native plant cover and stature.

b. An intact, native vegetation assemblage that can include, but is not limited to, shadscale saltbush, black sagebrush, Nevada mormon tea, James' galleta, and alkali sacaton to maintain plant–plant interactions and ecosystem resiliency and provide the habitats needed by Tiehm's buckwheat's insect visitors and pollinators.

c. A diversity of native plants whose blooming times overlap to provide insect visitors and pollinator species with flowers for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nest materials; and sheltered, undisturbed habitat for

hibernation and overwintering of pollinator species and insect visitors.

2. *Pollinators and insect visitors.* Sufficient pollinators and insect visitors, particularly bees, wasps, beetles, and flies, are present for the species' successful reproduction and seed production.

3. *Hydrology.* Hydrology that is suitable for Tiehm's buckwheat consists of dry, open, relatively barren, upland sites subject to occasional precipitation from rain and/or snow for seed germination.

4. *Suitable soils.* Soils that are suitable for Tiehm's buckwheat consist of:

a. Soils with a high percentage (70–95 percent) of surface fragments that is classified as clayey, smectitic, calcareous, mesic Lithic Torriorthents; clayey-skeletal, smectitic, mesic Typic Calcicargids; and clayey, smectitic, mesic Lithic Haplargids.

b. Soils that have a thin ((0–5.5 in (0–14 cm)) A horizon, B horizons that are present as Bt (containing illuvial layer of lattice clays) or Bw (weathered), C horizons that are not always present, and soil depths to bedrock that range from 3.5 to 20 in (9 to 51 cm).

c. Soils characterized by a variety of textures, and include gravelly clay loam, sand, clay, very gravelly silty clay, and gravelly loam.

d. Soils with pH greater than 7.6 (*i.e.,* alkaline) in all soil horizons.

e. Soils that commonly have on average boron and bicarbonates present at higher levels, and potassium, zinc, sulfur, and magnesium present at lower levels.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The area designated as critical habitat may require some level of management to address the current and future threats to the PBFs essential to the conservation of Tiehm's buckwheat.

A detailed discussion of threats to Tiehm's buckwheat and its habitat can be found in the SSA report (Service 2022, pp. 26–42). The features essential to the conservation of Tiehm's buckwheat (plant community, pollinators and insect visitors, and suitable hydrology and soils, required for the persistence of adults as well as successful reproduction of such individuals and the formation of a seedbank) may require special management considerations or protection to reduce threats; these threats are described in the proposed listing rule (86 FR 55775; October 7, 2021). The current range of Tiehm's buckwheat is subject to anthropogenic threats such as mineral development, road development and OHV activity, livestock grazing, nonnative and invasive plant species, and climate change, as well as natural threats such as herbivory and potential effects associated with small population size (Service 2022, pp. 26–59).

Management activities that could ameliorate these threats include (but are not limited to): treatment of nonnative, invasive plant species; minimization of OHV access and placement of new roads away from the species and its habitat; regulations or agreements to minimize the effects of mineral exploration and development where the species resides; minimization of livestock use or other disturbances that disturb the soil or seeds; minimization of habitat fragmentation; and monitoring for herbivory. These activities would help protect the PBFs for the species by preventing the loss of habitat; protecting the plant's habitat, pollinator and insect visitors, and soils from undesirable patterns or levels of disturbance; and facilitating management for desirable conditions that are necessary for Tiehm's buckwheat to fulfill its life-history needs.

Tiehm's buckwheat occurs entirely on Federal lands managed by the BLM. As described in the Tonopah BLM Resource Management Plan, habitat for all federally listed endangered and threatened species and for all Nevada BLM sensitive species will be managed to maintain or increase current species populations. The introduction, reintroduction, or augmentation of Nevada BLM sensitive species may be allowed in coordination with the State of Nevada or the Service, if it is deemed appropriate. Such actions will be considered on a case-by-case basis and will be subject to applicable procedures (BLM 1997, p. 9).

The Rhyolite Ridge area, where Tiehm's buckwheat occurs, is open to the operation of the Mining Law, meaning mineral exploration and extraction operations may occur, subject to compliance with BLM's regulations at 43 CFR subparts 3715 and 3809 (BLM 1997, p. 23). As a result, the Service has been coordinating with BLM and Ioneer on both the 2020 PoO (Ioneer 2020b) and 2022 revised PoO (Ioneer 2022b). In November 2021, Ioneer met with BLM and the Service to discuss proposed revisions to their 2020 PoO for the Rhyolite Ridge lithium-boron project (Service 2021b, entire) including adjustments to the proposed quarry location. On May 27, 2022, Ioneer provided the Service with a memorandum further describing the proposed revisions to their 2020 PoO (Ioneer 2022a, entire). On July 18, 2022, Ioneer submitted their revised PoO to BLM and provided the Service with a copy on August 8, 2022. On August 17, 2022, BLM determined the revised PoO was complete under 43 CFR 3809.401(b); however, BLM resource specialists are still in the process of receiving and reviewing baseline data reports that further explain the details of the 2022 revised PoO. BLM will analyze the environmental impacts of approving the project under National Environmental Policy Act (NEPA), and BLM may initiate consultation with the Service under section 7 of the Act.

The 2022 revised PoO includes modifications such as relocating the quarry to avoid individual Tiehm's buckwheat plants and implementing 13–127 ft (4–39 m) buffers with fencing around each subpopulation (Ioneer 2022b, p. 14 and Appendix J). An explosives storage area is proposed adjacent to subpopulation 1 (Ioneer 2022b, Figure 4). To the east, subpopulations 3, 4, 5, 6, and 7 would be concerningly close to a 960-ft (293 m) deep open-pit quarry and when mining is complete, a terminal quarry lake (Ioneer 2022b, p. 24, 74). In addition, over-burden storage facilities are proposed on the west side of subpopulations 3, 4, 5, 6, and 7 (Ioneer 2022b, p. 25). The combination of the quarry development and over-burden storage facilities are projected to disturb and remove up to 38 percent of critical habitat for this species, impacting pollinator populations, altering hydrology, removing soil, and risking subsidence.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. The occupied areas are sufficient for the conservation of the species because those are the only areas Tiehm's buckwheat has been known to

exist, and the occupied areas provide all of the physical and biological features that are necessary to support the life history requirements for Tiehm's buckwheat. Other unoccupied locations may have similar physical and biological features that may support life history requirements for Tiehm's buckwheat; however, until direct seeding or transplant studies are conducted (*i.e.,* to increase the species dispersal) in these locations, we do not have any scientific evidence to support the theory that Tiehm's buckwheat has the ability to grow and persist at locations other than where it currently occurs. Because we determined that occupied areas are sufficient to conserve the species, no unoccupied areas are essential for the conservation of the species. Therefore, we are not designating any areas outside the geographical area occupied by the species.

We are designating one occupied critical habitat unit for Tiehm's buckwheat. The one unit comprises approximately 910 ac (368 ha) in Nevada and is completely on lands under Federal (BLM) land ownership. The unit was determined using location information for Tiehm's buckwheat from E.M. Strategies and NDNH (Kuyper 2019, entire; Morefield 2010, entire; Morefield 2008, entire). These locations were classified into one discrete population, with eight subpopulations, based on mapping standards devised by NatureServe and its network of Natural Heritage Programs (NatureServe 2004, entire). This unit includes the physical footprint of where the plants currently occur, as well as their immediate surroundings out to 1,640 ft (500 m) in every direction from the periphery of each subpopulation. This area of surrounding habitat contains components of the PBFs (*i.e.,* the pollinator community and its requisite native vegetative assembly) necessary to support the life-history needs of Tiehm's buckwheat (Gathmann and Tscharntke 2002, entire; Greenleaf et al. 2007, pp. 592–594; Xerces 2009, p. 14; p. 207; BLM 2012a, p. 19; Danforth et al. 2019, p. 207; O'Neill 2019, pp. 108–111, 152; Antoine and Forrest 2021, p. 152). This essential habitat configuration was based on the best available nesting, egg-laying, and foraging information for the bee, wasp, beetle, and fly pollinators and insect visitors of Tiehm's buckwheat (McClinton et al. 2020, p. 18), as most insect communities are known to be influenced not only by local habitat conditions, but also the surrounding landscape conditions (Klein et al. 2004, p. 523; Xerces 2009, pp. 11–26; Tepedino et al. 2011, entire; Dorchin et al. 2013, entire; Inouye et al. 2015, pp. 119–121).

The critical habitat designation is defined by the map, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. The coordinates or plot points or both on which the map is based are available to the public on *https://www.regulations.gov* at Docket No. FWS–R8–ES–2020–0017 and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Final Critical Habitat Designation

We designate one unit as critical habitat for Tiehm's buckwheat. The unit is considered occupied at the time of listing. The critical habitat area, the Rhyolite Ridge area of the Silver Peak Range in Esmeralda County, Nevada, that we describe below constitutes our current best assessment of areas that meet the definition of critical habitat for Tiehm's buckwheat. Table 2 (below) shows the final critical habitat unit and its approximate area.

TABLE 2—CRITICAL HABITAT UNIT FOR TIEHM'S BUCKWHEAT (ERIOGONUM TIEHMII)

[Area estimates reflect all lands within the critical habitat boundary]

Unit name	Federally owned land *		Total area	
	Acres	Hectares	Acres	Hectares
Rhyolite Ridge Unit	910	368	910	368

* These lands are Federal lands managed by the Bureau of Land Management (BLM).

We present a brief description of the critical habitat unit, and reasons why it meets the definition of critical habitat for Tiehm's buckwheat, below.

Rhyolite Ridge Unit

The Rhyolite Ridge Unit consists of approximately 910 ac (368 ha) of Federal land. This unit is located approximately 13 miles (21 kilometers) west of Silver Peak in Esmeralda County, Nevada. Cave Springs Road, a rural, county unpaved road, bisects the unit. The roads and other manmade structures existing as of the effective date of the final rule are excluded from the designation of critical habitat. The entire unit is on Federal lands managed by the BLM. This unit is currently occupied and contains the single population comprised of eight subpopulations of Tiehm's buckwheat and all of the habitat that is occupied by the species across its range. This unit contains all of the PBFs essential to the conservation of the species, including a plant community that supports all life stages of Tiehm's buckwheat; sufficient pollinators and insect visitors, particularly bees, wasps, beetles, and flies; hydrology suitable for Tiehm's buckwheat that consists of dry, open, relatively barren, upland sites subject to occasional precipitation from rain and/or snow; and soils that are suitable for Tiehm's buckwheat. Special management considerations or protection may be required to address mineral development, including the 2020 and 2022 revised mining PoOs, road development and OHV activity, livestock grazing, nonnative invasive plant species, and herbivory (see Special Management Considerations or Protection).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule revising the definition of destruction or adverse modification on. August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action

agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, when: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support PBFs essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify the critical habitat of Tiehm's buckwheat include, but are not limited to, actions that are likely to cause large-scale habitat impacts, adversely affecting the PBFs at a scale and magnitude such that the designated critical habitat would no longer be able to provide for the conservation of the species. Examples include removing pollinator habitat and corridors for pollinator movement and seed dispersal; significantly disrupting the native vegetative assemblage, seed bank, or soil composition and structure; or significantly fragmenting the landscape and decreasing the resiliency and representation of the species throughout its range (Service 2021c, p. 14). For such activities, the Service would likely require reasonable and prudent alternatives to ensure the implementation of project-specific conservation measures designed to reduce the scale and magnitude of these habitat impacts.

Exemptions

Application of Section 4(a)(3)(B)(i) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is designated. No DoD lands of any kind are within the final critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under

Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts. In this final rule, we have not considered any areas for exclusion from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM; Service 2021c, entire) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for Tiehm's buckwheat (Industrial Economics Inc. (IEc) 2021, entire).

We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas will also jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. Therefore, the screening analysis focuses on areas of unoccupied critical habitat. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our final economic analysis of the critical habitat designation for Tiehm's buckwheat; our economic analysis is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the Executive Orders' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for Tiehm's buckwheat, first we identified, in the IEM dated July 21, 2021 (Service 2021c, entire), probable incremental economic impacts associated with the following categories of activities: mining and minerals exploration, livestock grazing, and recreation. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Because the species is being listed as endangered, in areas where Tiehm's buckwheat is present, Federal agencies need to consult with the Service on any activity that they authorize, fund, or carry out that may affect the species or its critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,*

difference between the jeopardy and adverse modification standards) for Tiehm's buckwheat critical habitat. The following specific circumstances help to inform our evaluation: (1) The essential PBFs identified for critical habitat are the most important features essential for the life-history needs of the species, and (2) any actions that would result in sufficient adverse effect to the essential PBFs to result in destruction or adverse modification of the critical habitat would also likely constitute jeopardy to Tiehm's buckwheat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for Tiehm's buckwheat. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this final designation of critical habitat.

The final critical habitat designation for Tiehm's buckwheat includes one critical habitat unit (Rhyolite Ridge Unit) totaling approximately 910 ac (368 ha), which was occupied by Tiehm's buckwheat at the time of proposed listing and is currently occupied now at the time of final listing. Any actions that may affect the species would also reach the ''may affect'' threshold for critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of Tiehm's buckwheat. Therefore, the final critical habitat designation is expected to result in only administrative costs. While additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would be relatively minor and administrative in nature.

This final critical habitat designation is expected to result in six consultations in 10 years (IEc 2021, p. 3). This additional administrative effort includes a projected estimate of five formal consultations and one programmatic consultation, which is aggregated into a given year to give a total annual incremental cost for the purpose of determining whether the rule is economically significant under Executive Order 12866 (IEc 2021, exhibit 3, p. 12). The analysis forecasts no incremental costs associated with project modifications that would involve additional conservation efforts for Tiehm's buckwheat. The projected incremental costs for each programmatic, formal, informal, and technical assistance effort are estimated to be approximately $5,300 (formal consultation), $2,600 (informal consultation), $9,800 (programmatic consultation), and $420 (technical assistance). Analyzing the potential for adverse modification of the species' critical habitat during section 7 consultation will likely result in a total annual incremental cost of less than approximately $37,000 (2021 dollars) in a given year for Tiehm's buckwheat (IEc 2021, exhibits 4 and 5, p. 13); therefore, the annual administrative burden is extremely unlikely to generate costs exceeding $100 million in a single year (*i.e.,* the threshold for an economically significant rule under Executive Order 12866).

We solicited data and comments from the public on the draft economic analysis discussed above, as well as on all aspects of the proposed critical habitat rule (87 FR 6101, February 3, 2022) and our required determinations. In developing this final designation, we considered the information presented in the draft economic analysis and any additional information on economic impacts we received during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19 and the 2016 Policy.

During the public comment period, we did not receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion; therefore, we did not conduct an exclusion analysis for the relevant area or areas. In developing the proposed critical habitat we have the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conducted an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service's expertise, we gave weight to those impacts consistent with the expert or firsthand information unless we had rebutting information. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species. We considered the economic impacts of the critical habitat designation. The Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for Tiehm's buckwheat based on economic impacts.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed or proposed listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or

waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national-security or homeland-security impact might exist on lands not owned or managed by DoD or DHS. In preparing this rule, we have determined that the lands within the designation of critical habitat for Tiehm's buckwheat are not owned or managed by DoD or DHS. Therefore, we anticipate no impact on national security or homeland security. During the public comment period we did not receive credible information that we determine indicates that there is a potential for impacts on national security or homeland security from designating particular areas as critical habitat; therefore, as part of developing the final designation of critical habitat, we did not conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19 and the 2016 Policy.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire, or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

In the case of Tiehm's buckwheat, the benefits of critical habitat include public awareness of the presence of Tiehm's buckwheat and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Tiehm's buckwheat due to protection from destruction or adverse modification of critical habitat.

Conservation Plans

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential PBFs; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service, sometimes through the permitting process under section 10 of the Act.

When we undertake a discretionary section 4(b)(2) analysis, we evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. There are no HCP's for the area in the final critical habitat designation for Tiehm's buckwheat.

Ioneer USA Corporation (Ioneer)

As part of the proposed Rhyolite Ridge lithium-boron project, Ioneer USA Corporation (Ioneer) is developing a conservation strategy for Tiehm's buckwheat to protect and preserve the continued viability of the species on a long-term basis. Currently, this strategy is in the early stages of development (Ioneer 2020c, entire; Barrett, Service, pers. comm. 2021; Tress, WestLand, pers. comm. 2021a; Tress, WestLand, pers. comm. 2021b; Tress, WestLand, pers. comm. 2021c; Barrett, Service, pers. comm. 2022).

Ioneer has also implemented or proposed various protection measures for Tiehm's buckwheat as part of the 2020 PoO for the Rhyolite Ridge lithium-boron project. Ioneer funded the development of a habitat suitability model to identify additional potential habitat for Tiehm's buckwheat through field surveys (Ioneer 2020a, p. 12). In addition, a demographic monitoring program was initiated in 2019 by Ioneer, to detect and document trends in population size, acres inhabited, size class distribution, and cover with permanent monitoring transects established in subpopulations 1, 2, 3, 4, and 6 (Ioneer 2020a, p. 16). Ioneer also funded collection of Tiehm's buckwheat seed in 2019 and plans to collect seeds

in 2022 (Ioneer 2020a, pp. 13–14). Some of this seed was used by the University of Nevada, Reno, for a propagation trial and transplant study (Ioneer 2020a, p. 14). The remainder of this seed is in long-term storage at Rae Selling Berry Seed Bank at Portland State University (Ioneer 2020a, p. 13). As part of the 2020 PoO, Ioneer also plans to avoid subpopulations 1, 2, 3, and 8 (Ioneer 2020a, p. 11), fence and place signage around subpopulations 1 and 2 (Ioneer 2020a, p. 11), and remove and salvage all remaining plants in subpopulations 4, 5, 6, and 7 and translocate them to another location (Ioneer 2020a, p. 15). However, in July 2022, Ioneer submitted a revised mining PoO and the proposed project may or may not be permitted by BLM as proposed; thus, the project as proposed, and these protection measures, may or may not be fully implemented and therefore, we did not exclude lands based on Ioneer's draft conservation strategy.

Tribal Lands

Several Executive Orders, Secretarial Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis. In addition, we look at the existence of Tribal conservation plans and partnerships. In preparing this proposal, we have determined that the final designation of critical habitat does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands or partnerships from this final designation of critical habitat.

We may also consider areas not identified for inclusion or exclusion from the final critical habitat designation based on information we may receive during the public comment period. As noted above, we have requested that the entities seeking inclusion or exclusion of areas provide credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion for that particular area (see 50 CFR 424.19). We have considered the information we received through the public comment period regarding other relevant impacts of the proposed designation and have determined that we are not excluding any areas from critical habitat. In preparing this final rule, we have determined that there are currently no HCPs or other management plans for Tiehm's buckwheat, and the designation does not include any Tribal lands or trust resources. We anticipate no impact on Tribal lands, partnerships, or HCPs from this final critical habitat designation. We did not receive any additional information during the public comment period for the proposed rule regarding other relevant impacts to support excluding any specific areas from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this final rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated with this final critical habitat designation. The RFA does not require evaluation of the potential impacts to

entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that this final critical habitat designation for Tiehm's buckwheat will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the final designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that this final critical habitat designation for Tiehm's buckwheat will not have a significant economic impact on a substantial number of small business entities. Therefore, a final regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects when undertaking certain actions. There are no operation, management, and maintenance activities of utility facilities (*e.g.,* hydropower facilities, powerlines, pipelines) that we are aware of or that have been known to occur within the range of Tiehm's buckwheat and its final critical habitat unit. If proposed in the future, these are activities that the Service consults on with Federal agencies (and their respective permittees, including utility companies) under section 7 of the Act. As discussed in the EA, the costs associated with consultations related to occupied critical habitat would be largely administrative in nature and are not anticipated to reach $100 million in any given year based on the anticipated annual number of consultations and associated consultation costs, which are not expected to exceed $37,000 per year (2021 dollars) (IEc 2021, p. 13). In our economic analysis, we did not find that this final critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no statement of energy effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it is not anticipated to reach a Federal mandate of $100 million in any given year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Small governments could be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Consequently, we do not believe that the final critical habitat designation would significantly or uniquely affect small government entities. Therefore, a small government agency plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Tiehm's buckwheat in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the final designation of critical habitat for Tiehm's buckwheat, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this final rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this final critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the final rule does not have substantial direct effects either on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The final designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the PBFs of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this final rule identifies the PBFs essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the final rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the final critical habitat for Tiehm's buckwheat; therefore, no Tribal lands would be affected by the final designation of critical habitat.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Reno Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Reno Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12 in paragraph (h), in the List of Endangered and Threatened Plants, by adding an entry for ''*Eriogonum tiehmii* (Tiehm's buckwheat)'' in alphabetical order under Flowering Plants to read as set forth below:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	*
Eriogonum tiehmii	Tiehm's buckwheat	Wherever found	E	87 FR [Insert **Federal Register** page where the document begins], 12/16/2022; 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.96, in paragraph (a), by adding an entry for ''Family Polygonaceae: *Eriogonum tiehmii* (Tiehm's buckwheat)'' in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Polygonaceae: *Eriogonum tiehmii* (Tiehm's buckwheat)

(1) The critical habitat unit is depicted for Esmeralda County, Nevada, on the map in this entry.

(2) Within this area, the physical or biological features essential to the conservation of Tiehm's buckwheat consist of the following:

(i) *Plant community.* A plant community that supports all life stages of Tiehm's buckwheat includes:

(A) Open to sparsely vegetated areas with low native plant cover and stature.

(B) An intact, native vegetation assemblage that can include, but is not limited to, shadscale saltbush (*Atriplex confertifolia*), black sagebrush (*Artemisia nova*), Nevada mormon tea (*Ephedra nevadensis*), James' galleta (*Hilaria jamesii* (formerly *Pleuraphis jamesii*)), and alkali sacaton (*Sporobolus airoides*) to maintain plant–plant interactions and ecosystem resiliency and provide the habitats needed by Tiehm's buckwheat's insect visitors and pollinators.

(C) A diversity of native plants whose blooming times overlap to provide insect visitors and pollinator species with flowers for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nest materials; and sheltered, undisturbed habitat for hibernation and overwintering of pollinator species and insect visitors.

(ii) *Pollinators and insect visitors.* Sufficient pollinators and insect visitors, particularly bees, wasps, beetles, and flies, are present for the species' successful reproduction and seed production.

(iii) *Hydrology.* Hydrology that is suitable for Tiehm's buckwheat consists of dry, open, relatively barren, upland sites subject to occasional precipitation from rain and/or snow for seed germination.

(iv) *Suitable soils.* Soils that are suitable for Tiehm's buckwheat consist of:

(A) Soils with a high percentage (70–95 percent) of surface fragments that is classified as clayey, smectitic, calcareous, mesic Lithic Torriorthents; clayey-skeletal, smectitic, mesic Typic Calcicargids; and clayey, smectitic, mesic Lithic Haplargids.

(B) Soils that have a thin (0–5.5 inch (in) (0–14 centimeter (cm)) A horizon; B horizons that are present as Bt (containing illuvial layer of lattice clays) or Bw (weathered); C horizons that are not always present; and soil depths to bedrock that range from 3.5 to 20 in (9 to 51 cm).

(C) Soils characterized by a variety of textures and that include gravelly clay loam, sand, clay, very gravelly silty clay, and gravelly loam.

(D) Soils with pH greater than 7.6 (*i.e.,* alkaline) in all soil horizons.

(E) Soils that commonly have on average boron and bicarbonates present at higher levels and potassium, zinc, sulfur, and magnesium present at lower levels.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on January 17, 2023.

(4) Data layers defining the map unit were created by the Service, and the critical habitat unit was then mapped using Universal Transverse Mercator Zone 11N coordinates. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at *https://www.regulations.gov* at Docket No. FWS–R8–ES–2020–0017 and at the field office responsible for this designation. You may obtain field office location information by contacting the Service regional office, the address of which is listed at 50 CFR 2.2.

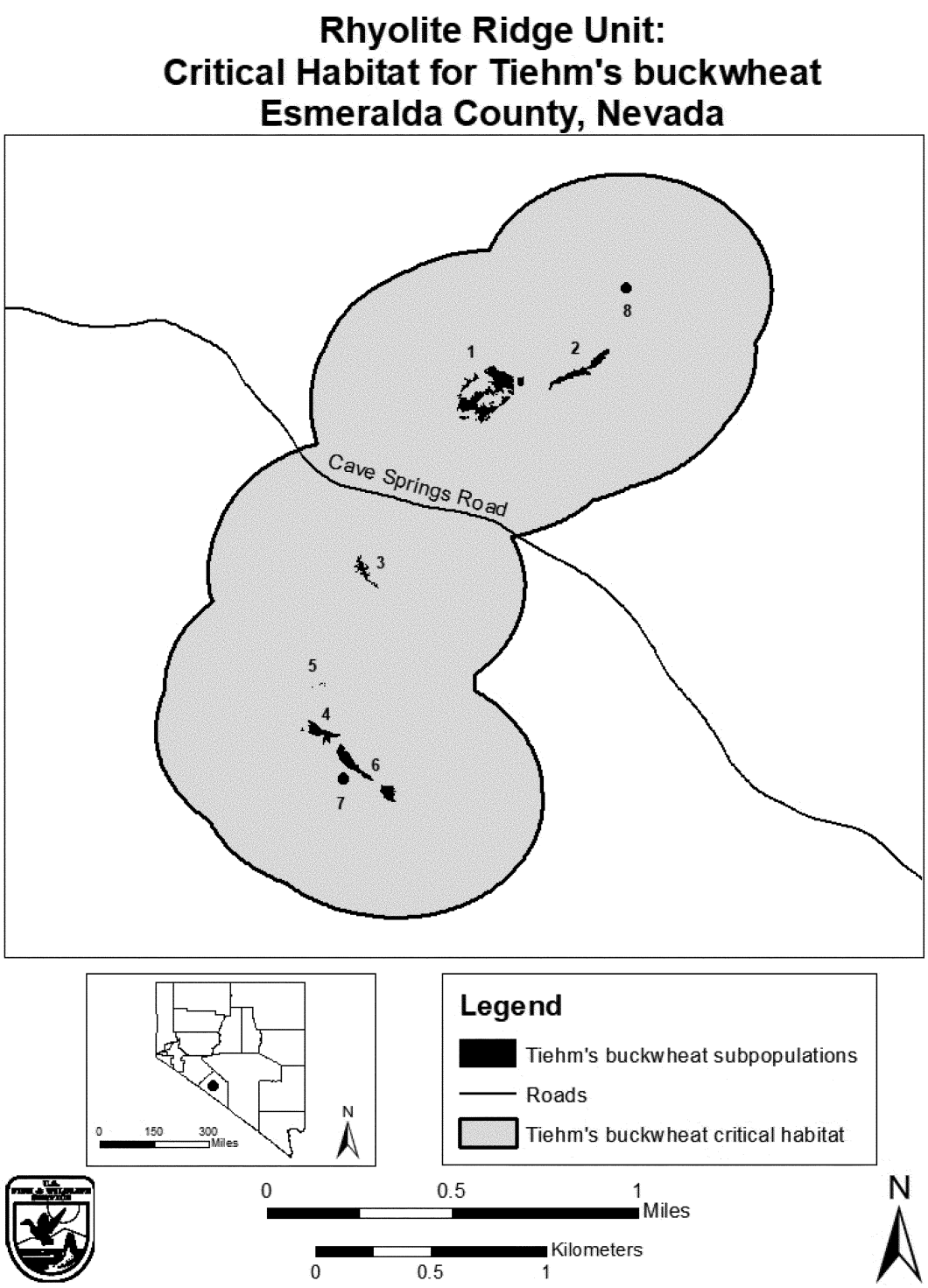
(5) Rhyolite Ridge Unit, Esmeralda County, Nevada.

(i) The Rhyolite Ridge Unit consists of approximately 910 acres (368 hectares) of occupied habitat in the Rhyolite Ridge area of the Silver Peak Range in Esmeralda County, Nevada. All lands within this unit are under Federal ownership (Bureau of Land Management).

BILLING CODE 4333–15–P

(ii) Map of the Rhyolite Ridge Unit follows:

Figure 1 to *Eriogonum tiehmii* (Tiehm's buckwheat) paragraph (5)(ii)



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–27225 Filed 12–14–22; 8:45 am]

BILLING CODE 4333–15–C

FEDERAL REGISTER

Vol. 87 Friday,
No. 241 December 16, 2022

Part VI

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Part 1010

Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities; Proposed Rule

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB59
RIN 1506–AB49

Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FinCEN is promulgating proposed regulations regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to Section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act), which is itself part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). The proposed regulations would implement the strict protocols on security and confidentiality required by the CTA to protect sensitive personally identifiable information (PII) reported to FinCEN. The NPRM explains the circumstances in which specified recipients would have access to BOI and outlines data protection protocols and oversight mechanisms applicable to each recipient category. The disclosure of BOI to authorized recipients in accordance with appropriate protocols and oversight will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security. FinCEN is also proposing regulations to specify when and how reporting companies can use FinCEN identifiers to report the BOI of entities.

DATES: Written comments on this proposed rule may be submitted on or before February 14, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2021–0005 and RIN 1506–AB49/AB59.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2021–0005 and RIN 1506–AB49/AB59.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

These proposed regulations would implement the provisions in the CTA, codified at 31 U.S.C. 5336(c),[1] that authorize certain recipients to receive disclosures of identifying information associated with reporting companies, their beneficial owners, and their company applicants (together, BOI). The CTA requires reporting companies to report BOI to FinCEN pursuant to 31 U.S.C. 5336(b). This NPRM reflects FinCEN's careful consideration of public comments, including those received in response to an advance notice of proposed rulemaking (ANPRM)[2] on the implementation of the CTA, and in response to an NPRM regarding BOI reporting requirements (Reporting NPRM).[3] This NPRM also reflects FinCEN's understanding of the critical need for the highest standard of security and confidentiality protocols to maintain confidence in the U.S. government's ability to protect sensitive information while achieving the objective of the CTA—establishing a database of beneficial ownership information (BOI) that will be highly useful in combatting illicit finance and the abuse of shell and front companies by criminals, corrupt officials, and other bad actors.

The proposed regulations aim to ensure that: (1) only authorized recipients have access to BOI; (2) authorized recipients use that access only for purposes permitted by the CTA; and (3) authorized recipients only re-disclose BOI in ways that balance protection of the security and confidentiality of the BOI with furtherance of the CTA's objective of making BOI available to a range of users for purposes specified in the CTA. The proposed regulations also provide a robust framework to ensure that BOI reported to FinCEN, and received by authorized recipients, is subject to strict cyber security controls, confidentiality protections and restrictions, and robust audit and oversight measures. Coincident with the protocols described in this NPRM, FinCEN is working to develop a secure, non-public database in which to store BOI, using rigorous information security methods and controls typically used in the Federal government to protect non-classified yet sensitive information systems at the highest security level. Against this backdrop and consistent with the CTA, FinCEN will permit Federal, State, local, and Tribal officials, as well as certain foreign officials acting through a Federal agency, to obtain BOI for use in furtherance of statutorily authorized activities such as those related to national security, intelligence, and law enforcement. Financial institutions (FIs) with customer due diligence (CDD) requirements under applicable law will have access to BOI to facilitate CDD compliance. Their regulators will likewise have access to BOI to make assessments of CDD compliance.

Additionally, FinCEN is proposing certain amendments to the BOI reporting regulations regarding the use of FinCEN identifiers.[4] The proposed amendments would specify how reporting companies would be able to use an entity's FinCEN identifier to fulfill their BOI reporting obligations under 31 CFR 1010.380.

II. Background

A. Access to Beneficial Ownership Information

As Congress explained in the CTA, ''malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States.'' [5] Access by authorized recipients to BOI reported under the CTA would significantly aid efforts to protect U.S. national security and safeguard the U.S. financial system from such illicit use. It would impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests, such as corruption, human smuggling, drug and arms trafficking, and terrorist financing. BOI can also add critical data to financial analyses in activities the CTA

[1] The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020 (AML Act), which includes the CTA. Section 6403 of the CTA, among other things, amends the Bank Secrecy Act (BSA) by adding a new Section 5336, Beneficial Ownership Information Reporting Requirements, to Subchapter II of Chapter 53 of Title 31, United States Code.

[2] 86 FR 17557 (Apr. 5, 2021).

[3] 86 FR 69920 (Dec. 8, 2021).

[4] *Id.,* as defined in 31 CFR 1010.380(f)(2), a FinCEN identifier is a unique identifying number assigned by FinCEN to an individual or reporting company under 31 CFR 1010.380.

[5] CTA, Section 6402(3).

contemplates, including tax investigations. It can also provide essential information to the intelligence and national security professionals who work to prevent terrorists, proliferators, and those who seek to undermine our democratic institutions or threaten other core U.S. interests from raising, hiding, or moving money in the United States through anonymous shell or front companies.[6]

The United States currently does not have a centralized or complete store of information about who owns and operates legal entities within the United States. The beneficial ownership data available to law enforcement and national security agencies are generally limited to the information collected by financial institutions on legal entity accounts pursuant to their CDD or broader Customer Identification Program (CIP) obligations, some of which has been included in Suspicious Activity Reports (SARs) or provided to law enforcement in response to judicial process.[7] As set out in detail in the Reporting NPRM [8] and the BOI reporting final rule,[9] U.S. law enforcement officials and the Financial Action Task Force (FATF),[10] among others, have for years noted how the lack of timely access to accurate and adequate BOI by law enforcement and other authorized recipients remained a significant gap in the United States' anti-money-laundering-/countering-the-financing-of-terrorism (AML/CFT) and countering the financing of proliferation (CFP) framework. Broadly, and critically, BOI can identify linkages between potential illicit actors and opaque business entities, including shell companies. Furthermore, comparing BOI reported pursuant to the CTA against data collected under the Bank Secrecy Act (BSA) and other relevant government data is expected to significantly further efforts to identify illicit actors and combat their financial activities.

As law enforcement and other U.S. government officials have noted, investigations into, and prosecutions of, money laundering, corruption, and other illicit financial activities are often prolonged or stymied by those officials' inability to rapidly access BOI in a centralized database. Kenneth A. Blanco, then-Director of FinCEN and a former State and Federal prosecutor, observed in 2019 testimony to the U.S. Senate Committee on Banking, Housing and Urban Affairs that based on his experience as a former State and Federal prosecutor, identifying the ultimate beneficial owner of a shell or front company in the United States ''often requires human source information, grand jury subpoenas, surveillance operations, witness interviews, search warrants, and foreign legal assistance requests to get behind the outward facing structure of these shell companies. This takes an enormous amount of time—time that could be used to further other important and necessary aspects of an investigation—and wastes resources, or prevents investigators from getting to other equally important investigations.'' [11]

The FBI's Steven M. D'Antuono elaborated on these difficulties, testifying before the Senate Banking Housing and Urban Affairs Committee in 2019 that ''[t]he process for the production of records can be lengthy, anywhere from a few weeks to many years, and . . . can be extended drastically when it is necessary to obtain information from other countries . . . . [I]f an investigator obtains the ownership records, either from a domestic or foreign entity, the investigator may discover that the owner of the identified corporate entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity. Many professional launderers and others involved in illicit finance intentionally layer ownership and financial transactions in order to reduce transparency of transactions. As it stands, it is a facially effective way to delay an investigation.'' [12] D'Antuono acknowledged that these challenges may be even starker for State, local, and Tribal law enforcement agencies that may not have the same resources as their Federal counterparts to undertake long and costly investigations to identify the beneficial owners of these entities.[13] During the testimony, he noted that requiring the disclosure of BOI by legal entities and the creation of a central BOI repository available to law enforcement and regulators could address these challenges.[14]

The process of obtaining BOI through grand jury subpoenas and other means can be time-consuming and of limited utility in some cases. Grand jury subpoenas, for example, require an underlying grand jury investigation into a possible violation of law. In addition, the law enforcement officer or investigator must work with a prosecutor's office, such as a U.S. Attorney's Office, to open a grand jury investigation, obtain the grand jury subpoena, and issue it on behalf of the grand jury. The investigator also needs to determine the proper recipient of the subpoena and coordinate service, which raises additional complications in cases where there is excessive layering of corporate structures to hide the identity of the ultimate beneficial owners. In some cases, however, BOI still may not be attainable via grand jury subpoena because it is not recorded. For example, because most states do not require the disclosure of BOI when forming or registering an entity, BOI cannot be obtained from the secretary of state or similar office. Furthermore, many states permit corporations to acquire property without disclosing BOI, and therefore BOI cannot be obtained from property records.

FinCEN's existing regulatory tools also have significant limitations. The 2016 CDD Rule,[15] for example, requires that certain types of U.S. financial institutions identify and verify the beneficial owners of legal entity customers at the time those financial institutions open a new account for a

[6] A front company generates legitimate business proceeds to commingle with illicit earnings. *See* U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), p. 29, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[7] 31 CFR 1010.230. Even then, any BOI a financial institution collects is not systematically reported to any central repository.

[8] *Supra* note 3.

[9] 87 FR 59498 (Sept. 30, 2022).

[10] The FATF, of which the United States is a founding member, is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of weapons proliferation, and other related threats to the integrity of the international financial system. The FATF assesses over 200 jurisdictions against its minimum standards for beneficial ownership transparency. Among other things, it has established standards on transparency and beneficial ownership of legal persons, to deter and prevent the misuse of corporate vehicles. *See* FATF Recommendation 24, Transparency and Beneficial Ownership of Legal Persons, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated Oct. 2020), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html;* FATF Guidance, Transparency and Beneficial Ownership, Part III (Oct. 2014), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.*

[11] FinCEN, *Testimony for the Record, Kenneth A. Blanco, Director, U.S. Senate Committee on Banking, Housing and Urban Affairs* (May 21, 2019), available at *https://www.banking.senate.gov/imo/media/doc/Blanco%20Testimony%205-21-19.pdf.*

[12] Federal Bureau of Investigation (FBI), *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division, ''Combatting Illicit Financing by Anonymous Shell Companies''* (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[13] *Id.*

[14] *Id.*

[15] 81 FR 29397 (May 11, 2016).

legal entity customer,[16] but the rule provides only a partial solution.[17] The information provided to U.S. financial institutions about beneficial owners of certain U.S. entities is generally not comprehensive and not reported to the U.S. government (nor to State, local, or Tribal governments), except when filed in SARs or in response to judicial process. It is therefore not immediately available to law enforcement, intelligence, and national security agencies. Moreover, the CDD rule applies only to legal entities that open accounts at certain U.S. financial institutions. Other FinCEN authorities—geographic targeting orders [18] and the so-called ''311 measures'' (*i.e.,* special measures imposed on jurisdictions, financial institutions, or international transactions of primary money laundering concern) [19]—offer temporary and targeted tools. Neither provides law enforcement the ability to reliably, efficiently, and consistently follow investigatory leads.

The utility and value of BOI reported to FinCEN, therefore, rests in large part on the bureau's ability to provide authorized recipients predictable and efficient access to reported BOI while protecting the confidentiality and integrity of the information. As Congress noted, ''[f]ederal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed'' to protect vital U.S. ''national security interests . . . [and] better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity.'' [20] Furthermore, providing authorized recipients in FIs access to BOI reported to FinCEN, as the CTA requires, will assist FIs in complying with AML/CFT and CDD requirements.

B. The Corporate Transparency Act

The CTA is part of the AML Act, which is itself a part of the 2021 NDAA. The CTA added a new section, 31 U.S.C. 5336, to the BSA to address the broader objectives of enhancing beneficial ownership transparency while minimizing the burden on the regulated community. In brief, 31 U.S.C. 5336 requires certain types of domestic and foreign entities, called ''reporting companies,'' to submit specified BOI to FinCEN. FinCEN is authorized to share this BOI with certain Government agencies, financial institutions, and regulators, subject to appropriate protocols.[21] The requirement for reporting companies to submit BOI takes effect ''on the effective date of the regulations prescribed by the Secretary of the Treasury under [31 U.S.C. 5336].'' [22] Reporting companies formed or registered after the effective date will need to submit the requisite BOI to FinCEN at the time of formation, while preexisting reporting companies will have a specified period to comply and report.[23]

The CTA reporting requirements generally exempt entities that are otherwise subject to significant regulatory regimes—*e.g.,* banks—where Congress presumably expected primary regulators to have visibility into the identities of the owners and ownership structures of the entities. The exemptions thus avoid imposing duplicative requirements in these cases.

The provision at 31 U.S.C. 5336 requires reporting companies to submit to FinCEN, for each beneficial owner and company applicant, either the individual's full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable identification document (*e.g.,* a nonexpired passport)—four readily accessible pieces of information that should not be unduly burdensome for individuals to produce, or for reporting companies to collect and submit to FinCEN—or a FinCEN identifier.[24] A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals or entities upon request.[25] In certain instances, the FinCEN identifier may be reported in lieu of an individual's name, birth date, address, and unique identification number.[26] As noted in Section II.E. below, FinCEN addressed the regulatory requirements related to BOI reporting pursuant to the CTA through the recent issuance of a final BOI reporting rule.[27]

Given the sensitivity of the reportable BOI, the CTA imposes strict confidentiality and security restrictions on the storage, access, and use of BOI. Congress authorized FinCEN to disclose BOI to a statutorily defined group of governmental authorities and financial institutions, in limited circumstances. The CTA establishes that BOI is ''sensitive information,'' [28] and provides that the Secretary of the Treasury (Secretary) shall ''maintain [it] in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level.'' [29] The statute further provides that BOI is only to be used by specified parties for specified purposes.[30] Access to and disclosure of BOI is the focus of this NPRM.

In addition to setting out requirements and restrictions related to BOI reporting and access, the CTA requires that FinCEN revise the current CDD Rule within one year of January 1, 2024, the effective date of the final BOI reporting rule, by rescinding paragraphs (b) through (j) of 31 CFR 1010.230.[31] The CTA identifies three purposes for this revision: (1) to bring the rule into conformity with the AML Act as a whole, including the CTA; (2) to account for financial institutions' access to BOI reported to FinCEN ''in order to confirm the beneficial ownership information provided directly to the financial institutions'' for AML/CFT and customer due diligence purposes; and (3) to reduce unnecessary or duplicative

[16] The CDD Rule NPRM contained a requirement that covered financial institutions conduct ongoing monitoring to maintain and update customer information on a risk basis, specifying that customer information includes the beneficial owners of legal entity customers. As noted in the supplementary material to the final rule, FinCEN did not construe this obligation as imposing a categorical, retroactive requirement to identify and verify BOI for existing legal entity customers. Rather, these provisions reflect the conclusion that a financial institution should obtain BOI from existing legal entity customers when, in the course of its normal monitoring, the financial institution detects information relevant to assessing or reevaluating the risk of such customer. Final Rule, *Customer Due Diligence Requirements for Financial Institutions,* 81 FR 29398, 29404 (May 11, 2016).

[17] *See* U.S. Money Laundering Threat Assessment Working Group, *U.S. Money Laundering Threat Assessment* (2005), pp. 48–49, available at *https://www.treasury.gov/resource-center/terrorist-illicit-finance/documents/mlta.pdf. See also* Congressional Research Service, Miller, Rena S. and Rosen, Liana W., *Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions* (Jul. 8, 2019), available at *https://crsreports.congress.gov/product/pdf/R/R45798.*

[18] 31 U.S.C. 5326(a); 31 CFR 1010.370.

[19] 31 U.S.C. 5318A, as added by section 311 of the USA PATRIOT Act (Pub. L. 107–56).

[20] CTA, Section 6402(5)(B),(D).

[21] *See generally* 31 U.S.C. 5336(b), (c).

[22] 31 U.S.C. 5336(b)(5).

[23] *See* 31 U.S.C. 5336(b)(1)(B), (C).

[24] *See* 31 U.S.C. 5336(b)(2).

[25] *See* 31 U.S.C. 5336(b)(3)(A)(i).

[26] *See* 31 U.S.C. 5336(b)(3)(B).

[27] *Supra* note 7.

[28] CTA, Section 6402(6).

[29] CTA, Section 6402(7)(A). While the statutory language seems to include a typo that refers to another provision, it also seems clear that the object of protection in this case is BOI.

[30] CTA, Section 6402(6).

[31] CTA, Section 6403(d)(1), (2). The CTA orders the rescission of paragraphs (b) through (j) directly (''the Secretary of the Treasury shall rescind paragraphs (b) through (j)'') and orders the retention of paragraph (a) by a negative rule of construction (''nothing in this section may be construed to authorize the Secretary of the Treasury to repeal ... [31 CFR] 1010.230(a)[.]'').

burdens on financial institutions and legal entity customers.[32]

FinCEN intends to satisfy the requirements related to the revision of the CDD Rule through a future rulemaking process that will provide the public with an opportunity to comment on the proposal. FinCEN anticipates that this rulemaking to revise the CDD Rule will touch on the issue of the interplay between financial institutions' CDD efforts and the beneficial ownership IT system that FinCEN is developing to receive, store, and maintain BOI.

C. The Advance Notice of Proposed Rulemaking

On April 5, 2021, FinCEN published the ANPRM related to implementing the CTA.[33] The ANPRM sought input on five open-ended categories of questions, including on clarifying key definitions and on FinCEN's implementation of the related provisions of the CTA that govern the bureau's maintenance and disclosure of BOI subject to appropriate access protocols.

In response to the ANPRM, FinCEN received 220 comments from parties that included businesses, civil society organizations, trade associations, law firms, secretaries of state and other State officials, Indian Tribes, members of Congress, and private citizens. Some comments focused on issues that pertain to this access rulemaking, such as the structure of the BOI database, certain users' need for access, the importance of ensuring the security of the database, specific technological decisions that FinCEN could make, and the desirability of a FinCEN commitment to verifying the information in the database.

FinCEN has considered all of the comments that it received in response to the ANPRM in drafting this proposed rule.

D. The Reporting Notice of Proposed Rulemaking

FinCEN followed the ANPRM with the December 8, 2021, publication of the Reporting NPRM, the first of the three CTA-related rulemakings.[34] In the Reporting NPRM, FinCEN described in detail Treasury's efforts to address the lack of transparency in certain legal entity ownership, the value of BOI, the national security and law enforcement implications of legal entities with anonymous beneficial owners, and the need for centralized BOI collection.[35] The Reporting NPRM acknowledged the current environment in which criminals and other bad actors can exploit the creation and use of legal entities in the United States.

The Reporting NPRM proposed regulations specifying what BOI must be reported to FinCEN pursuant to CTA requirements, by whom, and when. In particular, it proposed that domestic and foreign reporting companies report to FinCEN four pieces of BOI for each of their beneficial owners and company applicants: full legal name, birthdate, current residential or business street address, and a unique identifying number from an acceptable identification document (*e.g.,* a nonexpired passport or driver's license). In the alternative, the proposed rule would permit a reporting company to report a FinCEN identifier for an individual or entity in certain circumstances.[36] These regulations also proposed processes for obtaining, updating, and using FinCEN identifiers. The Reporting NPRM included a 60-day comment period, which closed on February 7, 2022, and FinCEN received over 240 comments on the NPRM.

E. The Final Reporting Rule

On September 30, 2022, FinCEN published a final rule implementing the CTA's BOI reporting requirements and addressing the comments submitted on the NPRM. The final regulations require certain legal entities to file with FinCEN reports that identify the beneficial owners of the entity, and individuals who filed (or who are primarily responsible for directing or controlling the filing of) an application with specified governmental authorities to create the entity or register it to do business. Further, the regulations describe who must file a report, what information must be provided, and when a report is due. These reporting requirements are intended to help prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity, while minimizing the burden on reporting companies.

In addition, as the final BOI reporting rule noted, providing authorized users in the law enforcement, national security, and regulatory communities, and in FIs, access to the reported BOI will diminish the ability of illicit actors to obfuscate their activities through the use of anonymous shell and front companies. FinCEN also recognized in the final BOI reporting rule the vital importance of protecting the reported BOI and ensuring, through the issuance of regulations governing access to the reported BOI, that the BOI is subject to stringent use and security protocols. The BOI final reporting regulations become effective on January 1, 2024.

Furthermore, the final BOI reporting rule reserved certain provisions concerning the use of FinCEN identifiers for entities for further consideration. This Access NPRM includes proposed amendments to the reporting regulations that would finalize these remaining provisions.

F. Beneficial Ownership Information Infrastructure

i. Beneficial Ownership Information IT System Development

The CTA directs the Secretary to maintain BOI ''in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information security systems at the highest security level . . . .'' [37] To implement this requirement, FinCEN has been developing a secure information technology (IT) system to receive, store, and maintain BOI. FinCEN has gathered requirements and completed initial system engineering, architectures, and program planning activities. The initial build of the cloud infrastructure is complete and the development of the first set of system products is in progress. The target date for the system to begin accepting BOI reports is January 1, 2024, the same day the reporting rule takes effect.

FinCEN is taking a very deliberative approach to designing and building the system, factoring in the requirements set out in the CTA as well as guidance from Congress. As Senator Sherrod Brown, the then-Ranking Member of the Senate Committee on Banking, Housing, and Urban Affairs and one of the primary authors of the CTA, noted in his December 9, 2020, floor statement accompanying the CTA, ''[i]n designing the [system], FinCEN should survey other beneficial ownership databases to determine their best features and design, and create a structure that secures the data as required by law.'' [38] Among other actions FinCEN has undertaken in the development of the system, FinCEN met not only with future stakeholders to better understand their need to access BOI and how they currently safeguard sensitive information (see Section II.H. ''Outreach'' below), but also with other government entities that had developed

[32] CTA, Section 6403(d)(1)(A)–(C).

[33] *Supra* note 2.

[34] 86 FR 69920 (Dec. 8, 2021).

[35] *Id.* at 69921–69928.

[36] *See* 31 U.S.C. 5336(b).

[37] CTA, Section 6402(7).

[38] Senator Sherrod Brown, *National Defense Authorization Act,* Congressional Record 166:208 (Dec. 9, 2020), p. S7312, available at *https://www.govinfo.gov/content/pkg/CREC-2020-12-09/pdf/CREC-2020-12-09.pdf.*

beneficial ownership databases, such as the District of Columbia's (DC's) Superintendent of Corporations (within DC's Department of Consumer and Regulatory Affairs Corporations), and the United Kingdom's Companies House.

Senator Brown also encouraged FinCEN to ''ensure that [F]ederal, [S]tate, local and tribal law enforcement can access the beneficial ownership database without excessive delays or red tape in a manner modeled after its existing systems providing law enforcement access to databases containing currency transaction and suspicious activity report information.'' [39] Keeping BOI secure and confidential is one of FinCEN's highest priorities in building the system. Serving that interest requires not only designing and implementing appropriate technical controls around BOI security and storage, but also thoroughly understanding the ways in which prospective authorized BOI recipients intend to access, handle, and use BOI. This knowledge in turn informs the policies, procedures, and processes that will govern how authorized recipients treat BOI when they access it.

This balance is reflected in the ongoing development of the system. Consistent with the CTA's requirement,[40] the system will be cloud-based and is being implemented to meet the highest Federal Information Security Management Act (FISMA) [41] level (FISMA High).[42] A FISMA High rating indicates that losing the confidentiality, integrity, or availability of information within a system would have a severe or catastrophic adverse effect on the organization maintaining the system, including on organizational assets or individuals.[43] The rating carries with it a requirement to implement certain baseline controls to protect the relevant information.[44]

FinCEN recognizes that BOI is highly sensitive information. FinCEN therefore views it as critical to mitigate the risk of unauthorized disclosure of BOI as much as possible. To that end, system functionality will vary by recipient category consistent with statutory requirements and limitations on BOI disclosure—for example, financial institutions will have a different level of access to BOI than law enforcement agencies. The regulations proposed in this Access NPRM complement this functionality by clarifying and codifying those requirements and limitations, including through recipient-specific access protocols designed to protect BOI security and confidentiality.

ii. CTA Implementation Efforts

FinCEN continues to face resource constraints in developing and deploying the Beneficial Ownership IT System and efforts to put in place processes to support the collection and use of BOI. There are a myriad of areas that need additional investment, including additional personnel to support efforts beyond the initial build of the Beneficial Ownership IT System. These include efforts to provide clear and transparent guidance to reporting companies and authorized users of BOI, negotiating and implementing memoranda of understanding (MOUs) with domestic government agencies, reviewing requests for BOI and accompanying court authorizations from State, local, or tribal law enforcement agencies, auditing the handling and use of BOI, and enforcement activities.

FinCEN is particularly focused on providing adequate customer service resources for reporting companies in the first year and beyond as they file their BOI. FinCEN currently fields approximately 13,000 inquiries a year through its Regulatory Support Section, and approximately 70,000 external technical inquiries a year through the IT Systems Helpdesk. FinCEN has estimated that there will be approximately 32 million reporting companies in Year 1 of the reporting requirement and approximately 5 million new reporting companies each year thereafter.[45] If 10 percent of those reporting companies have questions about the reporting requirement or the form, or technical issues when filing, that could result in upwards of 3 million inquiries in Year 1, and 500,000 per year after that.

Without the availability of additional appropriated funds to support this project and other mission-critical services, FinCEN may need to identify trade-offs, including with respect to guidance and outreach activities, and the staged access by different authorized users to the database. FinCEN is currently identifying the range of considerations implicated by potential budget shortfalls and the trade-offs that are available and appropriate.

G. Verification

FinCEN continues to evaluate options for verifying reported BOI.[46] ''Verification,'' as that term is used here, means confirming that the reported BOI submitted to FinCEN is actually associated with a particular individual. A number of commenters to the ANPRM and Reporting NPRM have affirmed the importance of verifying BOI to support authorized activities that rely on the information. FinCEN continues to review the options available to verify BOI within the legal constraints in the CTA.

H. Outreach

FinCEN has conducted more than 30 outreach sessions to solicit input on how best to implement the statutory authorizations and limitations regarding BOI disclosure. Participants included representatives from Federal agencies, State courts, State and local prosecutors' offices, Tribal governments, FIs, financial self-regulatory organizations (SROs), and, as noted previously, government offices that had established BOI databases. Topics discussed included how stakeholders might use BOI, potential information technology (IT) system features, circumstances in which potential stakeholders might need to re-disseminate BOI, and how different approaches might help further the purposes of the CTA. These conversations helped FinCEN refine its thinking about how to create a useful database for stakeholders while protecting BOI and individual privacy.

III. Overview of Access Framework and Protocols

A. Statutory Framework

The CTA authorizes FinCEN to disclose BOI to five categories of recipients.[47] The first category consists of recipients in Federal, State, local and Tribal government agencies. Within this category, FinCEN may disclose BOI to Federal agencies engaged in national security, intelligence, or law enforcement activity if the requested BOI is for use in furtherance of such activity.[48] Note that Federal agency access is activity-based. Thus, an agency such as a Federal functional regulator, while perhaps not a ''law enforcement

[39] *Id.*

[40] 31 U.S.C. 5336(c)(8).

[41] 44 U.S.C 3541 *et seq.*

[42] *See* U.S. Department of Commerce, *Federal Information Processing Standards Publication: Standards for Security Categorization of Federal Information and Information Systems* (''FIPS Pub 199'') (Feb. 2004), available at *https://nvlpubs.nist.gov/nistpubs/fips/nist.fips.199.pdf.*

[43] *Id.* at 3.

[44] *Id.*

[45] 87 FR 59498, 59549 (Sept. 30, 2022).

[46] Pursuant to Sections 6502(b)(1)(C) and (D) of the AML Act, the Secretary, in consultation with the Attorney General, will conduct a study no later than two years after the effective date of the BOI reporting final rule, to evaluate the costs associated with imposing any new verification requirements on FinCEN and the resources necessary to implement any such changes.

[47] 31 U.S.C. 5336(c)(2)(B) and 31 U.S.C. 5336(c)(5).

[48] 31 U.S.C. 5336(c)(2)(B)(i)(I).

agency'' in the conventional sense, may still be engaged in ''law enforcement activity'' such as civil law enforcement, and can therefore still request BOI from FinCEN for use in furtherance of that activity. FinCEN may also disclose BOI to State, local, and Tribal law enforcement agencies if ''a court of competent jurisdiction'' has authorized the law enforcement agency to seek the information in a criminal or civil investigation.[49]

The second category consists of foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (''foreign requesters''), provided their requests come through an intermediary Federal agency, meet certain additional criteria, and are made either (1) under an international treaty, agreement, or convention, or (2) via a request made by law enforcement, judicial, or prosecutorial authorities in a trusted foreign country (when no international treaty, agreement, or convention is available).[50]

The third authorized recipient category is FIs using BOI to facilitate compliance with CDD requirements under applicable law, provided the FI requesting the BOI has the relevant reporting company's consent for such disclosure.[51]

The fourth category is Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing FIs for compliance with CDD requirements.[52] These agencies may access the BOI information that FIs they supervise received from FinCEN.

The fifth and final category of authorized BOI recipients is the U.S. Department of the Treasury (Treasury) itself, for which the CTA provides relatively unique access to BOI tied to an officer or employee's official duties requiring BOI inspection or disclosure, including for tax administration.[53]

The CTA directs the Secretary to ''take all steps, including regular auditing, to ensure that government authorities accessing [BOI] do so only for authorized purposes consistent with [the CTA].'' [54] The CTA also requires the Secretary to establish protocols governing access by authorized recipients to BOI and protecting the information's security and confidentiality.[55]

Specifically, the statute provides that the Secretary shall establish protocols requiring: (1) the heads of requesting agencies to approve standards and procedures for protecting BOI, and make related certifications; [56] (2) requesting agencies to ''establish and maintain, to the satisfaction of the Secretary, a secure system in which [BOI] provided directly by the Secretary shall be stored''; [57] (3) requesting agencies to ''furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, that describes the procedures established and utilized by such agency to ensure the confidentiality of [BOI] provided directly by the Secretary''; [58] (4) certain requesting agencies to provide a written certification that the requirements for access to BOI have been met; [59] (5) requesting agencies to ''limit, to the greatest extent practicable, the scope of information sought, consistent with the purposes for seeking [BOI];'' [60] (6) requesting agencies to ''establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to an auditable trail of each request for [BOI] submitted to the Secretary by the agency, including the reason for the request, the name of the individual who made the request, the date of the request, any disclosure of [BOI] made by or to the agency, and any other information the Secretary of the Treasury determines is appropriate''; [61] and (7) requesting agencies to ''conduct an annual audit to verify that the [BOI] received from the Secretary has been accessed and used appropriately, and in a manner consistent with this paragraph and provide the results of that audit to the Secretary upon request.[62] The Secretary is likewise required to ''conduct an annual audit of the adherence of the agencies to the protocols established under this paragraph to ensure that agencies are requesting and using beneficial ownership information appropriately.'' [63]

The CTA expressly restricts access to BOI to only those authorized users at a requesting agency: (1) who are directly engaged in an authorized investigation or activity; (2) whose duties or responsibilities require access to BOI; (3) who have undergone appropriate training or use staff to access the system who have undergone appropriate training; (4) who use appropriate identity verification to obtain access to the information; and (5) who are authorized by agreement with the Secretary to access BOI.[64]

The statute further provides the Secretary with discretionary authority to prescribe by regulation such other safeguards as she deems necessary and appropriate to protect BOI confidentiality.[65] The Secretary has delegated the authority to prescribe appropriate protocols to protect the security and confidentiality of BOI pursuant to 31 U.S.C. 5336(c)(3) to FinCEN.[66]

B. Disclosure to Authorized Domestic Government Agency Users for Non-Supervisory Purposes

Under the first category of BOI recipients, FinCEN expects three types of domestic agency users to be able to access and query the beneficial ownership IT system directly: (1) Federal agencies engaged in national security, intelligence, and law enforcement activity; (2) Treasury officers and employees who require access to BOI to perform their official duties or for tax administration; and (3) State, local, and Tribal law enforcement agencies. This type of access would permit authorized individuals within an authorized recipient agency to log in, run queries using multiple search fields, and review one or more results returned immediately.

These agencies often lack comprehensive information about a subject or other relevant individuals or entities when conducting investigations. The ability to query the database directly and iteratively is therefore necessary to enable them to use BOI effectively. Nevertheless, to protect against potential abuse, Federal-agency users engaged in national security, intelligence, or law enforcement activity would have to submit brief justifications to FinCEN for their searches, explaining how their searches further a particular qualifying activity, and these justifications would be subject to oversight and audit by FinCEN. FinCEN will develop guidance for agencies on submitting the required justifications.

Consistent with the CTA's restrictions, authorized users from State, local, and Tribal law enforcement agencies would be required to upload the document issued by a court of competent jurisdiction authorizing the

[49] 31 U.S.C. 5336(c)(2)(B)(i)(II).
[50] *See* 31 U.S.C. 5336(c)(2)(B)(ii).
[51] 31 U.S.C. 5336(c)(2)(B)(iii).
[52] 31 U.S.C. 5336(c)(2)(B)(iv).
[53] 31 U.S.C. 5336(c)(5).
[54] CTA, Section 6402(7)(B).
[55] *See generally* 31 U.S.C. 5336(c)(3).
[56] 31 U.S.C. 5336(c)(3)(B).
[57] 31 U.S.C. 5336(c)(3)(C).
[58] 31 U.S.C. 5336(c)(3)(D).
[59] 31 U.S.C. 5336(c)(3)(E).
[60] 31 U.S.C. 5336(c)(3)(F).
[61] 31 U.S.C. 5336(c)(3)(H).
[62] *See* 31 U.S.C. 5336(c)(3)(I).
[63] *See* 31 U.S.C. 5336(c)(3)(J).
[64] 31 U.S.C. 5336(c)(3)(G).
[65] *See* 31 U.S.C. 5336(c)(3)(K).
[66] Treasury Order 180–01 (Jan. 14, 2020).

agency to seek BOI from FinCEN.[67] After FinCEN has reviewed the relevant authorization for sufficiency and approved the request, an agency could then conduct searches using multiple search fields consistent in scope with the court authorization and subject to audit by FinCEN. These searches would return results immediately.

Such broad search capabilities within the beneficial ownership IT system require domestic agencies to clearly understand the scope of their authorization and their responsibilities under it. That is why the proposed rule establishes protocols for requirements, limitations, and expectations with respect to searches by domestic agencies of the beneficial ownership IT system. As part of these protocols, each domestic agency would first need to enter into a memorandum of understanding (MOU) with FinCEN before being allowed access to the system. FinCEN is developing draft MOUs based on similar agreements it uses to share BSA data. FinCEN will also provide training for agency personnel and exercise oversight and audit functions discussed in more detail in Section IV below.

None of the remaining authorized recipient categories will have access to the broad search capabilities within the system.

C. Disclosure to Authorized Foreign Requesters

Foreign requesters—foreign law enforcement agencies, judges, prosecutors, central authorities, or competent authorities (or a like designation)—will not have direct access to the beneficial ownership IT system. They will instead submit their requests for BOI to Federal intermediary agencies as the CTA requires.[68] If the foreign request meets the applicable criteria of the CTA [69] and the proposed rule, then the Federal agency intermediary will retrieve the BOI from the system and transmit it to the foreign requester.

FinCEN intends to work with Federal agencies to identify agencies that are well positioned to serve as intermediaries between FinCEN and foreign requesters. FinCEN expects that these possible intermediary Federal agencies will have regular engagement and familiarity with foreign law enforcement agencies, judges, prosecutors, central authorities, or competent authorities on matters related to law enforcement, national security, or intelligence activity, and will have established policies, procedures, and communication channels for sharing information with those foreign parties. Other factors would include whether a prospective intermediary Federal agency represents the U.S. government in relevant international treaties, agreements, or conventions, the expected number of requests that the agency could receive, and the ability of the agency to efficiently process requests while managing risks of unauthorized disclosure.

Once identified, FinCEN will then work with intermediary Federal agencies to: (1) ensure that they have secure systems for BOI storage; (2) enter into MOUs outlining expectations and responsibilities; (3) translate the CTA foreign sharing requirements into evaluation criteria against which intermediaries can compare requests from foreign requesters; (4) integrate the evaluation criteria into the intermediaries' existing information-sharing policies and procedures; (5) develop additional security protocols and systems as required under the CTA and this rule; and (6) ensure that intermediary agency personnel have sufficient training on the requirements of the CTA and the proposed rule. FinCEN would exercise oversight and audit functions to ensure that Federal intermediary agencies adhere to requirements and take appropriate measures to mitigate the risk of foreign requesters abusing the information.

Given its longstanding relationships and relevant experience as the financial intelligence unit of the United States, FinCEN proposes to directly receive, evaluate, and respond to requests for BOI from foreign financial intelligence units.

D. Disclosure to FIs and Regulatory Agencies for CDD Compliance

Unlike foreign requesters, both FIs and their regulators (Federal functional regulators and other appropriate regulatory agencies, when assessing FIs' compliance with CDD requirements) would both have direct access to BOI contained in the beneficial ownership IT system, albeit in more limited form than Federal agencies engaged in national security, intelligence, or law enforcement activity, or State, local, and Tribal law enforcement agencies.

The CTA authorizes FinCEN to disclose a reporting company's BOI to an FI only to the extent that such disclosure facilitates the FI's compliance with CDD requirements under applicable law, and only if the reporting company first consents.[70] FinCEN takes these constraints seriously given the sensitive nature of BOI and the potential number of FI employees who could have access to it. FinCEN is therefore not planning to permit FIs to run broad or open-ended queries in the beneficial ownership IT system or to receive multiple search results. Rather, FinCEN anticipates that a FI, with a reporting company's consent, would submit to the system identifying information specific to that reporting company, and receive in return an electronic transcript with that entity's BOI. To the extent the FI makes a trivial data-entry error in its request for BOI, the FI could still obtain the requested BOI, provided the errors do not compromise BOI security and confidentiality and result in the FI retrieving information on the wrong reporting company. This more limited information-retrieval process would reduce the overall risk of inappropriate use or unauthorized disclosures of BOI.

The CTA permits similarly narrow access for Federal functional regulators and other appropriate regulatory agencies exercising supervisory functions. The statute allows these agencies to request from FinCEN BOI that the FIs they supervise have already obtained from the bureau, but only for assessing an FI's compliance with CDD requirements under applicable law.[71] Consequently, Federal functional regulators and other appropriate regulatory agencies will generally have limited access to the beneficial ownership IT system if requesting BOI for the purpose of ascertaining CDD compliance. FinCEN is still developing this access model and accompanying functionality, but expects regulators to be able to retrieve any BOI that the FIs they supervise received from FinCEN during a particular period, as opposed to data that might reflect subsequent updates. This would both satisfy CTA requirements and facilitate smoother

[67] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[68] 31 U.S.C. 5336(c)(2)(B)(ii).

[69] Section 6403 of the CTA requires that the foreign request be made by a Federal agency on behalf of a law enforcement agency, foreign central authority or competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available. The CTA goes on to state that the foreign request must (1) be issued in response to a request for assistance in an investigation or prosecution by such foreign country; and (2) either (a) require compliance with the disclosure and use provisions of the treaty, agreement, or convention publicly disclosing any BOI received; or (b) limit the use of the information for any purpose other than the authorized investigation or national security or intelligence activity. *See* 31 U.S.C. 5336(c)(2)(B)(ii).

[70] 31 U.S.C. 5336(c)(2)(B)(iii).

[71] *See* 31 U.S.C. 5336(c)(2)(C), providing that BOI FinCEN discloses to a financial institution ''shall also be available to a Federal functional regulator or other appropriate regulatory agency, as determined by the Secretary . . . .''

examinations by ensuring regulators receive the same BOI that FIs received for purposes of their CDD reviews.

FinCEN expects that Federal functional regulators responsible for bringing civil enforcement actions will be able to avail themselves of the Federal law enforcement access provision and functionality described in Section III.B. above.[72] State, local, and Tribal agencies with both a qualifying, CDD-focused regulatory function and a law enforcement function could similarly avail themselves of the access provisions applicable to those distinct BOI recipient categories. Each agency would be responsible for ensuring unauthorized disclosure does not occur between its various components. In addition, FinCEN is required under the CTA to perform annual audits to ensure agencies are requesting and using BOI appropriately and consistently with their internal protocols.[73] As with other Federal agencies, MOUs will further specify the expectations with respect to the handling and sharing of BOI by components of the same agency that may access BOI under different circumstances. FIs, meanwhile, would have to agree to terms of use that would be a condition of access to the beneficial ownership IT system. This distinction reflects the more limited, less flexible functionality FIs will enjoy relative to government agencies with multi-field search capabilities within the beneficial ownership IT system.

IV. Section-by-Section Analysis

As described below in Section IV.A., this proposed rule would add new access-to-information rules in a new § 1010.955 (''Availability of information reported pursuant to 31 CFR 1010.380'') in subpart J (''Miscellaneous'') of part 1010 (''General Provisions'') of chapter X (''Financial Crimes Enforcement Network'') of title 31, Code of Federal Regulations. To avoid confusion, it would also rename and clarify the scope of the existing 31 CFR 1010.950 (''Availability of information—general'').

The following sections describe the elements of the proposed rule: (i) availability of information—general; (ii) prohibition on disclosure; (iii) disclosure of information by FinCEN; (iv) use of information; (v) security and confidentiality requirements; (vi) administration of requests for information reported pursuant to 31 CFR 1010.380; and (vii) violations and penalties.

Additionally, Section IV.B. below describes the FinCEN identifier provisions of the proposed rule.

A. Beneficial Ownership Information Retention and Disclosure Requirements

i. Availability of Information—General

FinCEN proposes to amend 31 CFR 1010.950(a) to clarify that the disclosure of BOI would be governed by proposed 31 CFR 1010.955, rather than 31 CFR 1010.950(a), which governs disclosure of other BSA information. Currently 31 CFR 1010.950(a) authorizes the disclosure of all BSA information received by FinCEN and states that ''[t]he Secretary may within his discretion disclose information reported under this chapter for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.'' The CTA authorizes FinCEN to disclose such information only in limited and specified circumstances that are separate and distinct from provisions authorizing disclosure of other BSA information.[74] Accordingly, FinCEN is proposing to amend 31 CFR 1010.950(a) to clarify that the disclosure of BOI would instead be governed by proposed 31 CFR 1010.955.

ii. Prohibition on Disclosure

The CTA provides that, except as authorized by 31 U.S.C. 5336(c) and the protocols promulgated under that subsection, BOI reported pursuant to 31 U.S.C. 5336 ''shall be confidential and may not be disclosed by . . . (i) an officer or employee of the United States; (ii) an officer or employee of any State, local, or Tribal agency, or (iii) an officer or employee of any [FI] or regulatory agency receiving information under [31 U.S.C. 5336(c)].''[75]

Proposed 31 CFR 1010.955(a) would incorporate this prohibition, with two clarifications. First, it would clarify that any individual authorized to receive BOI pursuant to proposed 31 CFR 1010.955(b) is prohibited from disclosing it except as expressly authorized by FinCEN. Critically, this provision would extend the prohibition on disclosure to any individual who receives BOI regardless of whether they continue to serve in the position through which they were authorized to receive BOI. Otherwise, the regulations could be read to permit disclosure of sensitive BOI after an individual leaves the relevant position. Second, it would also extend the prohibition on disclosure to any individual who receives BOI as a contractor or agent of the United States; a contractor or agent of a State, local, or Tribal agency; or a member of the board of directors, contractor, or agent of an FI. FinCEN believes that this clarification is needed to ensure that agents acting on behalf of an authorized BOI recipient agency or other entity are subject to the same prohibition on the disclosure of BOI as officers and employees of an authorized BOI recipient agency or other entity. Such an approach is necessary to avoid the different treatment of employees and officers in relation to contractors and agents.

Although the CTA does not expressly refer to agents, contractors, or directors, FinCEN would extend the prohibition on disclosure to such individuals pursuant to 31 U.S.C. 5336(c)(3)(K), which provides that ''the Secretary of the Treasury shall establish by regulation protocols described in [31 U.S.C. 5336(2)(A)] that . . . provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the beneficial ownership information.''[76] FinCEN also believes this approach is consistent with the CTA's overall focus on preventing unauthorized disclosure[77] and the broad scope of the provisions penalizing unauthorized disclosure by ''any person.''[78] FinCEN invites comments on this approach.

iii. Disclosure of Information to Authorized Recipients

The CTA authorizes FinCEN to disclose BOI to five categories of recipients in specified circumstances.[79] The statutory authorization is generally permissive: with one exception, the CTA provides that FinCEN ''may disclose'' BOI to authorized recipients in qualifying circumstances.[80] This

[72] Federal functional regulators engaged in national security activity would similarly be able to make use of the search functionality associated with the ''national security activity'' access provision.

[73] *See* 31 U.S.C. 5336(c)(3)(J).

[74] *See* 31 U.S.C. 5336(c)(2), (5).

[75] *See* 31 U.S.C. 5336(c)(2)(A).

[76] Section 6003(1) of the AML Act defines the BSA as comprising Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), Chapter 2 of Title I of Public Law 91–508 (12 U.S.C. 1951 *et seq.*), and Subchapter II of Chapter 53 of Title 31, United States Code, which includes 31 U.S.C. 5336. Congress has authorized the Secretary to administer the BSA. The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations (Treasury Order 180–01 (Jan. 14, 2020)).

[77] *See generally* 31 U.S.C. 5336(c).

[78] *See generally* 31 U.S.C. 5336(h)(2), (3).

[79] *See* 31 U.S.C. 5336(c)(2)(B).

[80] 31 U.S.C. 5336(c)(2)(B). Under 5336(c)(2)(C), BOI that a reporting company consents to share with a financial institution ''shall'' be available to a Federal functional regulator to supervise

Continued

language affords FinCEN discretion to ensure that BOI is disclosed only to authorized recipients that are able to keep the information confidential and secure. FinCEN intends to foster a culture of responsibility around BOI that treats security and confidentiality as a paramount objective.

a. Federal Agencies Engaged in National Security, Intelligence, or Law Enforcement Activity

Section 6403 of the CTA authorizes FinCEN to disclose BOI upon receipt of a request, through appropriate protocols, from a Federal agency engaged in national security, intelligence, or law enforcement activity for use in furtherance of one of those activities.[81] Federal agency access is to be based upon the type of activity an agency is conducting rather than the identity of the agency or how it might be categorized. The key consideration is the scope of the types of activities described in the CTA for which the agency may seek BOI: national security activities, intelligence activities, and law enforcement activities.

The CTA does not specify what agency activities fall within those three categories, and FinCEN proposes to do so consistent with the text, structure, and purpose of the CTA. Proposed 31 CFR 1010.955(b)(1)(i) would define ''national security activity'' as any ''activity pertaining to the national defense or foreign relations of the United States, as well as activity to protect against threats to the security or economy of the United States.'' This approach draws, in large part, from 8 U.S.C. 1189(d)(2), which defines ''national security'' for purposes of designating foreign terrorist organizations (FTOs) that threaten U.S. national security. FinCEN believes this definition is appropriate for several reasons. First, the FTO statute covers a broad range of national security threats to the United States, including those with an economic dimension. That scope is consonant with the CTA's goal to combat national security threats that are financial in nature, such as money laundering, terrorist financing, counterfeiting, fraud, and foreign corruption.[82] Second, the FTO statute arises in a related context insofar as it involves efforts to hinder illicit actors' economic activities.

Proposed 31 CFR 1010.955(b)(1)(ii) would define ''intelligence activity'' based upon Executive Order 12333 of December 4, 1981, as amended.[83] Executive Order 12333 remains ''a foundational document for the United States' foreign intelligence efforts.'' [84] It establishes ''a framework that applies broadly to the government's collection, analysis, and use of foreign intelligence and counterintelligence—from human sources, by interception of communications, by cameras and other sensors on satellites and aerial systems, and through relationships with intelligence services of other governments.'' [85] FinCEN believes that relying on Executive Order 12333 would be consistent with existing agency understanding and would provide flexibility to accommodate Intelligence Community missions and activities.[86] Proposed 31 CFR 1010.955(b)(1)(ii) would therefore define intelligence activity to include ''all activities conducted by elements of the United States Intelligence Community that are authorized pursuant to Executive Order 12333, as amended, or any succeeding executive order.''

Finally, proposed 31 CFR 1010.955(b)(1)(iii) would define ''law enforcement activity'' to include ''investigative and enforcement activities relating to civil or criminal violations of law.'' Proposed 31 CFR 1010.955(b)(1)(iii) is intended broadly to cover the types of functions in which Federal agencies engage when they work to enforce the laws of the United States. FinCEN believes that it is consistent with the CTA to authorize Federal agencies to access BOI at all stages of the law enforcement process.

Additionally, the proposed rule would make clear that law enforcement activity can include both criminal *and* civil investigations and actions, such as actions to impose or enforce civil penalties, civil forfeiture actions, and civil enforcement through administrative proceedings. The CTA is concerned with combating all manner of illicit activity,[87] and many laws that prohibit such activity are enforced by Federal agencies in both civil and criminal actions. The CTA does not limit ''law enforcement activity'' to criminal investigations or actions. Moreover, FinCEN's clarification in the proposed rule would place Federal agencies on the same footing as State, local, and Tribal law enforcement agencies, for which the CTA authorizes use of BOI in a ''criminal or civil investigation.'' Nothing in the CTA suggests that Federal agencies should have more limited access to BOI than their State, local, and Tribal counterparts engaged in civil investigations, and FinCEN does not believe it would be appropriate to limit Federal agencies' access in this manner. The proposed rule would also facilitate law enforcement cooperation by providing access to BOI in both civil and criminal investigations, as both types of investigations often proceed in parallel.[88]

Among the Federal agencies with access to BOI for law enforcement purposes would be Federal functional regulators that investigate civil violations of law.[89] Although the CTA separately authorizes Federal functional regulators to access BOI for the purpose of supervising compliance with CDD requirements, this access does not preclude Federal functional regulators from accessing BOI when engaging in law enforcement activity.[90] The CTA specifically references ''securities fraud, financial fraud, and acts of foreign corruption'' as types of illicit activity that the statute is intended to help combat.[91] These are areas in which a significant amount of law enforcement activity is conducted by Federal functional regulators such as the Securities and Exchange Commission (SEC), which brings hundreds of civil enforcement actions, including administrative proceedings, each year against individuals and entities engaged in market manipulation, Ponzi schemes, offering fraud, insider trading, and other violations of the Federal securities laws.[92] Under the proposed rule, the SEC and other Federal functional regulators would be able to obtain BOI directly from the beneficial ownership IT system for use in furtherance of this critical law enforcement activity. The proposed rule would also place the SEC and other Federal functional regulators

compliance with customer due diligence requirements under applicable law.

[81] *See* 31 U.S.C. 5336(c)(2)(B)(i)(I).

[82] *See* CTA, Section 6402(3).

[83] Exec. Order No. 12333, 46 FR 59941 (Dec. 4, 1981) (''United States Intelligence Activities'').

[84] 5 Privacy and Civil Liberties Oversight Board, Executive Order 12333 (accessed Apr. 28, 2022), *https://documents.pclob.gov/prod/Documents/OversightReport/4f1d0d87-233b-4555-9b87-79089ad9845e/12333%20Public%20Capstone.pdf.*

[85] *Id.*

[86] By ''Intelligence Community,'' FinCEN means the agencies identified in paragraph 3.4(f) of Executive Order 12333.

[87] *See* CTA, Section 6402(3).

[88] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[89] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[90] The two provisions contemplate different processes depending on the purpose for which access is sought. Under Section 5336(c)(2)(B)(i)(I), FinCEN ''may'' disclose BOI upon request from a Federal agency engaged in law enforcement activity. In contrast, under 5336(c)(2)(C), BOI that a reporting company consents to share with a financial institution ''shall'' be available to a Federal functional regulator to supervise compliance with customer due diligence requirements pursuant to an agreement with the regulator.

[91] CTA, Section 6402(3).

[92] *See, e.g., https://www.sec.gov/news/press-release/2021-238.*

on equal footing with other Federal agencies that lack a regulatory or supervisory function, but that are engaged in civil and criminal law enforcement activity, like the U.S. Department of Justice (DOJ).

For all three types of activities—national security, intelligence, and law enforcement—FinCEN considered proposing more restrictive definitions involving exhaustive lists of activities. The bureau believes these approaches would risk being either under- or over-inclusive and could arbitrarily limit access to BOI for activities that the regulations may fail to specify. The CTA, among other things, was enacted to ''protect vital United States national security interests,'' ''protect interstate and foreign commerce,'' and ''better enable critical national security, intelligence, and law enforcement efforts to counter . . . illicit activity.'' [93] The statute targets a wide array of illicit actors who use opaque corporate structures to conceal their illicit activities. FinCEN believes the risk of unintentionally hindering a Federal agency's important national security, intelligence, or law enforcement activities supports the flexible approach the bureau has proposed. This approach will also have more flexibility to develop alongside the evolving threats facing the United States.

FinCEN invites comments on its proposed definitions of national security, intelligence, and law enforcement activities.

b. State, Local, and Tribal Law Enforcement Agencies

The CTA permits FinCEN to disclose BOI upon receipt of a request, through appropriate protocols, ''from a State, local, or Tribal law enforcement agency, if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation.'' [94]

Proposed 31 CFR 1010.955(b)(2) similarly would allow FinCEN to disclose BOI to a State,[95] local, or Tribal law enforcement agency ''if a court of competent jurisdiction has authorized the agency to seek the information in a criminal or civil investigation.'' FinCEN recognizes that State practices are likely to be varied with respect to how law enforcement agencies may be authorized by a court to seek information in connection with an investigation or prosecution.[96] FinCEN has not sought to define what it means for a court to ''authorize'' the law enforcement agency to seek BOI, but aims to ensure that BOI access at the State, local, and Tribal level is highly useful to law enforcement and has consistent application across jurisdictions.

At a minimum, the proposed rule would allow a State, local, or Tribal law enforcement agency (including a prosecutor) to access BOI where a court specifically authorizes access in the context of a criminal or civil proceeding, for example, through a court's issuance of an order or approval of a subpoena. Other circumstances, however, are less clear. For example, depending on State, local, or Tribal practices, grand jury subpoenas may or may not satisfy the CTA's court authorization requirement. Grand juries have traditionally played a central role in criminal discovery and may help determine whether sufficient evidence exists to indict an individual.[97] The State and local law enforcement agencies, prosecutors, and court officials with whom FinCEN consulted emphasized the importance of ensuring that BOI could be obtained in connection with grand jury investigations. FinCEN agrees that providing BOI at the investigative stage may further the CTA's statutory objectives by helping State, local, and Tribal authorities uncover links between criminals and entities they may be using to conceal illicit activities.[98] Ultimately, however, FinCEN determined that it needs more information about State, local, and tribal practices in order to determine whether they would involve court authorization, as required by the CTA. State practices can vary, and grand jury subpoenas may be issued by the grand jury in some jurisdictions or signed by a prosecutor seeking information to present to a grand jury in others. Neither courts nor grand juries always play a meaningful role in authorizing subpoenas,[99] and a majority of states no longer use grand juries to screen criminal cases.[100]

FinCEN requests comments on this subject. In particular, commenters should explain the mechanisms State, local, and Tribal authorities use to gather evidence in criminal and civil cases. With respect to these particular mechanisms, commenters should describe the extent to which court authorization is involved. More generally, commenters should also explain what role courts or court officers play in authorizing evidence-gathering activities, what existing practices involve court authorization, and the extent to which new court processes could be developed and integrated into existing practices to satisfy the CTA's authorization requirement. Commenters should also address the need for access to BOI at different stages of an investigation, as well as the privacy interests that may be implicated by such access.

Proposed 31 CFR 1010.955(b)(2) would clarify that the authorized recipient of BOI under this provision would be the State, local, or Tribal agency that makes a proper request for BOI consistent with the proposed rule. The proposed rule would also define ''law enforcement agency'' in a manner similar to the definition of ''law enforcement activity'' used to define the scope of access for Federal agencies engaged in law enforcement activity. This approach is intended to ensure consistency regardless of whether law enforcement activity occurs at the local, State, Tribal, or Federal level, including in circumstances involving cooperation among and across jurisdictions, such as through task forces.

[93] CTA, Section 6402(5)(B), (D).

[94] 31 U.S.C. 5336(c)(2)(B)(i)(II).

[95] FinCEN will interpret the term ''State'' consistent with the definition of that term in the final Beneficial Ownership Information Reporting Requirements rule at 87 FR 59498 (Sep. 30, 2022) (which defines the term ''State'' to mean ''any [S]tate of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.'')

[96] 31 U.S.C. 5336(c)(2)(B)(i)(II) authorizes FinCEN to disclose BOI to a State, local, or Tribal law enforcement agency in the context of ''a criminal or civil investigation.'' FinCEN believes this provision permits the agency to disclose of BOI to a State, local, or Tribal law enforcement agency, with the required court authorization, for use in a civil or criminal law enforcement action that follows the investigation. FinCEN believes this is a reasonable interpretation of the statutory language given that disclosure provisions for Federal agencies engaged in law enforcement, and foreign requests pertaining to an ''investigation or prosecution,'' under the CTA would cover the disclosure to those recipients in the context of a prosecution. *See* 31 U.S.C. 5336(c)(2)(B)(i)(I), (c)(2)(B)(ii)(I). FinCEN does not believes Congress intended to allow Federal and foreign law enforcement agencies to obtain BOI for use in prosecutions while prohibiting State, local, and Tribal law enforcement agencies doing so. A more restrictive interpretation would severely limit the utility of BOI for State, local, and Tribal law enforcement agencies and run counter to the purposes of the CTA. *See* CTA, Section 6402(8)(C) (directing FinCEN to create a database of BOI that is ''highly useful to national security, intelligence, and law enforcement agencies . . . '').

[97] *See generally* Sara Sun Beale et al., *Investigative Grand Jury and Indicting Grand Jury,* Grand Jury Law and Practice § 1:7 (2d ed. rev. Dec. 2021).

[98] *See* CTA, Section 6402(3), (4), (5)(D).

[99] *See* Sara Sun Beale et al., *Role of Prosecutor and Grand Jurors in Subpoenaing Evidence,* Grand Jury Law and Practice § 6:2 (2d ed. rev. Dec. 2021). For example, Massachusetts permits district attorneys to ''issue subpoenas under their hands for witnesses to appear and testify on behalf of the commonwealth.'' Mass. Gen. Laws Ann. ch. 277, § 68.

[100] *See id.*

Proposed 31 CFR 1010.955(b)(2) would clarify that ''a court of competent jurisdiction'' is any court with jurisdiction over the criminal or civil investigation for which a State, local, or Tribal law enforcement agency requests BOI. The proposed rule does not specify which officials qualify as officers of the court because courts have varying practices. FinCEN expects, however, that individuals who may exercise a court's authority and issue authorizations on its behalf would qualify. FinCEN invites comment on whether it should more specifically identify officers of the court for purposes of the rule, and if so, what the potential qualifying criteria might be.

FinCEN does not believe that individual attorneys acting alone would fall within the definition of ''court officer'' for purposes of this provision. Though lawyers are sometimes referred to as ''officers of the court'' to emphasize their professional obligations to the legal system, they are not all ''officers of the court'' in the sense of exercising the court's authority. FinCEN does not believe the CTA—which includes numerous provisions limiting who may access BOI—intended to empower any individual admitted to practice law to authorize the disclosure of BOI.

c. Foreign Requesters

The CTA provides that FinCEN may disclose BOI upon receipt of a request ''from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available.'' [101] Such a request from a Federal agency must be ''issued in response to a request for assistance in an investigation or prosecution by such foreign country,'' [102] and must ''require[e] compliance with the disclosure and use provisions of the treaty, agreement, or convention, publicly disclosing [sic] any beneficial ownership information received,'' [103] or limit BOI use ''for any purpose other than the authorized investigation or national security or intelligence activity.'' [104]

Proposed 31 CFR 1010.955(b)(3) clarifies that a request for BOI from a foreign requester would have to derive from a law enforcement investigation or prosecution, or from national security or intelligence activity, authorized under the foreign country's laws. This would permit foreign requesters to obtain BOI for, and use it in, the full range of activities contemplated by 31 U.S.C. 5336(c)(2)(B)(ii) (*i.e.,* law enforcement, national security, and intelligence activities), thereby giving effect to all of the language in that subparagraph. The proposed rule also resolves ambiguities arising from inconsistent statutory language. Specifically, one part of the CTA's foreign-access provision appears to require a request to flow from a foreign ''investigation or prosecution,'' [105] while another appears to allow a foreign requester to use BOI to further any ''authorized investigation or national security or intelligence activity.'' [106] FinCEN believes the proposed rule best resolves this discrepancy by clarifying that authorized national security and intelligence activities could be a basis for a BOI request, in addition to a law enforcement investigation or prosecution. FinCEN would view the scope of the phrase ''law enforcement investigation or prosecution'' similarly to how it interprets the term ''law enforcement activity'' under proposed 31 CFR 1010.955(b)(3): such activity can include both criminal and civil investigations and actions, including actions to impose civil penalties, civil forfeiture actions, and civil enforcement through administrative proceedings.

The proposed rule next makes clear that the relevant ''foreign central authority or foreign competent authority'' would be the agency identified in the international treaty, agreement, or convention under which a foreign request is made. FinCEN understands that ''foreign central authority'' and ''foreign competent authority'' are terms of art typically defined within the context of a particular agreement. This proposed regulatory clarification should therefore remove any ambiguity around the terms without unduly excluding appropriate foreign requesters from access to BOI.

Third, the proposed rule explains that, consistent with the CTA, foreign requests would need to fall into one of two categories in order for the foreign requester to receive BOI. The first category is requests made pursuant to an international treaty, agreement, or convention. The second category is official requests by a law enforcement, judicial, or prosecutorial authority of a trusted foreign country where there is no international treaty, agreement, or convention that governs.[107] The security and confidentiality requirements applicable to each of these two categories are different.

Under the proposed rule, an intermediary Federal agency responding to a foreign request under an international treaty, agreement, or convention would first need to ensure that the request is consistent with the requirements of the relevant treaty, agreement, or convention, and the requirements of proposed 31 CFR 1010.955(b)(3). FinCEN understands that an ''international treaty, agreement, or convention'' is a legally binding agreement governed by international law. FinCEN would appreciate views on whether there are other types of international arrangements under which the sharing of beneficial ownership information would be important to achieve the goals of the CTA (such as information sharing arrangements with foreign law enforcement agencies that do not have legal force) and whether there are means to do so consistent with the CTA. The intermediary Federal agency would provide basic information to FinCEN about who is requesting the information and the treaty, agreement, or convention under which the request is being made. The intermediary Federal agency would then search for and retrieve the requested BOI from the system and respond to the request in a manner consistent with the treaty, agreement, or convention. The intermediary Federal agency would be subject to certain recordkeeping requirements to ensure that FinCEN is able to perform appropriate audit and oversight functions in accordance with an MOU to be agreed between the intermediary Federal agency and FinCEN. The intermediary Federal agency would also be subject to the security and confidentiality protocols applicable to other domestic agencies that receive and handle BOI at proposed 31 CFR 1010.955(d)(1).

Where a request for BOI includes a request that the information be authenticated for use in a legal proceeding in the foreign country making the request, FinCEN may establish a process for providing such authentication via MOU with the

[101] 31 U.S.C. 5336(c)(2)(B)(ii).

[102] 31 U.S.C. 5336(c)(2)(B)(ii)(I).

[103] 31 U.S.C. 5336(c)(2)(B)(ii)(II)(aa).

[104] 31 U.S.C. 5336(c)(2)(B)(ii)(II)(bb).

[105] 31 U.S.C. 5336(c)(2)(B)(ii)(I).

[106] 31 U.S.C. 5336(c)(2)(B)(ii)(II)(bb).

[107] The regulatory text here uses ''judicial or prosecutorial authority'' instead of the earlier ''judge or prosecutor'' to mirror an identical language shift in the corresponding statutory provision. *See* 31 U.S.C. 5336(c)(2)(B)(ii). FinCEN does not view this difference as significant or having practical effect.

relevant intermediary Federal agency. Such process may include an arrangement where FinCEN searches the beneficial ownership IT system and provides the information and related authentication to the intermediary Federal agency consistent with the terms of the relevant MOU.

With respect to an official request by a law enforcement, judicial, or prosecutorial authority of a trusted foreign country where no international treaty, agreement, or convention applies, FinCEN would establish a mechanism to address such requests either on a case-by-case basis or pursuant to alternative arrangements with intermediary Federal agencies where those intermediary Federal agencies have ongoing relationships with the foreign requester. The CTA does not provide criteria for determining whether a particular foreign country is ''trusted,'' but rather, provides FinCEN with considerable discretion to make this determination.

FinCEN considered identifying particular countries or groups of countries as ''trusted'' for the purposes of receiving BOI. Ultimately, however, FinCEN determined that such a restrictive approach could arbitrarily exclude foreign requesters with whom sharing BOI might be appropriate in some cases but not others. The United States participates in many formal and informal international relationships through which data are sometimes shared. FinCEN does not believe any of these relationships, or any combination of them, sets appropriate potential boundaries for BOI disclosure given the purposes of the CTA. The bureau, in consultation with relevant U.S. government agencies, will therefore look to U.S. interests and priorities in determining whether to disclose BOI to foreign requesters when no international treaty, agreement, or convention applies. In making these determinations, FinCEN will also consider the ability of a foreign requester to maintain the security and confidentiality of requested BOI. Once FinCEN makes the determination to disclose BOI to a foreign requester, the intermediary Federal agency would be permitted to retrieve and disseminate BOI to the foreign requester, subject to applicable security and confidentiality protocols.

FinCEN considered an alternative structure under which intermediary Federal agencies would relay foreign requester requests under an international treaty, agreement, or convention to FinCEN, which would then assess the requests, retrieve requested BOI, and transmit it either directly to the requester or indirectly via the intermediary Federal agency for subsequent dissemination to the requester. While neither of these approaches presents the security risks associated with the other two potential approaches FinCEN rejected, both are likely to be much less efficient. For example, intermediary Federal agencies are likely to have ongoing relationships with foreign requesters, including established points of contact. They are also likely more familiar than FinCEN with existing treaty obligations and information exchange channels and processes. Finally, FinCEN believes its proposed approach aligns best with the text of the CTA, which assumes Federal agencies will serve as the intermediary on behalf of foreign requesters.[108] FinCEN invites comment on this proposal and on any other alternatives.

d. FIs Subject to CDD Requirements

The CTA authorizes FinCEN to disclose BOI upon receipt of a request ''made by a[n] [FI] subject to customer due diligence requirements, with the consent of the reporting company, to facilitate the compliance of the [FI] with customer due diligence requirements under applicable law.'' [109] This statutory language leaves unspecified both the mechanism by which consent should be registered and the meaning of the term ''customer due diligence requirements under applicable law.''

Proposed 31 CFR 1010.955(b)(4) would address both issues. Under the proposed rule, an FI would be responsible for obtaining a reporting company's consent. This reflects FinCEN's assessment that FIs are best positioned to obtain and manage consent through existing processes and by virtue of having direct contact with the reporting company as a customer. Additionally, the proposed rule would define ''customer due diligence requirements under applicable law'' to mean FinCEN's customer due diligence (CDD) regulations at 31 CFR 1010.230, which require covered FIs to identify and verify beneficial owners of legal entity customers. FinCEN considered interpreting the phrase ''customer due diligence requirements under applicable law'' more broadly to cover a range of activities beyond compliance with legal obligations in FinCEN's regulations to identify and verify beneficial owners of legal entity customers. FinCEN's separate Customer Identification Program regulations, for example, could be considered customer due diligence requirements.[110] FinCEN decided not to propose this broader approach, however. The bureau believes a more tailored approach will be easier to administer, reduce uncertainty about what FIs may access BOI under this provision, and better protect the security and confidentiality of sensitive BOI by limiting the circumstances under which FIs may access BOI.[111] That said, FinCEN solicits comments on whether a broader reading of the phrase ''customer due diligence requirements'' is warranted under the framework of the CTA, and, if so, how customer due diligence requirements should be defined in order to provide regulatory clarity, protect the security and confidentiality of BOI, and minimize the risk of abuse.

FinCEN also considered including State, local, and Tribal customer due diligence requirements comparable in substance to FinCEN's own CDD regulations in the proposed definition of ''customer due diligence requirements under applicable law.'' However, the bureau has not identified any such requirements. FinCEN invites comments identifying any specific State, local, or Tribal customer due diligence requirements that are substantially similar to the bureau's CDD regulations—*i.e.,* requirements related to FIs in a State, local, or Tribal jurisdiction identifying and verifying beneficial owners of legal entity customers—for potential inclusion in the proposed definition.

e. Federal Functional Regulators or Other Appropriate Regulatory Agencies

The CTA authorizes FinCEN to disclose BOI to ''Federal functional regulator[s] and other appropriate regulatory agenc[ies] consistent with'' certain requirements.[112] This access is subject to three statutory conditions. First, a ''Federal functional regulator or other appropriate regulatory agency'' must be ''authorized by law to assess, supervise, enforce, or otherwise determine the compliance of [a particular FI] with'' its CDD

[108] *See* 31 U.S.C. 5336(c)(2)(B)(ii) (providing that ''FinCEN may disclose [BOI] only upon receipt of . . . *a request from a Federal agency on behalf of*'' a qualified foreign requester (emphasis added)).

[109] *See* 31 U.S.C. 5336(c)(2)(B)(iii).

[110] *See, e.g.,* 31 CFR 1020.220 (requiring banks to implement a Customer Identification Program).

[111] The CTA requires FinCEN to revise the 2016 CDD Rule within a year of the effective date of the final Reporting Rule. *See* CTA, Section 6403(d)(1). One purpose of this revision is to account for FIs' access to BOI, which the Sense of Congress portion of the CTA states may be used to facilitate the FI's compliance ''with anti-money laundering, countering the financing of terrorism, and *customer due diligence requirements under applicable law.*'' *Id.* 6403(d)(1)(B) (emphasis added). That the CTA identifies ''[CDD] requirements under applicable law'' as distinct from broader AML/CFT requirements suggests that Congress intended that phrase not to include other AML/CFT obligations.

[112] *See* 31 U.S.C. 5336(c)(2)(B)(iv).

requirements.[113] Second, such regulator may use the BOI only ''for the purpose of conducting [an] assessment, supervision, or authorized investigation or activity'' related to the CDD requirements the regulator is responsible for overseeing.[114] Finally, the regulator must ''[enter] into an agreement with the Secretary providing for appropriate protocols governing the safekeeping of the information.'' [115]

FinCEN's proposed rule at 31 CFR 1010.955(b)(4) tracks these conditions. In order to obtain BOI from FinCEN, a regulator would need to be authorized by law to assess, supervise, enforce, or otherwise determine a FI's compliance with its CDD requirements, and it would have to enter into an agreement with FinCEN that describes appropriate protocols to obtain BOI. FinCEN would only disclose to the regulator the BOI that a relevant FI has already received. This is in keeping with the CTA requirement that BOI disclosed to an FI under 31 U.S.C. 5336(c)(2)(B)(iii) ''*also* be available to [regulators]'' that meet specified criteria.[116]

FinCEN does not believe this CDD-specific provision is the exclusive means through which a financial regulator can access BOI from the beneficial ownership IT system. The access provisions for Federal agencies engaged in national security, intelligence, or law enforcement activities, and for State, local, and Tribal law enforcement agencies, focus on activity categories, not agency types. To the extent a Federal functional regulator engages in civil law enforcement activities, those activities would be covered by the law-enforcement access provisions. For example, the SEC—which supervises broker-dealers and other securities market participants, including for compliance with the CDD regulations—also investigates and litigates civil violations of Federal securities laws. Consequently, consistent with the CTA, the SEC would be able to broadly search the beneficial ownership IT system for BOI for use in furtherance of its law enforcement activity. Separately, the SEC would also be able to receive BOI subject to the constraints at proposed 31 CFR 1010.955(b)(4) for use in supervising broker-dealers and other regulated entities for CDD compliance.

Regarding who qualifies for access under this proposed provision, the CTA refers to Federal functional regulators and ''other appropriate regulatory agencies.'' The AML Act defines ''Federal functional regulator'' to include six financial regulatory authorities [117] as well as ''any Federal regulator that examines a financial institution for compliance with the Bank Secrecy Act.'' [118] The proposed rule would adopt FinCEN's existing regulatory definition, which the bureau believes will minimize the risk of confusion. FinCEN's regulations already define the term ''Federal functional regulator'' to include the six agencies identified in the AML Act's definition as well as the Commodity Futures Trading Commission (CFTC).[119] Because the CFTC has been delegated authority to examine certain FIs for compliance with the BSA,[120] it also falls within the AML Act's definition. FinCEN does not propose to define ''other appropriate regulatory agencies'' at this time. FinCEN believes the requirement in 31 U.S.C. 5336(c)(2)(C)(i) that such an agency be ''authorized by law to assess, supervise, enforce, or otherwise determine the compliance of such FIs with customer due diligence requirements under applicable law'' sufficiently defines the category (*e.g.,* it could include State banking regulators). However, FinCEN invites comment on this proposed approach.

FinCEN considered whether financial self-regulatory organizations that are registered with or designated by a Federal functional regulator pursuant to Federal statute [121] (''qualifying SROs'')—like the Financial Industry Regulatory Authority (FINRA) or the National Futures Association (NFA)—qualify as ''other appropriate regulatory agencies.'' These organizations though authorized by Federal law, are not traditionally understood to be agencies of the government,[122] but they do exercise self-regulatory authority within the framework of Federal law and work under the supervision of Federal functional regulators to assess, supervise, and enforce FI compliance with, among other things, CDD requirements.[123] Qualifying SROs are subject to extensive oversight by Federal agencies.[124]

Although it may be unclear whether SROs are ''regulatory agencies'' to which direct access to BOI shall be provided, FinCEN believes that their unique position,[125] and the critical role they play in overseeing participants in the financial services sector, justify providing SROs with a limited and derivative form of access. The CTA provides FinCEN broad discretion to specify the conditions under which authorized recipients of BOI may re-disclose that information to others. Therefore, the proposed rule would permit FIs to re-disclose to qualifying SROs the BOI they have obtained from FinCEN for use in complying with CDD requirements under applicable law. A qualifying SRO would need to satisfy the same three conditions applicable to Federal functional regulators and other appropriate regulatory agencies, and a qualifying SRO that receives BOI from an FI it supervises may in turn use the information for the limited purpose of examining compliance with those same CDD obligations. Without this level of access, these organizations would not be able to effectively evaluate an FI's CDD compliance. FinCEN invites comments on this proposed approach.

f. Department of the Treasury Access

The CTA includes separate, Treasury-specific provisions for accessing BOI. One of those provisions makes BOI ''accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or

[113] 31 U.S.C. 5336(c)(2)(C)(i).

[114] 31 U.S.C. 5336(c)(2)(C)(ii).

[115] 31 U.S.C. 5336(c)(2)(C)(iii).

[116] 31 U.S.C. 5336(c)(2)(C) (emphasis added).

[117] The six Federal functional regulators that supervise financial institutions with CDD obligations are the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the SEC, and the Commodity Futures Trading Commission (CFTC).

[118] AML Act, Section 6003(3).

[119] 31 CFR 1010.100(r).

[120] *See* 31 CFR 1010.810(b)(9).

[121] *See, e.g.,* 7 U.S.C. 21; 15 U.S.C. 78o–3.

[122] *See, e.g., In re William H. Murphy & Co.,* SEC Release No. 34–90759, 2020 WL 7496228, *17 (Dec. 21, 2020) (explaining that FINRA ''is not a part of the government or otherwise a [S]tate actor'' to which constitutional requirements apply).

[123] *See, e.g.,* FINRA Rule 3310(f); NFA Compliance Rule 2–9(c)(5).

[124] *See, e.g., Scottsdale Cap. Advisors Corp.* v. *FINRA,* 844 F.3d 414, 418 (4th Cir. 2016) (''Before any FINRA rule goes into effect, the SEC must approve the rule and specifically determine that it is consistent with the purposes of the Exchange Act. The SEC may also amend any existing rule to ensure it comports with the purposes and requirements of the Exchange Act.'' (citations omitted); *Birkelbach* v. *SEC,* 751 F.3d 472, 475 (7th Cir. 2014) (''A [FINRA] member can appeal the disposition of a FINRA disciplinary proceeding to the SEC, which performs a *de novo* review of the record and issues a decision of its own.'').

[125] *See NASD* v. *SEC,* 431 F.3d 803, 804 (D.C. Cir. 2005) (explaining that FINRA's predecessor's ''authority to discipline its members for violations of Federal securities law is entirely derivative. The authority it exercises ultimately belongs to the SEC''); *see also Turbeville* v. *FINRA,* 874 F.3d 1268, 1276 (11th Cir. 2017) (''When exercising [their regulatory and enforcement] functions, SROs act under color of [F]ederal law as deputies of the [F]ederal [G]overnment.''); *In re Series 7 Broker Qualification Exam Scoring Litig.,* 548 F.3d 110, 114 (D.C. Cir. 2008) (''When an SRO acts under the aegis of the Exchange Act's delegated authority, it is absolutely immune from suit for the improper performance of regulatory, adjudicatory, or prosecutorial duties delegated by the SEC.'').

disclosure subject to procedures and safeguards prescribed by the Secretary of the Treasury.'' [126] The other grants officers and employees of Treasury ''access to [BOI] for tax administration purposes.'' [127]

Proposed 31 CFR 1010.955(b)(5) tracks these authorizations and would provide that Treasury officers and employees may receive BOI where their official duties require such access, or for tax administration, consistent with procedures and safeguards established by the Secretary. The proposed rule clarifies the term ''tax administration purposes'' by adding a reference to the definition of ''tax administration'' in the Internal Revenue Code.[128] FinCEN believes adopting this definition is appropriate because Treasury officers and employees who administer tax laws are already familiar with it and have a clear understanding of the activity it covers. Furthermore, FinCEN believes the definition is broad enough to avoid inadvertently excluding a tax administration-related activity that would be undermined by lack of access to BOI. FinCEN welcomes comments on the proposed scope of the term ''tax administration.''

FinCEN envisions Treasury components using BOI for appropriate purposes, such as tax administration, enforcement actions, intelligence and analytical purposes, use in sanctions designation investigations, and identifying property blocked pursuant to sanctions, as well as for administration of the BOI framework, such as for audits, enforcement, and oversight. FinCEN will work with other Treasury components to establish internal policies and procedures governing Treasury officer and employee access to BOI. These policies and procedures will ensure that FinCEN discloses BOI only to Treasury officers or employees with official duties requiring BOI access, or for tax administration. FinCEN anticipates that the security and confidentiality protocols in those policies and procedures will include elements of the protocols described in proposed 31 CFR 1010.955(d)(1) as applicable to Treasury activities and organization. Officers and employees identified as having duties potentially requiring access to BOI would receive training on, among other topics, determining when their duties require access to BOI, what they can do with the information, and how to handle and safeguard it. Their activities would also be subject to the same audit.

iv. Use of Information

a. Use of Information by Authorized Recipients

The CTA includes numerous provisions limiting how BOI may be used. Federal agencies engaged in national security, intelligence, or law enforcement activity may use BOI only ''in furtherance of such activity'' [129] and must provide written certifications to FinCEN that ''at a minimum, se[t] forth the specific reason or reasons why [BOI] is relevant to'' an authorized activity.[130] State, local, and Tribal law enforcement agencies must obtain authorization from a court of competent jurisdiction to obtain BOI in criminal or civil investigations.[131] Federal agencies requesting BOI on behalf of foreign law enforcement agencies, judges, or prosecutors may do so only pursuant to an international treaty, agreement, or convention or pursuant to an official request from a trusted foreign country for assistance in an official investigation, prosecution, or authorized national security or intelligence activity.[132] FIs must have a reporting company's consent to request its BOI from FinCEN as part of CDD compliance activities,[133] and a financial regulator assessing an FI's compliance with CDD requirements may request and receive only the BOI that the FI previously requested when conducting such an assessment.[134] Each of these requirements reflects a general expectation that authorized recipients not obtain BOI for one authorized activity and then use it for another unrelated purpose. The statute also requires authorized recipients of BOI to narrowly tailor their requests as much as possible. For example, the CTA instructs the Secretary to require requesting agencies ''to limit, to the greatest extent practicable, the scope of information sought, consistent with the purposes for seeking BOI.'' [135]

Proposed 31 CFR 1010.955(c)(1) would implement these provisions by clarifying that, unless otherwise authorized by FinCEN, any person who receives information disclosed by FinCEN under proposed 31 CFR 1010.955(b) would be authorized to use it only for the particular purpose or activity for which it was disclosed. Thus, for example, a Federal agency employee, contractor, or agent who obtains BOI from FinCEN for use in furtherance of national security activity would be authorized to use the BOI only for the particular national security activity for which the request was made. FinCEN believes this limitation is necessary to ensure that BOI is used only for proper purposes and only to the extent necessary.

Proposed 31 CFR 1010.955(c)(1) further clarifies that a Federal agency receiving BOI pursuant to the foreign access provision at proposed 31 CFR 1010.955(b)(3), *i.e.,* an intermediate Federal agency, can use the BOI only to facilitate a response to the relevant foreign requester. This limitation ensures that Federal intermediary agencies handling BOI in this context would do so only for the permissible use of transmitting it to a foreign requester.

Authorized recipients that fail to follow applicable use limitations would risk losing the ability to receive BOI.

b. Limitations on Re-Disclosure of Information by Authorized Recipients

Although the CTA expressly limits the circumstances under which FinCEN may initially disclose BOI to other agencies or FIs, the CTA does not specify the circumstances under which an authorized recipient of BOI may re-disclose the BOI to another person or organization. The CTA instead prohibits re-disclosure except as authorized in the protocols promulgated by regulation, thereby leaving it to FinCEN to establish the appropriate re-disclosure rules in the protocols.[136] The proposed rule would permit the disclosure by authorized recipients of BOI in limited circumstances that would further the core underlying national security, intelligence, and law enforcement objectives of the CTA while at the same time ensuring that BOI is disclosed only where appropriate for those purposes. Generally, authorized re-disclosures would be subject to protocols designed, as with those applicable to initial disclosures of BOI from the beneficial ownership IT system, to protect the security and confidentiality of BOI.

First, proposed 31 CFR 1010.955(c)(2)(i) would authorize a Federal, State, local or Tribal agency that receives BOI from FinCEN to re-disclose it to others within the same organization, if the re-disclosure is consistent with the security and confidentiality requirements of 31 CFR

[126] 31 U.S.C. 5336(c)(5)(A).

[127] *See* 31 U.S.C. 5336(c)(5)(B).

[128] 26 U.S.C. 6103(b)(4).

[129] 31 U.S.C. 5336(c)(2)(B)(i)(I).

[130] 31 U.S.C. 5336(c)(3)(E)(ii).

[131] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[132] *See* 31 U.S.C. 5336(c)(2)(B)(ii).

[133] *See* 31 U.S.C. 5336(c)(2)(B)(iii).

[134] *See* 31 U.S.C. 5336(c)(2)(B)(iv) and 31 U.S.C. 5336(c)(2)(C).

[135] 31 U.S.C. 5336(c)(3)(F).

[136] 31 U.S.C. 5336(c)(2)(A). The CTA appears to presume that some re-disclosure will be permitted when it requires requesting agencies to keep records related to their requests, including of ''any disclosure of beneficial information made by . . . the agency.'' 31 U.S.C. 5336(c)(3)(H).

1010.955(d)(1)(i)(F), (d)(2), or applicable internal Treasury policies, procedures, orders or directives; and is in furtherance of the same purpose for which the BOI was requested. Without this authorization, the statutory prohibitions at 31 U.S.C. 5336(c)(2)(A) and corresponding regulatory prohibitions at proposed 31 CFR 1010.955(a) could be viewed to constrain officers, employees, contractors, and agents within the same authorized requesting agency from efficiently sharing BOI in a manner consistent with the objectives of the CTA. FinCEN recognizes that authorized individuals that receive BOI within authorized recipient organizations may need limited flexibility to disclose BOI to others in their organization to the extent those other individuals need the BOI to further the original purpose for which the BOI request was made to FinCEN. An employee working on a law enforcement case within a Federal agency, for example, might need to disclose BOI obtained from FinCEN to another employee working on the same law enforcement matter.

FinCEN envisions that there are circumstances in which FI employees may have a similar need to share BOI with counterparts, *e.g.,* if they are working together to onboard a new customer. Proposed 31 CFR 1010.955(c)(2)(ii) therefore extends a comparable authority to FIs. One difference should be noted: FinCEN proposes to expressly limit FIs to redisclosing BOI to other officers, employees, contractors, and agents of the FI *physically present in the United States.* FinCEN believes this limitation is necessary to provide appropriate protection to BOI against disclosures to foreign governments outside of the framework established by the CTA. The CTA confirms, among other things, foreign government agencies should only obtain the BOI of reporting companies for limited purposes and through intermediary Federal agencies. Allowing U.S. FIs to re-disclose BOI outside of the United States creates the potential for a foreign government agency to obtain such BOI by serving a judicial or administrative warrant, summons, or subpoena directly on the foreign entity or location where the BOI is stored. Prohibiting FIs from moving BOI outside the United States reinforces and complements the requirements associated with the requirements through which foreign governments can obtain BOI under the proposed rule.

Next, proposed 31 CFR 1010.955(c)(2)(iii) would allow an FI, subject to certain conditions, to share BOI that it obtains from FinCEN for use in fulfilling its CDD obligations with (1) the FI's Federal functional regulator, (2) a qualifying SRO, or (3) any other appropriate regulatory agency. The CTA specifies that BOI provided to an FI ''shall also be available'' to a Federal functional regulator or other appropriate regulatory agency, under certain conditions, and proposed 31 CFR 1010.955(b)(4)(ii) would authorize the agency to obtain the BOI directly from FinCEN. Proposed 31 CFR 1010.955(c)(2)(ii) would complement that authorization by also allowing the agency to obtain the BOI from the FI. FinCEN believes this may be a more efficient means of access for agencies conducting assessments of an FI's compliance with CDD requirements under applicable law. Such re-disclosure would more easily provide regulators with a complete picture of how FIs are obtaining and using BOI for CDD compliance, thereby supporting the aims and purposes of the CTA, and would also help them detect compliance failures. Proposed 31 CFR 1010.955(c)(2)(ii) would also authorize re-disclosure to qualifying SROs. SROs perform important supervisory and regulatory functions under the oversight of Federal functional regulators to assess FI compliance with CDD requirements among their member firms. Given that SROs can perform these supervisory functions, FinCEN believes that access to BOI would be as helpful to qualifying SROs as to Federal functional regulators in ensuring a complete and accurate assessment of CDD compliance. Qualifying SROs, like any supervisory agency, would need to enter into an MOU with FinCEN, and agree to implement security and confidentiality protocols, including audit requirements, prior to receiving BOI from their regulated institutions.

Fourth, proposed 31 CFR 1010.955(c)(2)(iv) would allow a Federal functional regulator to disclose information to a qualifying SRO. Consistent with the purposes of the CTA, the proposed rule makes clear that BOI may be accessed, used, and re-disclosed for examinations for compliance with CDD requirements under applicable law.

Fifth, proposed 31 CFR 1010.955(c)(2)(v), consistent with the CTA, would allow an intermediary Federal agency to disclose BOI to the foreign person for whom the intermediary Federal agency requested the information in accordance with proposed 31 CFR 1010.955(b)(3). Without an express regulatory provision to effectuate the CTA's provisions relating to BOI access by a foreign law enforcement agency, prosecutor, or judge, questions could arise as to whether the intermediary Federal agency would be able to then share with a foreign requester the information obtained on its behalf.

Sixth, proposed 31 CFR 1010.955(c)(2)(vi) would allow a Federal, State, local, or Tribal law enforcement agency to disclose BOI to a court of competent jurisdiction or parties to a civil or criminal proceeding. This authorization would only apply to civil or criminal proceedings involving U.S. Federal, State, local, and Tribal laws. FinCEN envisions agencies relying on this provision when, for example, a prosecutor must provide a criminal defendant with BOI in discovery or use it as evidence in a court proceeding or trial.[137]

FinCEN considered requiring Federal, State, local, or Tribal law enforcement agencies to request permission to disclose BOI on a case-by-case basis. The bureau decided against that approach for the sake of efficiency and the administration of justice. FinCEN would be unlikely to oppose disclosing BOI for use by law enforcement agencies in a civil or criminal proceeding; the CTA explicitly contemplates using BOI in this scenario.[138] Additionally, manual review of individual disclosure requests in this context could also delay the relevant legal proceeding. FinCEN invites comment on this proposed approach.

Seventh, proposed 31 CFR 1010.955(c)(2)(vii) would allow a Federal agency that receives BOI from FinCEN pursuant to proposed 31 CFR 1010.955(b)(1), (b)(4)(ii), or (b)(5) to disclose that BOI to DOJ in a case referral. While DOJ would also be able to request the relevant BOI from FinCEN in furtherance of law enforcement activity, allowing the requesting Federal agency to share that BOI with DOJ would allow for more efficient investigation and law enforcement activity. The proposed provision would also make clear that the requesting agency can disclose BOI to DOJ for use in litigation related to the activity for which the BOI is requested. Such authorization will allow DOJ to have a complete record—including BOI—when fulfilling its responsibilities to represent the requesting agency in litigation.

Eighth, proposed 31 CFR 1010.955(c)(2)(viii) would allow a foreign requester that receives BOI pursuant to a request made under an international treaty, agreement, or convention to disclose and use that BOI in accordance with the requirements of

[137] *See* CTA, Section 6402(5)(D).

[138] *See id.*

the relevant agreement. This approach harmonizes 31 U.S.C. 5336(c)(2)(B)(ii)(II)(aa) [139] with the process described in the introductory paragraph in 31 U.S.C. 5336(c)(2)(B)(ii), which establishes a preference for disclosing BOI to foreign requesters under international agreements. For foreign requests that are not governed by an international treaty, agreement, or convention, FinCEN would review re-disclosure requests from foreign requesters either on a case-by-case basis or pursuant to alternative arrangements with intermediary Federal agencies where those intermediary Federal agencies have ongoing relationships with the particular foreign requesters.

Finally, proposed 31 CFR 1010.955(c)(2)(ix) would make clear that re-disclosing BOI obtained under 31 CFR 1010.955(b) in any circumstances other than those defined in proposed 31 CFR 1010.955(c)(2) would be prohibited unless FinCEN provided prior authorization for the re-disclosure in writing, or such re-disclosure were made in accordance with applicable protocols, guidance, and regulations as FinCEN may issue. This provision would give FinCEN the ability to authorize, either on a case-by-case basis or categorically through written protocols, guidance, or regulations, the re-disclosure of BOI in limited cases to further the purposes of the CTA.[140] FinCEN welcomes comments on any of the proposed provisions permitting the re-disclosure of BOI for activities consistent with the purposes of the CTA.

Proposed 31 CFR 1010.955(c)(2)(ix) would also enable FinCEN to authorize the re-disclosure of BOI in appropriate circumstances. For example, FinCEN envisions instances when it might be necessary for one law enforcement agency to disclose BOI obtained from FinCEN to another agency for an authorized purpose. The ability to share BOI in such circumstances would ensure that authorized recipients are able to further the goals of the CTA of protecting U.S. national security and combatting illicit activity, including corruption, money laundering, tax fraud, and terrorist financing, while at the same time, ensuring that appropriate security and confidentiality are maintained in a way that ensures appropriate audit and oversight.

For example, a Federal agency to which FinCEN disclosed BOI in furtherance of that agency's national security activities may identify a possible criminal violation and need to provide the information to a Federal law enforcement agency for investigation, and prosecution, if appropriate. Federal agencies that are a part of a task force to target specific criminal activity, such as drug trafficking or corruption, may also need to share BOI within the task force. In such cases, it would be more efficient for the agencies involved to share BOI directly among themselves instead of each agency having to separately request the same BOI from FinCEN.

The requirements that an agency would need to satisfy to obtain BOI through re-disclosure are the same as those an agency would need to satisfy to obtain BOI from FinCEN directly under this proposed rule. FinCEN also envisions including re-disclosure limitations in the BOI disclosure MOUs it enters into with recipient agencies. These provisions would make clear that it would be the responsibility of a recipient agency to take necessary steps to ensure that BOI is made available for purposes specifically authorized by the CTA, and not for the general purposes of the agency. Such agency-to-agency agreements can be effective at creating and enforcing standards on use, reuse, and redistribution of sensitive information. However, FinCEN solicits comments from the public as to whether other mechanisms, such as the imposition of redistribution standards by regulation, mandatory redistribution logs, regular audit requirements, or other techniques, may be more appropriate in this context.

v. Security and Confidentiality Requirements

The CTA directs the Secretary to establish by regulation protocols to protect the security and confidentiality of any BOI provided directly by FinCEN.[141] FinCEN views safeguarding BOI to be a top priority. The security and confidentiality of BOI would be protected through several protocols to prevent unauthorized disclosure and to ensure that BOI is used solely for the purposes described in the CTA. These include high standard security protocols in the implementation of the beneficial ownership IT system, robust MOUs that will impose security requirements on agencies that have access to BOI, such as current background checks on personnel accessing the information and controls to ensure appropriate use, regular training, and robust audit and oversight at the agency level and by FinCEN. In addition, FinCEN is committed to regularly reviewing protocols and information security practices to ensure they protect BOI from unauthorized use or disclosure.

While the CTA enumerates specific requirements applicable to ''requesting agencies,'' FinCEN believes it is necessary and appropriate to impose comparable requirements on FIs and foreign requesters, taking into account considerations unique to those recipient categories.[142] Clear expectations for all recipients and comparable data management requirements across different categories of authorized recipients will facilitate high standard information security and confidentiality practices and will contribute to more effective audits and oversight. This subsection discusses requirements applicable to both ''requesting agencies'' and other authorized requesters.

a. Security and Confidentiality Requirements for Domestic Agencies

The CTA prescribes with specificity a number of requirements that the Secretary must impose on requesting agencies and their heads. These requirements affirm the importance of the security and confidentiality protocols and the need for a high degree of accountability for the protection of BOI.

Specifically, the statute provides that the Secretary shall require requesting agencies to (1) ''establish and maintain, to the satisfaction of the Secretary, a secure system in which [BOI] provided directly by the Secretary shall be stored;'' [143] (2) ''furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, that describes the procedures established and utilized by such agency to ensure the confidentiality of [BOI] provided directly by the Secretary;'' [144] (3) ''limit, to the greatest extent practicable, the scope of information sought, consistent with the purposes for seeking [BOI];'' [145] and (4) ''establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to an auditable trail of each request for [BOI] submitted to the Secretary by the agency, including the reason for the request, the name of the individual who made the request, the date of the

[139] Requiring requests for BOI from foreign requesters to ''[comply] with the disclosure and use provisions of the treaty, agreement, or convention, publicly disclosing [sic] any beneficial ownership information received . . . .''

[140] For example, FinCEN could authorize the supervisory component of a Federal functional regulator that identifies a CDD-related deficiency at an FI to share BOI with its enforcement component as part of a referral in which the BOI would be used in furtherance of law enforcement activity.

[141] 31 U.S.C. 5336(c)(3)(A).

[142] 31 U.S.C. 5336(c)(3)(K).

[143] 31 U.S.C. 5336(c)(3)(C).

[144] 31 U.S.C. 5336(c)(3)(D).

[145] 31 U.S.C. 5336(c)(3)(F).

request, any disclosure of [BOI] made by or to the agency, and any other information the Secretary of the Treasury determines is appropriate.'' [146]

The CTA also instructs the Secretary to establish by regulation protocols: (1) ''requir[ing] the head of any requesting agency, on a non-delegable basis, to approve the standards and procedures utilized by the requesting agency and certify to the Secretary semi-annually that such standards and procedures are in compliance with the requirements of [31 U.S.C. 5336(c)(3)];'' [147] (2) ''requir[ing] a written certification for each authorized investigation or other activity [giving rise to an authorized BOI disclosure] from the head of [a Federal agency acting in furtherance of national security, intelligence, or law enforcement activity, or a State, local, or Tribal law enforcement agency], or their designees, that (a) states that applicable requirements have been met, in such form and manner as the Secretary may prescribe; and (b) at a minimum, sets forth the specific reason or reasons why the [BOI] is relevant to [the] authorized investigation or other activity . . .''; and (3) ''restrict[ing], to the satisfaction of the Secretary, access to [BOI] to whom disclosure may be made under the [CTA disclosure provisions] to only users at the requesting agency (a) who are directly engaged in the authorized investigation [for which BOI disclosure is authorized]; (b) whose duties or responsibilities require such access; (c) who have undergone appropriate training, or use staff to access the database who have undergone appropriate training; (d) who use appropriate identity verification mechanisms to obtain access to the information; and (e) who are authorized by agreement with the Secretary to access the information.'' [148]

Finally, the CTA instructs the Secretary to require requesting agencies receiving BOI from FinCEN to ''conduct an annual audit to verify that the [BOI] received from the Secretary has been accessed and used appropriately, and in a manner consistent with this paragraph and provide the results of that audit to the Secretary upon request.'' [149] The statute imposes a corresponding requirement on the Secretary to ''conduct an annual audit of the adherence of the agencies to the protocols established under [31 U.S.C. 5336(c)(3)] to ensure that agencies are requesting and using [BOI] appropriately.'' [150]

The proposed regulation would organize these requirements into two subsections. The first, proposed 31 CFR 1010.955(d)(1)(i), would address general requirements applicable to Federal, State, local, and Tribal requesting agencies, including intermediary Federal agencies acting on behalf of authorized foreign requesters, Federal functional regulators, and other appropriate regulatory agencies. This proposed subsection would require each requesting agency, before it could obtain BOI, to enter into a MOU with FinCEN specifying the standards, procedures, and systems that the agency would be required to maintain to protect BOI.[151] These MOUs would, among other things, memorialize and implement requirements contained in proposed 31 CFR 1010.955(d)(1)(i), including those regarding reports and certifications, periodic training of individual recipients of BOI, personnel access restrictions, re-disclosure limitations, and access to audit and oversight mechanisms. The MOUs would also include security plans covering topics related to personnel security (*e.g.,* eligibility limitations, screening standards, certification and notification requirements); physical security (system connections and use, conditions of access, data maintenance); computer security (use and access policies, standards related to passwords, transmission, storage, and encryption); and inspections and compliance. Agencies may rely on existing databases and related IT infrastructure to satisfy the requirement to ''establish and maintain'' secure systems in which to store BOI where those systems have appropriate security and confidentiality protocols, and FinCEN will engage with recipient agencies on this issue during the development of an MOU on BOI sharing.

Because security protocol details may vary based on each agency's particular circumstances and capabilities, FinCEN believes individual MOUs are preferable to a ''one-size-fits-all'' approach of specifying particular requirements by regulation. FinCEN invites comment on this MOU-based approach, and on whether additional requirements should be incorporated into the regulations or into FinCEN's MOUs.

The second subsection would apply to each request for BOI. It includes specific requirements with which each individual request for BOI must comply, as described in the CTA, as well as additional requirements that FinCEN believes are necessary to ensure that BOI is subject to security and confidentiality requirements of a sufficiently high standard.[152]

Proposed 31 CFR 1010.955(d)(1)(ii)(A) (referred to as a ''minimization'' requirement) would require all requesting agencies to limit, to the greatest extent practicable, the amount of BOI they seek, consistent with the agency's purpose for seeking it. The provision mirrors the CTA requirement at 31 U.S.C. 5336(c)(3)(F) and would enhance information security and confidentiality by limiting disclosure of BOI only to those situations in which BOI is necessary for a particular purpose.

Proposed 31 CFR 1010.955(d)(1)(ii)(B)(1) would incorporate the requirement of 31 U.S.C. 5336(c)(3)(E) that the head of a requesting Federal agency acting in furtherance of national security, intelligence, or law enforcement activity, or their designees, certify in writing, for each request made by the agency to FinCEN, that (1) the agency was engaged in a national security, intelligence, or law enforcement activity, and (2) the BOI requested was for use in furthering that activity, setting forth specific reasons why the requested BOI was relevant. FinCEN expects that the certification and justification would be made by the individual at the authorized Federal agency at the time of the BOI request. Similarly, proposed 31 CFR 1010.955(d)(1)(ii)(B)(2) would require the head of a requesting State, local, or Tribal law enforcement agency, or their designee, to submit to FinCEN a copy of the court authorization required under proposed 31 CFR 1010.955(b)(2), as well as a written justification setting forth specific reasons why the requested information was relevant to the investigation. FinCEN believes that collecting the underlying court authorizations will help to ensure compliance with 31 U.S.C. 5336(c)(2)(B)(i)(II) and facilitate audit and oversight of such requests. Moreover, the submission of brief justification narratives will make it easier for FinCEN personnel to identify the relevant information in a court authorization, thereby allowing for faster reviews and more focused audits. FinCEN considered not requiring State, local, and Tribal law enforcement agencies to submit corresponding justifications in addition to the court authorizations, but in some cases the

[146] 31 U.S.C. 5336(c)(3)(H).

[147] 31 U.S.C. 5336(c)(3)(B).

[148] 31 U.S.C. 5336(c)(3)(G).

[149] 31 U.S.C. 5336(c)(3)(I).

[150] 31 U.S.C. 5336(c)(3)(J).

[151] 31 CFR 1010.955(d)(1)(i)(A).

[152] The additional measures are being proposed pursuant to the authority delegated to FinCEN under 31 U.S.C. 5336(c)(3)(K).

relationship between a court authorization and the search in question might not be apparent on the face of the court authorization.

Proposed 31 CFR 1010.955(d)(1)(ii)(B)(3) and (4) would identify the information that an intermediary Federal agency would need to obtain, and in some cases, submit to FinCEN, when making a request for BOI on behalf of foreign law enforcement, prosecutors, or judges. The information that would need to be submitted to FinCEN pursuant to these provisions is dependent on whether the foreign request at issue is pursuant to an international treaty, agreement, or convention.

Regardless of whether an international treaty, agreement, or convention applies, the head of an intermediary Federal agency acting on behalf of a foreign requester, or their designee, would always need to: (1) identify to FinCEN both the individual within the intermediary Federal agency making the request; (2) identify to FinCEN the individual affiliated with the foreign requester on whose behalf the request is being made; and (3) either identify to FinCEN the international treaty, agreement, or convention under which the request was being made or provide a statement that no such instrument governs. When an international treaty, agreement, or convention applies, the head of an intermediary Federal agency acting on behalf of a foreign requester, or their designee, would need to retain the request for information under the relevant international treaty, agreement, or convention, and would also have to certify to FinCEN that the requested BOI is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country. This certification would apply to the intermediary Federal agency head or designee's understanding of the intended use for the BOI, and would not constitute a guarantee from the intermediary Federal agency that the foreign requester would not use the information for other activities without authorization.

In circumstances in which an international treaty, agreement, or convention does not apply, the head of an intermediary Federal agency acting on behalf of a foreign requester, or their designee, would need to submit to FinCEN a written explanation of the specific purpose for which the foreign requester is requesting BOI. The intermediary Federal agency would also need to provide FinCEN with a certification that requested BOI: (1) will be used in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity that is authorized under the laws of the relevant foreign country; (2) will only be used for the particular purpose or activity for which it is requested; and (3) will be handled in accordance with applicable security and confidentiality requirements as discussed in detail in Section IV.A.v.c. below with respect to proposed 31 CFR 1010.955(d)(3). Again, this certification would apply to the intermediary Federal agency head or designee's understanding of the intended use for the BOI, and would not constitute a guarantee from the intermediary Federal agency that the foreign requester would not use the information for other activities without authorization. The proposed rule further specifies that FinCEN may request additional information to support its evaluation of whether to disclose BOI to a foreign requester when a request is not pursuant to an international treaty, agreement, or convention. FinCEN anticipates the implementation of a case management function in the beneficial ownership IT system to manage this information and certification submission process.

Finally, proposed 31 CFR 1010.955(d)(1)(ii)(B)(5) would require the head of Federal functional regulators and other appropriate regulatory agencies, or their designee, to certify to FinCEN when requesting BOI that the agency (1) is authorized by law to assess, supervise, enforce, or otherwise determine the relevant FI's compliance with CDD requirements under applicable law, and (2) will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in proposed 31 CFR 1010.955(b)(4)(ii)(A).

b. Security and Confidentiality Requirements for FIs

Although the CTA does not specifically address the safeguards FIs must implement as a precondition to requesting BOI, the CTA authorizes FinCEN to prescribe by regulation any other safeguards determined to be necessary or appropriate to protect the confidentiality of BOI.[153] Proposed 31 CFR 1010.955(d)(2) contains the safeguards applicable to FIs, including security standards for managing the BOI data.

Any security standards FinCEN imposes should keep BOI reasonably secure and confidential, but not be so stringent as to make the information practically inaccessible or useless to FIs. Such overly burdensome requirements would frustrate the CTA's objective of facilitating FI compliance with CDD requirements under applicable law. To strike an appropriate balance, proposed 31 CFR 1010.955(d)(2)(i) would take a principles-based approach by requiring FIs to develop and implement administrative, technical, and physical safeguards reasonably designed to protect BOI as a precondition for receiving BOI. Although proposed 31 CFR 1010.955(d)(2)(i) would not prescribe any specific safeguards, it would establish that the security and information handling procedures necessary to comply with section 501 of the Gramm-Leach-Bliley Act (Gramm-Leach-Bliley)[154] and applicable regulations issued under it to protect non-public customer personal information, if applied to BOI under the control of the FI, would satisfy this requirement. This would be true for any FI, regardless of whether that FI was subject to section 501, so long as the FI actually applied procedures at the appropriate level of protection. The safe harbor in proposed 31 CFR 1010.955(d)(2)(i) would therefore establish baseline security and confidentiality standards that are the same for all FIs. The approach of establishing a baseline standard would be consistent with other provisions in FinCEN's regulations that impose standards for handling sensitive information.[155]

Section 501 of Gramm-Leach-Bliley, codified at 15 U.S.C. 6801(b) and 6805, requires each Federal functional regulator to establish appropriate standards for the FIs subject to its jurisdiction relating to administrative, technical, and physical safeguards to (1) ensure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. The Federal functional regulators have implemented these requirements in different ways. The OCC, FRB, FDIC, and NCUA incorporated into their regulations the Interagency Guidelines Establishing Interagency Security

[153] 31 U.S.C. 5336(c)(3)(K).

[154] Public Law 106–102, 113 Stat. 1338, 1436–37 (1999).

[155] *See, e.g.,* 31 CFR 1010.520(b)(3)(iv)(C), 31 CFR 1010.540(b)(4)(ii).

Standards (Interagency Guidelines).[156] The Interagency Guidelines add detail to the more general Gramm-Leach-Bliley requirements, covering specific subjects related to identifying, managing, and controlling risk (*e.g.,* physical and electronic access controls, encryption and training requirements, and testing). The CFTC has incorporated the Gramm-Leach-Bliley expectations of FIs into its regulations[157] and recommended best practices for meeting them that are ''designed to be generally consistent with'' the Interagency Guidelines.[158] The SEC has also incorporated the Gramm-Leach-Bliley expectations of FIs into its regulations,[159] but evaluates the reasonableness of Gramm-Leach-Bliley compliance policies and procedures on a case-by-case basis and communicates findings of insufficiency through supervision and enforcement actions.[160]

This blended approach for complying with the Gramm-Leach-Bliley requirements is well-suited to protecting sensitive information generally and BOI in particular. Gramm-Leach-Bliley provides general baseline expectations for keeping data secure and confidential, while each agency's implementing regulations take into account factors unique to the FIs they supervise. Allowing FIs to meet the requirement to safeguard BOI by extending to it the same processes they use to comply with regulations issued pursuant to section 501 of Gramm-Leach-Bliley would avoid duplicative or inconsistent requirements for information security and protocols and would be less burdensome for FIs to administer without sacrificing a high level of protection.

In order to ensure that security and confidentiality standards are consistent across the entire financial industry, even FIs not subject to regulations issued pursuant to section 501 of Gramm-Leach-Bliley would be held to these same substantive standards. For FIs not subject to section 501, the Interagency Guidelines might serve as a useful checklist against which such FIs could evaluate their existing security and confidentiality practices, and a useful guide to possible modifications to bring the FI to the level of security and confidentiality necessary to justify obtaining BOI.

Proposed 31 CFR 1010.955(d)(2)(ii) would require FIs to obtain and document a reporting company's consent before requesting that reporting company's BOI from FinCEN. FIs are well-positioned to obtain consent—and to track any revocation of such consent—given that they maintain direct customer relationships and are able to leverage existing onboarding and account maintenance processes to obtain reporting company consent. FinCEN considered the alternative approach of FinCEN obtaining consent directly from the reporting company, but rejected the approach given potential delays and the lack of any direct relationship with the reporting company.

Finally, proposed 31 CFR 1010.955(d)(2)(iii) would require the FI to certify in writing for each BOI request that it: (1) is requesting the information to facilitate its compliance with CDD requirements under applicable law, (2) obtained the reporting company's written consent to request its BOI, and (3) fulfilled the other requirements of the section. FinCEN anticipates that an FI would be able to make the certification via a checkbox when requesting BOI via the beneficial ownership IT system. FinCEN expects that FIs will establish protocols to direct authorized staff to ensure that the requirements are satisfied and that appropriate records are maintained for the purposes of audit and oversight. FinCEN further expects FIs to provide training on these protocols and to require system users from FIs to complete FinCEN-provided online training about the system and related responsibilities as a condition for creating and maintaining system accounts.

Under the proposed rule, FinCEN would not require FIs to submit proof of reporting company consent at the time of the request for BOI. FinCEN would not have the capacity to review, verify, and store consent forms and additional FinCEN involvement would create undue delays for the ability of FIs to onboard customers. In addition, FinCEN expects that FI compliance with these requirements would be assessed by Federal functional regulators in the ordinary course during safety and soundness examinations or by the SROs during their routine BSA examinations.[161] FIs therefore have a strong incentive to retain evidence of a reporting company's consent for the purposes of supervisory examinations and compliance and for use in cases involving suspected or alleged violations of the requirement. Together with potential civil and criminal penalties under the CTA, such examinations would create a robust control and oversight mechanism. FinCEN invites comments on this proposed approach to FI security and confidentiality requirements, including any views regarding how consent should be obtained from reporting companies and on the applicability of auditing requirements to FIs.

c. Security and Confidentiality Requirements for Foreign Requesters

It is critical that all authorized BOI recipients—including foreign requesters—take steps to keep BOI confidential and secure and to prevent misuse. To that end, proposed 31 CFR 1010.955(d)(3)(i) would require foreign requesters to handle, disclose, and use BOI consistent with the requirements of the applicable treaty, agreement or convention under which it was requested. 31 CFR 1010.955(d)(3)(ii), meanwhile, would impose on foreign BOI requesters certain general requirements the CTA imposes on all requesting agencies. FinCEN believes these measures are necessary to protect the security and confidentiality of BOI provided to foreign requesters.[162] Requirements applicable to foreign requesters when no treaty, agreement, or convention applies include having security standards and procedures, maintaining a secure storage system that complies with whatever security standards the foreign requester applies to the most sensitive unclassified information it handles, minimizing the amount of information requested, and restricting personnel access to it. Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention would not have these requirements under the proposed rule, given that such requesters would be governed by standards and procedures under the applicable international treaty, agreement, or convention.

[156] *See* Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness, 66 FR 8616 (Feb. 1, 2001). The agencies implementing regulations are at 12 CFR part 30, app. B (OCC); 12 CFR. Part 208, app. D–2 and Part 225, app. F (FRB); 12 CFR part 364, app. B (FDIC); and 12 CFR part 748, apps. A & B (NCUA).

[157] *See* 17 CFR 160.

[158] *See* CFTC Staff Advisory No. 14–21 (February 16, 2014).

[159] *See* 17 CFR 248.30(a).

[160] *See, e.g.,* Morgan Stanley Smith Barney, SEC Administrative Proceeding File No. 3–21112 (Sept. 20, 2022).

[161] The CTA requirements FIs must satisfy to qualify for BOI disclosure from FinCEN are part of the BSA, a statute enacted in pertinent part in Chapter X of the Code of Federal Regulations. FinCEN has delegated its authority to examine FIs for compliance with Chapter X to the Federal functional regulators. *See* 31 CFR 1010.810. *See also, e.g.,* 12 U.S.C. 1818(s)(2), 12 U.S.C. 1786(q)(2).

[162] *See* 31 U.S.C. 5336(c)(3)(A), (K).

FinCEN considered proposing a requirement that foreign requesters enter into MOUs comparable to domestic requesting agencies for situations in which an international treaty, agreement, or convention applies. The bureau decided not to propose such an approach because foreign requesters will not have direct access to the beneficial ownership IT system and because FinCEN anticipates a significantly lower volume of foreign requests in general relative to other stakeholders. FinCEN believes MOUs are appropriate with domestic agencies to account for the risks inherent in repeated, detailed interaction with the beneficial ownership IT system. Foreign BOI requesters, by contrast, would only receive BOI through intermediary Federal agencies that would themselves be subject to detailed MOUs. Those intermediary Federal agencies would in turn work with foreign requesters to safeguard BOI in accordance with applicable treaties, agreements, or conventions when applicable, and under governing protocols in other circumstances.

FinCEN considered imposing audit requirements on foreign requesters as part of these security and confidentiality protocols, but determined that it would not be feasible. First, in situations involving international treaties, agreements, or conventions, such audits would only be permissible if allowed by the international agreement. In situations in which no such international agreement applied, it would nevertheless be practically challenging for FinCEN to conduct meaningful audits of a foreign requester's BOI handling systems and practices given that it would involve extensive negotiations and the commitment of substantial FinCEN personnel to considerable document review (potentially involving translation) and travel. Foreign governments under any circumstances are also unlikely to grant FinCEN access to their secure IT systems to the degree that a comprehensive audit demands. While FinCEN considered whether to refrain from sharing information with a foreign requester that refused to be subject to audit requirements, such an approach would result in reduced information sharing and cooperation overall. The United States regularly collaborates bilaterally and in global task forces, for example, to combat terrorism, transnational criminal organizations, and other threats to national security. The success of these initiatives depends upon effective international cooperation and robust efforts by foreign counterparts. Those foreign counterparts might decide not to request BOI at all, depriving our partners of information that would support these efforts, with potentially negative direct consequences for the United States.

FinCEN invites comments on its proposal with respect to security and confidentiality requirements applicable to foreign requesters.

vi. Administration of Requests for Information Reported Pursuant to 31 CFR 1010.380

The CTA includes several provisions regarding how FinCEN should administer requests for BOI. Proposed 31 CFR 1010.955(e) would implement these CTA provisions.

Proposed 31 CFR 1010.955(e)(1) would require agencies and FIs to submit requests for BOI to FinCEN in the form and manner FinCEN shall prescribe.[163] The bureau intends to provide additional detail regarding the form and manner of BOI requests for all categories of authorized users through specific instructions and guidance as it continues developing the beneficial ownership IT system. To the extent required by the Paperwork Reduction Act (PRA), FinCEN would publish for notice and comment any proposed information collection associated with BOI requests.

Proposed 31 CFR 1010.955(e)(2) would implement 31 U.S.C. 5336(c)(6)(B), which describes the circumstances under which the Secretary ''may decline to provide'' requested BOI. The CTA describes three permissible reasons for declining to provide BOI: (a) a ''requesting agency'' failing to meet applicable requirements; (2) ''the information is being requested for an unlawful purpose;'' or (3) ''other good cause exists to deny the request.'' [164] Proposed 31 CFR 1010.955(e)(2) would make minor changes to the statutory text to clarify its scope and to provide appropriate cross references. While 31 U.S.C. 5336(c)(6)(B)(i) speaks directly to requests made by a ''requesting agency,'' FinCEN believes the CTA also permits the bureau to deny requests from any authorized recipient, including FIs, that fail to comply with any requirements to receive BOI (*e.g.,* refusing to obtain consent from reporting companies before making BOI requests or failing to fully comply with the proposed security and confidentiality requirements).[165] FinCEN's ability to decline requests in these circumstances is necessary to ''protect the security and confidentiality of [BOI]'' that the agency provides to authorized recipients.[166] Moreover, FinCEN would consider an FI's failure to comply with any requirements to constitute ''good cause'' sufficient to justify denying a request for BOI.[167]

Proposed 31 CFR 1010.955(e)(3) would specify that the reasons for rejecting a request are also bases for suspension or debarment. The CTA permits the Secretary to suspend or debar a ''requesting agency'' from access to BOI for any of the reasons for rejection in the preceding paragraph, including for ''repeated or serious violations'' of any requirement established as a precondition for receiving BOI.[168] FinCEN would again extend the availability of the suspension or debarment authority to FIs to ensure the integrity of BOI, ensure the security of the beneficial ownership IT system, and implement the confidentiality requirements imposed by the CTA. Under the proposed rule, suspension of access to BOI would be a temporary measure, while debarment would be permanent. The proposed rule would also permit FinCEN to determine in its sole discretion the length of any suspension. Additionally, the proposed rule would clarify that FinCEN may reinstate suspended or debarred requesters upon satisfaction of any terms or conditions FinCEN in its sole discretion believes are appropriate. As with the authority to reject requests, FinCEN views suspension and debarment as important tools for protecting sensitive information from potential misuse.

vii. Violations; Penalties

The CTA makes it unlawful for any person to knowingly disclose or knowingly use BOI obtained by the person through a report submitted to, or an authorized disclosure made by, FinCEN, unless such disclosure is authorized under the CTA.[169] Proposed 31 CFR 1010.955(f)(1) tracks this prohibition, and further clarifies that such disclosure authorized under the CTA includes disclosure authorized under the regulations issued pursuant to the CTA. Proposed 31 CFR 1010.955(f)(2) then explains that for purposes of paragraph (f)(1), unauthorized use would include any unauthorized accessing of information submitted to FinCEN under 31 CFR 1010.380, including any activity in

[163] 31 U.S.C. 5336(c)(2)(C).

[164] *Id.*

[165] *See* 31 U.S.C. 5336(c)(3)(A).

[166] *Id.; see also* 31 U.S.C. 5336(c)(3)(K).

[167] 31 U.S.C. 5663(c)(6)(B)(iii).

[168] 31 U.S.C. 5336(c)(7).

[169] *See* 31 U.S.C. 5336(h)(2).

which an employee, officer, director, contractor, or agent of a Federal, State, local, or Tribal agency or FI knowingly violates applicable security and confidentiality requirements in connection with accessing such information.[170] This reflects FinCEN's view that the security and confidentiality requirements under the CTA and this proposed rule circumscribe the ways in which authorized recipients can use BOI, consistent with the statute's emphasis on keeping BOI secure and confidential.

Proposed 31 CFR 1010.955(f)(3) lists the CTA's enumerated civil and criminal penalties for knowingly disclosing or using BOI without authorization. The CTA provides civil penalties in the amount of $500 for each day a violation continues or has not been remedied. Criminal penalties are a fine of not more than $250,000 or imprisonment for not more than 5 years, or both.[171] The CTA also provides for enhanced criminal penalties, including a fine of up to $500,000, imprisonment of not more than 10 years, or both, if a person commits a violation while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period.[172]

B. Use of FinCEN Identifiers for Entities

A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals who have provided FinCEN with their BOI and to reporting companies that have filed initial BOI reports.[173] Consistent with the CTA, the final BOI reporting rule describes the manner in which FinCEN will issue a FinCEN identifier to individuals and to entities.[174] It also describes circumstances in which a reporting company may report an individual beneficial owner's FinCEN identifier to FinCEN in lieu of providing the individual's BOI.[175]

The CTA also provides for the use of a reporting company's FinCEN identifier, specifying that if an individual ''is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that, directly or indirectly, holds an interest in the reporting company,'' the reporting company may report the *entity's* FinCEN identifier in lieu of providing the *individual's* BOI.[176] The Reporting NPRM proposed to incorporate this language without significant clarification. Some commenters, however, expressed concerns that the use of FinCEN identifiers could obscure the identities of beneficial owners in a manner that might result in greater secrecy or incomplete or misleading disclosures. Several commenters noted that the proposed language may be confusing and pose problems when a reporting company's ownership structure involves multiple beneficial owners and intermediate entities. In light of this feedback, the final BOI reporting rule did not adopt the proposed language, and FinCEN is now proposing different language to implement the CTA in a manner that better clarifies when a company may report an intermediate entity's FinCEN identifier in lieu of an individual's BOI.

Proposed 31 CFR 1010.380(b)(4)(ii)(B) would permit a reporting company to report an intermediate entity's FinCEN identifier in lieu of a beneficial owner's BOI only when: (1) the intermediate entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company; (2) an individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through the entity; and (3) only the individuals that are beneficial owners of the intermediate entity are beneficial owners of the reporting company, and vice versa. The first and second requirements are straightforward clarifications, while the third requirement reflects an implicit assumption in the statutory language.

It is straightforward to allow a reporting company to use an intermediate entity's FinCEN identifier where a single individual is the sole beneficial owner of a reporting company through a single intermediate entity. In this simple scenario, the same individual would be the beneficial owner of both the reporting company and the intermediate entity. Reporting the intermediate entity's FinCEN identifier in lieu of the individual's BOI would thus accurately indicate that the individual is a beneficial owner of both entities, and the intermediate entity would have already reported the individual's BOI when it filed its initial report and obtained a FinCEN identifier. However, the use of an intermediate company's FinCEN identifier beyond this simple scenario encounters significant problems when a reporting company's ownership structure involves multiple beneficial owners and/or intermediate entities. For instance, if the intermediate entity has any beneficial owners who are not also beneficial owners of the reporting company, the reporting company's use of the intermediate entity's FinCEN identifier would identify multiple individuals as beneficial owners of the reporting company, when in fact they are only beneficial owners of the intermediate entity. Additionally, if an individual is a beneficial owner of a reporting company through multiple intermediate entities but is not a beneficial owner of one of those entities, the reporting company's use of that entity's FinCEN identifier could obscure the identity of that beneficial owner. In this case, the reporting company's use of an intermediate entity's FinCEN identifier would fail to identify an individual as a beneficial owner of the reporting company, when in fact the individual is such a beneficial owner.

In light of the core objective of the CTA to establish a comprehensive beneficial ownership database and to ensure that the information it contains is accurate and highly useful, FinCEN does not believe the FinCEN identifier provision was intended to enable reporting companies to misidentify beneficial owners. As explained in the prior paragraph, there are some scenarios in which FinCEN would be unable to accurately identify which reported beneficial owners are extraneous, or which BOI reports are incomplete, thereby making it more difficult for FinCEN and authorized recipients of BOI to identify the true beneficial owners of each reporting company. This would make the beneficial ownership database less accurate and undermine the fundamental goals of the CTA. Moreover, FIs that obtain BOI reports that are either under- or over-inclusive may have difficulty reconciling this BOI with other information they receive during the CDD process, impeding another goal of the CTA. Furthermore, over-inclusive BOI would require FinCEN to disclose more BOI than necessary in response to authorized requests. Instead of only disclosing BOI for individuals who are beneficial owners of the reporting company that is the subject of a request, FinCEN would have to also disclose BOI for other individuals who are beneficial owners of a different company that may not be

[170] 31 U.S.C. 5336(c)(4) explicitly applies civil and criminal penalties to employees and officers of ''requesting agencies'' who violate applicable security and confidentiality protocols, including through unauthorized disclosure or use. FinCEN views this as a self-executing reinforcement provision to support 31 U.S.C. 5336(h)(3)(B), which focuses on unlawful disclosure or use by any person.

[171] 31 U.S.C. 5336(h)(3)(B).

[172] *See* 31 U.S.C. 5336(h)(3)(B)(ii)(II).

[173] 31 U.S.C. 5336(b)(3).

[174] *See* 31 CFR 1010.380(b)(4).

[175] *See* 31 CFR 1010.380(b)(4)(ii)(B).

[176] 31 U.S.C. 5336(b)(3)(C).

the subject of the request. This over-disclosure would be in significant conflict with the confidentiality and privacy protections the CTA instructs FinCEN to implement, including the requirement to ''limit, to the greatest extent practicable, the scope of the information sought.'' [177]

For all of these reasons, permitting a reporting company to use an intermediate entity's FinCEN identifier would appear consistent with the CTA's overall statutory scheme only if the two entities have the same beneficial owners. In this case, as in the simple scenario previously described, reporting the intermediate entity's FinCEN identifier would be equivalent to reporting the BOI of the reporting company's beneficial owners. There would be no mismatch. Accordingly, proposed 31 CFR 1010.380(b)(4)(ii)(B) makes this requirement explicit by permitting a reporting company to report an intermediate entity's FinCEN identifier only when the intermediate entity and the reporting company have the same beneficial owners. FinCEN believes this requirement is implicit in the CTA, and is necessary for FinCEN to avoid collection of potentially incomplete information and to prevent disclosure of inaccurate reports that contain extraneous sensitive information or that lack relevant BOI. FinCEN solicits comment on this proposal.

V. Final Rule Effective Date

FinCEN is proposing an effective date of January 1, 2024, to align with the date on which the final BOI reporting rule at 31 CFR 1010.380 becomes effective. A January 1, 2024, effective date is intended to provide the public and authorized users of BOI with sufficient time to review and prepare for implementation of the rule. FinCEN solicits comment on the proposed effective date for this rule.

VI. Request for Comment

FinCEN seeks comment from all parts of the public, as well as Federal, State, local, and Tribal government entities, with respect to the proposed rule as a whole and specific provisions discussed above in Section IV. FinCEN invites comment on any and all aspects of the proposed rule, and specifically seeks comments on the following questions:

Understanding the Rule

1. Can the organization of the rule text be improved? If so, how?

2. Can the language of the rule text be improved? If so, how?

3. Does the proposed rule provide sufficient guidance to stakeholders and the public regarding the scope and requirements for access to BOI?

Disclosure of Information

4. The CTA prohibits officers and employees of (1) the United States, (2) State, local, and Tribal agencies, and (3) FIs and regulatory agencies from disclosing BOI reported under the statute. FinCEN proposes to extend the prohibition to agents, contractors, and, in the case of FIs, directors as well. FinCEN invites comments on the proposed scope.

5. Are FinCEN's proposed interpretations of ''national security,'' ''intelligence,'' and ''law enforcement'' clear enough to be useful without being overly prescriptive? If not, what should be different? Commenters are invited to suggest alternative interpretations or sources for reference.

6. Should FinCEN add any specific activities or elements to the proposed interpretations of ''national security,'' ''intelligence,'' and ''law enforcement'' that do not seem to be covered already? If so, what?

7. FinCEN requests comments discussing how State, local, and Tribal law enforcement agencies are authorized by courts to seek information in criminal and civil investigations. Among the particular issues that FinCEN is interested in are: how State, local, and Tribal authorities gather evidence in criminal and civil cases; what role a court plays in each of these mechanisms, and whether in the commenter's opinion it rises to the level of court ''authorization''; what role court officers (holders of specific offices, not attorneys as general-purpose officers of the court) play in these mechanisms; how grand jury subpoenas are issued and how the court officers issuing them are ''authorized'' by a court; whether courts of competent jurisdiction, or officers thereof, regularly authorize subpoenas or other investigative steps via court order; and whether there are any evidence-gathering mechanisms through which State, local, or Tribal law enforcement agencies should be able to request BOI from FinCEN, but that do not require any kind of court?

8. Is requiring a foreign central authority or foreign competent authority to be identified as such in an applicable international treaty, agreement, or convention overly restrictive? If so, what is a more appropriate means of identification?

9. Are there alternative approaches to managing the foreign access provision of the CTA that FinCEN should consider?

10. Should FinCEN define the term ''trusted foreign country'' in the rule, and if so, what considerations should be included in such a definition?

11. FinCEN proposes that FIs be required to obtain the reporting company's consent in order to request the reporting company's BOI from FinCEN. FinCEN invites commenters to indicate what barriers or challenges FIs may face in fulfilling such a requirement, as well as any other considerations.

12. FinCEN proposes to define ''customer due diligence requirements under applicable law'' to mean the bureau's 2016 CDD Rule, as it may be amended or superseded pursuant to the AML Act. The 2016 CDD Rule requires FIs to identify and verify beneficial owners of legal entity customers. Should FinCEN expressly define ''customer due diligence requirements under applicable law'' as a larger category of requirements that includes more than identifying and verifying beneficial owners of legal entity customers? If so, what other requirements should the phrase encompass? How should the broader definition be worded? It appears to FinCEN that the consequences of a broader definition of this phrase would include making BOI available to more FIs for a wider range of specific compliance purposes, possibly making BOI available to more regulatory agencies for a wider range of specific examination and oversight purposes, and putting greater pressure on the demand for the security and confidentiality of BOI. How does the new balance of those consequences created by a broader definition fulfill the purpose of the CTA?

13. If FinCEN wants to limit the phrase ''customer due diligence requirements under applicable law'' to apply only to requirements like those imposed under its 2016 CDD Rule related to FIs identifying and verifying beneficial owners of legal entity customers, are there any other comparable requirements under Federal, State, local, or Tribal law? If so, please specifically identify these requirements and the regulatory bodies that supervise for compliance with or enforce them.

14. Are there any State, local, or Tribal government agencies that supervise FIs for compliance with FinCEN's 2016 CDD Rule? If so, please identify them.

15. FinCEN does not propose to disclose BOI to SROs as ''other appropriate regulatory agencies,'' but does propose to authorize FIs that receive BOI from FinCEN to disclose it to SROs that meet specified qualifying

[177] 31 U.S.C. 5336(c)(3)(F).

criteria. Is this sufficient to allow SROs to perform duties delegated to them by Federal functional regulators and other appropriate regulatory agencies? Are there reasons why SROs could be included as ''other appropriate regulatory agencies'' and obtain BOI directly from FinCEN?

16. Are there additional circumstances under which FinCEN is authorized to disclose BOI that are not reflected in this proposed rule?

Use of Information

17. FinCEN proposes to permit U.S. agencies to disclose BOI received under 31 CFR 1010.955(b)(1) or (2) to courts of competent jurisdiction or parties to civil or criminal proceedings. Is this authorization appropriately scoped to allow for the use of BOI in civil or criminal proceedings?

18. In proposed 31 CFR 1010.955(c)(2)(v), FinCEN proposes to establish a mechanism to authorize, either on a case-by-case basis or categorically through written protocols, guidance, or regulations, the re-disclosure of BOI in cases not otherwise covered under 31 CFR 1010.955(c)(2) and in which the inability to share the information would frustrate the purposes of the CTA because of the categorical prohibitions against disclosures at 31 U.S.C. 5336(c)(2)(A). Are there other categories of redisclosures that FinCEN should consider authorizing? Are there particular handling or security protocols that FinCEN should consider imposing with respect to such re-disclosures of BOI?

19. Could a State regulatory agency qualify as a ''State, local, or Tribal law enforcement agency'' under the definition in proposed 31 CFR 1010.955(b)(2)(ii)? If so, please describe the investigation or enforcement activities involving potential civil or criminal violations of law that such agencies may undertake that would require access to BOI.

Security and Confidentiality Requirements

20. Should FinCEN impose any additional security or confidentiality requirements on authorized recipients of any type? If so, what requirements and why?

21. The minimization component of the security and confidentiality requirements requires limiting the ''scope of information sought'' to the greatest extent possible. FinCEN understands this phrase, drawn from the language of the CTA, to mean that requesters should tailor their requests for information as narrowly as possible, consistent with their needs for BOI. Such narrow tailoring should minimize the likelihood that a request will return BOI that is irrelevant to the purpose of the request or unhelpful to the requester. Does the phrase used in the regulation convey this meaning sufficiently clearly, or should it be expanded, and if so how?

22. Because security protocol details may vary based on each agency's particular circumstances and capabilities, FinCEN believes individual MOUs are preferable to a one-size-fits all approach of specifying particular requirements by regulation. FinCEN invites comment on this MOU-based approach, and on whether additional requirements should be incorporated into the regulations or into FinCEN's MOUs.

23. FinCEN proposes to require FIs to limit BOI disclosure to FI directors, officers, employees, contractors, and agents within the United States. Would this restriction impose undue hardship on FIs? What are the practical implications and potential costs of this limitation?

24. Are the procedures FIs use to protect non-public customer personal information in compliance with section 501 of Gramm-Leach-Bliley sufficient for the purpose of securing BOI disclosed by FinCEN under the CTA? If not, is there another set of security standards FinCEN should require FIs to apply to BOI?

25. Are the standards established by section 501 of Gramm-Leach-Bliley, its implementing regulations, and interagency guidance sufficiently clear such that FIs not directly subject to that statute will know how to comply with FinCEN's requirements with respect to establishing and implementing security and confidentiality standards?

26. Do any states impose, and supervise for compliance on, security and confidentiality requirements comparable to those that FFRs are required to impose on FIs under section 501 of Gramm-Leach-Bliley? Please provide examples of such requirements.

Outreach

29. What specific issues should FinCEN address via public guidance or FAQs? Are there specific recommendations on engagement with stakeholders to ensure that the authorized recipients, and in particular, State, local, and Tribal authorities and small and mid-sized FIs, are aware of requirements for access to the beneficial ownership IT system?

FinCEN Identifiers

30. Does FinCEN's proposal with respect to an entity's use of a FinCEN identifier adequately address the potential under- or over-reporting issues discussed in the preamble?

VI. Regulatory Analysis

This regulatory impact analysis (RIA) assesses the anticipated impact, both in terms of costs and benefits, of the proposed rule, in accordance with Executive Order 12866. This analysis also includes an assessment of the impact on small entities pursuant to the Regulatory Flexibility Act (RFA), reporting and recordkeeping burdens under the Paperwork Reduction Act (PRA); and an assessment as required by the Unfunded Mandates Reform Act of 1995 (UMRA).[178]

Regarding the proposed regulations related to BOI access, the analysis assumes a baseline scenario of no access granted to the BOI system maintained by FinCEN, which is the current regulatory environment, and uses a time horizon of 10 years. The analysis estimates that the overall quantifiable impact associated with the proposed rule, which would affect U.S. Federal agencies including FinCEN, as well as State, local, and Tribal agencies, foreign requesters, certain financial institutions, and self-regulatory organizations, would be between $108.7 million in net savings and $840.7 million in net costs in the first year of implementation of the rule, and then a net impact between $186.5 million in net savings and $672.0 million in net costs on an ongoing annual basis.[179] This proposed rule has been determined to be a significant rule for purposes of Executive Order 12866. Furthermore, the proposed rule would have a significant economic impact on a substantial number of small entities. Last, the proposed rule would result in an estimated 5-year average PRA annual cost of $642.5 million to certain State, local, and Tribal agencies, self-regulatory organizations, and financial

[178] The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995 (the year in which UMRA was enacted) as 71.823, and as 118.895 in 2021. *See* U.S. Bureau of Economic Analysis, Table 1.1.9. Implicit Price Deflators for Gross Domestic Product, available at *https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIkNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJGaXJzdF9ZZWFyIiwiMjAyMSJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ.* Thus, the inflation adjusted estimate for $100 million is 118.895/71.823 × 100 = $166 million.

[179] All aggregate figures are approximate and not precise estimates unless otherwise specified.

institutions. Because accessing BOI under the proposed rule is not mandated for State, local, and Tribal governments or the private sector, FinCEN does not assess any expenditures pursuant to UMRA.

As FinCEN identified in the final BOI reporting rule's RIA, FinCEN will incur costs for administering the regulation and access to BOI.[180] These costs include development and ongoing annual maintenance of the beneficial ownership IT system. In particular, developing and maintaining the methods of access to the beneficial ownership IT system described in this NPRM has impacted FinCEN's IT cost estimates. FinCEN estimated that the initial IT development costs associated with the final BOI reporting rule are approximately $72 million with an additional $25.6 million per year required to maintain the new BOI system and the underlying FinCEN IT that is needed to support the new capabilities. These estimates do not include certain potential additional costs, such as for IT personnel or information verification. The final BOI reporting rule's RIA also estimated $10 million per year in FinCEN personnel costs in order to ensure successful implementation of and compliance with the BOI reporting requirements. Given that these costs to FinCEN are already accounted for in the RIA of the final BOI reporting rule, these costs are not included in the RIA. The costs to FinCEN in this RIA are in addition to those included in the final BOI reporting rule's RIA.

FinCEN also considers in the RIA what costs or benefits may be associated with the proposed rule regarding reporting companies' use of FinCEN identifiers for entities. The final BOI reporting rule's RIA contains a regulatory analysis that accounts for the impact associated with obtaining, updating, and using FinCEN identifiers, including a summary of NPRM comments related to the associated estimated costs and benefits. Regarding entities' use of FinCEN identifiers, FinCEN proposes to rely upon the analysis in the final BOI reporting rule's RIA. That analysis states that the costs associated with reporting companies' use of FinCEN identifiers are captured in that RIA's cost estimates associated with BOI reports. This analysis is explained in more detail in Section VI.A.ii. below.

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects, as well as distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. FinCEN conducted an assessment of the costs and benefits of the proposed rule, as well as the costs and benefits of available regulatory alternatives. This proposed rule is necessary in order to implement Section 6403 of the CTA. Consistent with the cost-benefit analysis in Section VI.A.i. below, this proposed rule has been designated a ''significant regulatory action'' and economically significant under section 3(f) of Executive Order 12866. Accordingly, the proposed rule has been reviewed by the Office of Management and Budget (OMB).

i. Section of Proposed Rule Regarding BOI Access

a. Alternative Scenarios

FinCEN considered alternatives to the proposed rule. However, for the reasons described within this section, FinCEN decided not to propose these alternatives.

1. Reduce Training Burden

The first alternative would be to reduce the training requirement for BOI authorized recipients, which includes appropriate training for authorized recipients of BOI as well as annual training for access to BOI. In its analysis, FinCEN assumes that each authorized recipient that would access the BOI would be required to undergo one hour of training per year.[181] Here, FinCEN considers the scenario where authorized recipients would instead be required to undergo one hour of training every two years, in alignment with the current BSA data access requirements. This scenario could result in savings every other year of $108 to $172,800 per Federal agency, $76 to $5,168 per State, local, and Tribal agency, $95 to $6,460 per SRO,[182] $108 per foreign requester, and $146 to $241 per financial institution. The aggregate savings could be as much as $3.7 million to $5.2 million ($1.3 million total for domestic agencies and SROs + $2.4 to $3.9 million for financial institutions) every other year. This alternative scenario could result in savings every other year of approximately $95 to $190 per small financial institution. The aggregate savings could be as much as approximately $1.3 million to $2.7 million (($95 × 14,051 small financial institutions = $1,334,845) and ($190 × 14,051 small financial institutions = $2,669,690)) every other year. Given the sensitive nature of the BOI,[183] FinCEN believes that maintaining an annual training requirement for BOI authorized recipients and access to BOI is necessary to protect the security and confidentiality of the BOI.

2. Change Customer Consent Requirement

The second alternative that FinCEN considered is altering the customer consent requirement for FIs. Under the proposed rule, financial institutions would be required to obtain and document customer consent once for a given customer. FinCEN considered an alternative approach in which FinCEN would directly obtain the reporting company's consent. Under this scenario, financial institutions would not need to spend time and resources on the one-time implementation costs of approximately 10 hours in year 1 to create consent forms and processes. Using an hourly wage estimate of $95 per hour for financial institutions, FinCEN estimates this would result in a one-time savings per financial institution of approximately $950. To estimate aggregate savings under this scenario, FinCEN multiplies this value by 16,252 financial institutions resulting in a total savings of approximately $15.4 million ($950 per institution × 16,252 financial institutions = $15,439,400). The cost savings for small financial institutions under this scenario would be approximately $13.3 million ($950 per institution × 14,051 small financial institutions = $13,348,450). Though this alternative results in a savings to financial institutions, including small entities, FinCEN believes that financial institutions are better positioned to obtain consent—and to track consent revocation—given their direct customer relationships and ability to leverage existing onboarding and account

[180] 87 FR 59578 (Sept. 30, 2022).

[181] The assumption of one training hour is in alignment with the current training requirement for accessing BSA data. However, one notable difference is that the proposed BOI training requirement is annual, not biennial.

[182] To calculate costs to SROs, FinCEN calculated a ratio that applied the estimated costs to State regulators (which would have access requirements similar to SROs) to the wage rate estimated herein for financial institutions, since SROs are private organizations. FinCEN requests comment on this assessment.

[183] As noted in the preamble, the CTA establishes that BOI is ''sensitive information'' and it imposes strict confidentiality and security restrictions on the storage, access, and use of BOI. *See* CTA, Section 6402(6), (7).

maintenance processes. Therefore, FinCEN decided not to propose this alternative.

3. Impose Court Authorization Requirement on Federal Agencies

The third alternative would extend the requirement that State, local, and Tribal law enforcement agencies provide a court authorization with each BOI request to 202 Federal agencies. FinCEN expects that requests submitted by State, local, and Tribal law enforcement agencies have an additional 20 to 30 hours of burden owing to an additional requirement that a court of competent jurisdiction, including any officer of such a court, authorizes the agency to seek the information in a criminal or civil investigation. Therefore, FinCEN applies this additional 20 to 30 hours of burden per BOI request to the estimated BOI requests submitted by Federal agencies and by State regulators. Using FinCEN's internal BSA request data as a proxy, FinCEN anticipates that Federal agencies could submit as many as approximately 2 million total BOI requests annually.[184] Using an hourly wage estimate of $108 per hour for Federal employees results in additional aggregate annual costs between approximately $4.3 billion and $6.5 billion ((2 million Federal requests × 20 hours × $108 per hour = $4,320,000,000) and (2 million Federal requests × 30 hours × $108 per hour = $6,480,000,000).

This alternative could minimize the potential for broad or non-specific searches by any agency not currently subject to the requirement because of the higher initial barrier to accessing the data. However, FinCEN believes that imposing this requirement on authorized recipients, for whom such a requirement is not statutorily mandated, is overly burdensome and would make it too difficult to obtain BOI in a timely fashion for active investigations. For these reasons, FinCEN decided not to propose this alternative.

b. Affected Entities

In order to analyze cost and benefits, the number of entities affected by the proposed rule must first be estimated. Authorized recipients of BOI would be affected by this proposed rulemaking if they elect to access BOI, because they are required to meet certain criteria in order to receive that BOI. The criteria vary depending on the type of authorized recipient.

Federal agencies engaged in national security, intelligence, and law enforcement activity would have access to BOI in furtherance of such activities if they establish the appropriate protocols prescribed for them in the proposed rule. Additionally, Treasury officers and employees who require access to BOI to perform their official duties or for tax administration would have access. The number of agencies that could qualify under these categories is large and difficult to quantify. FinCEN proposes using the number of Federal agencies that are active entities [185] with BSA data access [186] as a proxy for the number of Federal agencies that may elect to access BOI. FinCEN believes this proxy is apt. While the criteria for access to BSA data are somewhat different outside of the CTA context, Federal agencies that have access to BSA data would generally also meet the criteria for access to BOI under the CTA. FinCEN believes that Federal agencies that have access to BSA data will most likely want access to BOI as well, and will generally be able to access it under the parameters specified by the proposed rule. FinCEN includes offices within the Department of the Treasury, such as FinCEN itself,[187] in this proxy count. As of January 2022, 202 Federal agencies and agency subcomponents are active entities with BSA data access.

State, local, and Tribal law enforcement agencies would have access to BOI for use in criminal and civil investigations if they follow the process prescribed for them in the proposed rule. FinCEN proposes using the number of State and local law enforcement agencies that are active entities with BSA data access as a proxy for the number of State, local, and Tribal law enforcement agencies that may access BOI, for the reasons discussed in the Federal agency context. As of January 2022, 153 State and local law enforcement agencies and agency subcomponents are active entities with access to BSA data.[188] The process that the proposed rule sets forth involves these agencies obtaining a court authorization for each BOI request. Courts of competent jurisdiction that would issue such authorizations may therefore also be affected by the proposed rule; FinCEN has not estimated the burden that may be imposed on such entities, but is interested in comments on the subject.

Foreign government entities, such as law enforcement, prosecutors, judges or other competent or central authorities, would potentially be able to access BOI after submitting a request as described in the proposed rule. FinCEN does not estimate the number of different foreign requesters that may request BOI, but instead estimates a range of the total number of annual requests for BOI that FinCEN may receive from all foreign requesters. FinCEN requests comment on this proposal and the estimate of foreign requests. The proposed rule requires that foreign requests be made through an intermediary Federal agency. Therefore, Federal agencies would also be affected by foreign requests.

The six Federal functional regulators that supervise financial institutions with CDD obligations—the FRB, the OCC, the FDIC, the NCUA, the SEC, and the CFTC—may access BOI for purposes of supervising a financial institution's compliance with those obligations. Additionally, other appropriate regulatory agencies may access BOI under the proposed rule. FinCEN proposes primarily using the number of regulators that both supervise entities with requirements under FinCEN's CDD Rule and are active entities with access to BSA data as a proxy for the number of regulatory agencies that may access BOI. As of January 2022, 62 regulatory agencies satisfy both criteria.[189] FinCEN adds two self-regulatory organizations (SROs) to this count, which totals to 64 regulatory agencies. Although SROs are

[184] While FinCEN does not estimate growth of requests throughout the 10-year time horizon of this analysis, the number of BOI requests could increase significantly after the first years of implementation of the BOI reporting requirements as awareness of the ability to access and the utility of BOI increases.

[185] For purposes of this analysis, an agency has active access to BSA data if the official duties of any agency employee or contractor includes authorized access to the FinCEN Query system, a web-based application that provides access to BSA reports maintained by FinCEN.

[186] For purposes of this analysis, BSA data consists of all of the reports submitted to FinCEN by financial institutions and individuals pursuant to obligations that currently arise under the BSA, 31 U.S.C. 5311 *et seq.,* and its implementing regulations. These include reports of cash transactions over $10,000, reports of suspicious transactions by persons obtaining services from financial institutions, reports of the transportation of currency and other monetary instruments in amounts over $10,000 into or out of the United States, and reports of U.S. persons' foreign financial accounts. In fiscal year 2019, more than 20 million BSA reports were filed. *See* Financial Crimes Enforcement Network, ''What is the BSA data?,'' available at *https://www.fincen.gov/what-bsa-data.*

[187] In addition to incurring costs as an authorized recipient of BOI, FinCEN expects to incur costs from administering data to other authorized recipients.

[188] No Tribal law enforcement agencies currently have access to BSA data through the FinCEN Query system. FinCEN requests comment on how many Tribal law enforcement agencies may access BOI.

[189] This includes the six Federal functional regulators. The remaining 56 entities are State regulators that supervise banks, securities dealers, and other entities that currently have CDD obligations under FinCEN regulations. FinCEN did not include State regulatory agencies that have active access to BSA data but do not regulate entities with FinCEN CDD obligations, such as State gaming authorities or State tax authorities.

not government agencies and they would not have direct access to the beneficial ownership IT system under the proposed rule, they may receive BOI through re-disclosure and would be subject to the same security and confidentiality requirements as other regulatory agencies under the proposed rule.

Financial institutions with CDD requirements under applicable law would be able to access BOI with the consent of the reporting company. Assuming that all financial institutions that are subject to FinCEN's CDD Rule would access BOI, FinCEN estimates the number of affected financial institutions in Table 1.

Table 1—Affected Financial Institutions

Financial Institution Type	Count	Small Count
Banks, savings associations, thrifts, trust companies[1]	5,128	3,661
Credit unions[2]	4,957	4,432
Brokers or dealers in securities[3]	3,527	3,439
Mutual funds[4]	1,591	1,548
Futures commission merchants and introducing brokers in commodities[5]	1,049	971
Total	**16,252**	**14,051**

[1] All counts are from Q2 2022 Federal Financial Institutions Examination Council (FFIEC) Call Report data, available at https://cdr.ffiec.gov/public/pws/downloadbulkdata.aspx. Data for institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or do not have a Federal functional regulator are from the FDIC's Research Information System, available at https://www.fdic.gov/foia/ris/index.html

[2] Credit union data are from the NCUA for Q2 2022, available at https://www.ncua.gov/analysis/credit-union-corporate-call-report-data.

[3] According to the SEC, the number of brokers or dealers in securities for the fiscal year 2021 is 3,527. *See* Securities and Exchange Commission, *Fiscal Year 2023 Congressional Budget Justification*, p. 33, https://www.sec.gov/files/FY%202023%20Congressional%20Budget%20Justification%20Annual%20Performance%20Plan_FINAL.pdf.

[4] Based on estimates provided for the 2018 notice to renew OMB control number 1506–0033, 83 FR 46011 (Sept. 11, 2018).

[5] As of September 30, 2022, the CFTC stated there are 60 futures commission merchants and 989 introducing brokers in commodities, totaling 1,049.

Totaling these estimates results in 16,252 financial institutions that may access BOI pursuant to the proposed rule. Of these financial institutions, 14,051 are small entities. To identify whether a financial institution is small, FinCEN uses the Small Business Administration's (SBA) latest annual size standards for small entities in a given industry.[190] FinCEN also uses the U.S. Census Bureau's publicly available 2017 Statistics of U.S. Businesses survey data (Census survey data).[191] FinCEN applies SBA size standards to the corresponding industry's receipts in the 2017 Census survey data and determines what proportion of a given industry is deemed small, on average.[192] [193] FinCEN considers a

[190] The SBA currently defines small entity size standards for affected financial institutions as follows: less than $750 million in total assets for commercial banks, savings institutions, and credit unions; less than $41.5 million in total assets for trust companies; less than $41.5 million in annual receipts for broker-dealers; less than $41.5 million in annual receipts for portfolio management; less than $35 million in annual receipts for open-end investment funds; and less than $41.5 million in annual receipts for futures commission merchants and introducing brokers in commodities. *See* U.S. Small Business Administration's *Table of Size Standards, https://www.sba.gov/sites/default/files/2022-07/Table%20of%20Size%20Standards_Effective%20July%2014%202022_Final-508.pdf.*

[191] *See* U.S. Census Bureau, *U.S. & states, NAICS, detailed employment sizes (U.S., 6-digit and states, NAICS sectors)* (2017), available at *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* The Census survey documents the number of firms and establishments, employment numbers, and annual payroll by State, industry, and enterprise every year. Receipts data, which FinCEN uses as a proxy for revenues, is available only once every five years, with 2017 being the most recent survey year with receipt data.

[192] FinCEN does not apply population proportions to banks or credit unions. Because data accessed through FFIEC and NCUA Call Report data provides information about asset size for banks, trusts, savings and loans, credit unions, etc., FinCEN is able to directly determine how many banks and credit unions are small by SBA size standards. Because the Call Report data does not include institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or that do not have a Federal financial regulator, FinCEN assumes that all such entities listed in the FDIC's Research Information System data are small, unless they are controlled by a holding company that does not meet the SBA's definition of a small entity, and includes them in the count of small banks.

[193] Consistent with the SBA's General Principles of Affiliation, 13 CFR 121.103(a), FinCEN aggregates the assets of affiliated financial institutions using FFIEC financial data reported by bank holding companies on forms Y–9C, Y–9LP, and Y–9SP (available at *https://www.ffiec.gov/npw/*

Continued

financial institution to be small if it has total annual receipts less than the annual SBA small entity size standard for the financial institution's industry. FinCEN applies these estimated proportions to FinCEN's current financial institution counts for brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities to determine the proportion of current small financial institutions in those industries. Using this methodology and data from the FFIEC and the NCUA, approximately 14,051 small financial institutions could be affected by the proposed rule, as summarized in Table 1.

Table 2 summarizes the counts of entities by category that would have access to BOI data.

Table 2—Affected Entities

Entity Type	Count	Small Count
Federal agencies engaged in national security, intelligence, or law enforcement activities, and Treasury offices[1]	202	0
State, local, and Tribal law enforcement agencies	153	0
Foreign requesters	N/A	N/A
Regulatory agencies[2]	64	0
Financial institutions[3]	16,252	14,051
Total	**16,671**	**14,051**

[1] This includes 186 active Federal agencies and 16 offices within the U.S. Department of the Treasury including FinCEN.

[2] This includes both State and Federal regulators of institutions subject to CDD requirements, as well as SROs.

[3] This includes all financial institutions subject to CDD requirements, as summarized in Table 1.

As evidenced in Table 2, FinCEN anticipates that as many as 16,671 different domestic agencies and financial institutions could elect to access BOI. Of these, FinCEN believes the only entity category that would have small entities affected is financial institutions.[194]

c. Potential Costs and Benefits

Ideally, a cost-benefit analysis would identify and monetize, with certainty, all costs and benefits of a regulation; this would enable policymakers to evaluate different regulatory options by comparing dollar amounts of costs and benefits, and pursuing those options with the greatest net benefits. However, regulatory impact analyses often include both cost and benefit components that cannot be expressed in monetary units with any degree of certainty. As explained by OMB in relevant cost-benefit guidance, simple cost-benefit comparisons can be misleading when the analysis cannot express important benefits and costs in dollar terms ''because the calculation of net benefits in such cases does not provide a full evaluation of all relevant benefits and costs.'' [195] FinCEN follows OMB's recommendation in such instances and provides an evaluation of non-quantifiable benefits and costs in addition to quantified benefits and costs.

This RIA estimates costs to the authorized recipients for following the proposed rule's security and confidentiality requirements, costs to FinCEN for administering access to BOI, and benefits that authorized recipients would gain from accessing BOI. The quantified estimates provided in this RIA include a range of possible costs and benefits for each type of authorized recipient. The quantified benefits are limited to cost savings that agencies may obtain through accessing BOI; there are other, non-quantified benefits that would also be included in the agencies' decision to request BOI. For the purposes of estimating the overall impact of the proposed rule, FinCEN assumes that Federal, State, or local agencies that access BOI would do so only if the quantified and non-quantified benefits at least equal the costs, since these entities would obtain access to BOI only if they voluntarily request it. Therefore, FinCEN expects that in reality the minimum net impact to these entities would be zero, meaning that the costs equal the benefits. However, because many of benefits to

FinancialReport/FinancialDataDownload) and ownership data (available at *https://www.ffiec.gov/npw/FinancialReport/DataDownload*) when determining if an institution should be classified as small. FinCEN uses four quarters of data reported by holding companies, banks, and credit unions because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* U.S. Small Business Administration's *Table of Size Standards,* p. 44 n.8, *https://www.sba.gov/sites/default/files/2022-07/Table%20of%20Size%20Standards_Effective%20July%2014%202022_Final-508.pdf.* FinCEN recognizes that using SBA size standards to identify small credit unions differs from the size standards applied by the NCUA. However, for consistency in this analysis, FinCEN applies the SBA-defined size standards.

[194] FinCEN considered whether other entities would be considered small entities pursuant to the Regulatory Flexibility Act. The Regulatory Flexibility Act's definition of a small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. While State, local, and Tribal government agencies may be affected by the proposed rule, FinCEN does not believe that government agencies of jurisdictions with a population of less than 50,000 would be included in such agencies. However, FinCEN requests comment on this assumption.

[195] Office of Management and Budget, *Circular A–4:10* (Sept. 17, 2003), available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4.*

such agencies are not quantifiable, FinCEN presents in the analysis an impact estimate that incorporates the range of quantified costs and benefits that FinCEN expects based in part on outreach to agencies that are authorized recipients of BOI.

FinCEN does not attempt to estimate a dollar value of benefits that will accrue to financial institutions, State regulators or SROs as a result of the proposed rule. In order to estimate financial institutions' benefits, it would be necessary to know how access to BOI under the proposed rule would apply to CDD obligations, which will not be known until FinCEN revises the 2016 CDD Rule, as the CTA requires. FinCEN estimates a dollar value of benefits that would accrue to Federal financial regulatory agencies on the assumption that these agencies would access BOI for law enforcement activity.[196] However, FinCEN does not estimate a dollar value of benefits accruing to State regulators and SROs because FinCEN assumes that their primary use of BOI would be for examinations of financial institutions for compliance with CDD requirements, rather than for law enforcement activity. In addition, FinCEN assumes that no quantifiable benefits will accrue to FinCEN itself as a result of administering BOI access.

The costs in the first and subsequent years are distributed unevenly among the different types of Federal, State, and local agencies. The estimated average year 1 net impact per Federal agency is between $8,967,600 in costs and $2,157,165 in savings,[197] per State regulator is between $1,995 and $0.5 million in costs, per State, local and Tribal law enforcement agency is between $52,977,200 in costs and $1,516,485 in savings,[198] per SRO is between $2,494 and $0.6 million in costs, and per financial institution is between $12,206 and $17,695 in costs. From year 2 and onward, the estimated average annual net impact per Federal agency is between $8,867,600 in costs and $2,158,785 in savings,[199] per State regulator is between $855 and $0.4 million in costs, per State, local and Tribal law enforcement agency is between $52,877,200 in costs and $1,517,625 in savings,[200] per SRO is between $1,069 at $0.5 million in costs, and per financial institution is between $7,456 and $9,145 in costs. Overall, FinCEN estimates the potential overall impact associated with the proposed rule would be between $108.7 million in net savings and $840.7 million in net costs in the first year of implementation of the rule, and then from $186.5 million in net savings to $672.0 million in net costs on an ongoing annual basis.[201] These estimates, along with any non-quantifiable costs and benefits, are described in further detail within this section.[202]

In the analysis, FinCEN uses an estimated compensation rate of approximately $108 per hour for Federal agencies and foreign requesters, approximately $76 per hour for State, local, and Tribal agencies, and approximately $95 per hour for financial institutions. This is based on occupational wage data from the U.S. Bureau of Labor Statistics (BLS).[203] The most recent occupational wage data from the BLS corresponds to May 2021, released in May 2022. To obtain these three wage rates, FinCEN calculated the average reported hourly wages of six specific occupation codes assessed to be likely authorized recipients at Federal agencies, State, local, and Tribal agencies, and financial institutions.[204] [205] Included financial industries were identified at the most granular North American Industry Classification System (NAICS) code available and are the types of financial institutions that are subject to regulation under the BSA, even if these financial institutions are not entities that are affected by the proposed rule, including: banks (as defined in 31 CFR 1010.100(d)); casinos; money service businesses; broker-dealers; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; and loan or finance companies. This results in a Federal agency hourly wage estimate of $66.78; a State, local, and Tribal agency hourly wage estimate of

[196] *See* 31 U.S.C. 5336(c)(2)(B)(i)(I).

[197] The maximum estimated costs in Year 1 are $9 million per Federal agency, and the minimum estimated benefits in Year 1 per Federal agency are $32,400, so the maximum net cost per Federal agency is $8,967,600 ($9,000,000 − $32,400). The maximum estimated benefits in Year 1 per Federal agency are $2,160,000, and the minimum estimated costs in Year 1 per Federal agency ares $2,835, so the maximum estimated net benefit per Federal agency is $2,157,165 ($2,160,000 − $2,835).

[198] The maximum estimated costs in Year 1 are $53 million per State, local, and Tribal law enforcement agency, and the minimum estimated benefits in Year 1 are $22,800 per State, local and Tribal law enfocement agency, so the maxium net cost per State, local, and Tribal law enforcement agency is $52,977,200 ($53,000,000 − $22,800). The maximum estimated benefits in Year 1 per State, local, and Tribal law enforcement agency are $1,520,000, and the minimum estimated cost per State, local, and Tribal law enforcement agency is $3,515, so the maximum estimated net benefit in Year 1 per State, local, and Tribal law enforcement agency is $1,516,485 ($1,520,000 − $3,515).

[199] The maximum estimated costs in year 2 and onward are $8.9 million per Federal agency, and the minimum estimated benefits in year 2 and onward are $32,400 per Federal agency, so the maximum estimated net costs are $8,867,600 ($8,900,000 − $32,400). The maximum estimated benefits in year 2 and onward per Federal agency are $2,160,000, and the minimum estimated cost per Federal agency is $1,215, so the maximum estimated net benefits per Federal agency are $2,158,785 ($2,160,000 − $1,215).

[200] The maximum estimated costs in year 2 and onward are $52.9 million per State, local, and Tribal law enforcement agency, and the minimum estimate benefits in year 2 and onward per State, local, and Tribal law enforcement agency are $22,800, so the maximum estimated net costs in years 2 and onward per State, local, and Tribal law enforcement agency are $52,877,200 ($52,900,000 − $22,800). The maximum estimated benefits in years 2 and onward per State, local, and Tribal law enforcement agency are $1,520,000, and the minimum estimated costs in years 2 and onward per State, local, and Tribal law enforcement agency ares $2,375, so the maximum estimated net benefits in years 2 and onward per State, local, and Tribal law enforcement agency are $1,517,625 ($1,520,000 − $2,375).

[201] Both here and throughout the analysis, FinCEN estimates a range of both costs and benefits. These ranges reflect heterogeneity across agencies and financial institutions in terms of requirements to access BOI, entity size, resources, existing IT infrastructure, and investigative caseload, among other factors. FinCEN does not know exactly what every authorized recipient's unique costs and benefits would be and instead provides ranges of the expected minimum and maximum. FinCEN believes that providing ranges with minimums and maximums, rather than a point estimate, such as the median, throughout this analysis is more appropriate given the number of factors that could contribute to the actual cost or benefits an authorized recipient incurs due to the proposed rule.

[202] Throughout the analysis, FinCEN rounds each step of the calculation to the nearest whole dollar value for smaller estimates and to the first significant figure after the decimal for larger estimates (in the hundreds of thousands, millions, and billions). Performing a sensitivity analysis where rounding is only performed in the final step of the whole impact calculation confirms that FinCEN's rounding method produces a difference of less than 0.7 percent in the magnitude of FinCEN's estimates, which FinCEN does not consider to be sufficient to affect its analysis or conclusions regarding the impact of the proposed rule.

[203] *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates* (May 2021), available at *https://www.bls.gov/oes/current/oessrci.htm.*

[204] To estimate government hourly wages, FinCEN modifies the burden analysis in FinCEN's publication ''Renewal without Change of Anti-Money Laundering Programs for Certain Financial Institutions.'' *See* 85 FR 49418 (Aug. 13, 2020). Specifically, FinCEN uses hourly wage data from the following six occupations to estimate an average hourly government employee wage: chief executives (*i.e.,* agency heads), first-line supervisors of law enforcement workers, law enforcement workers, financial examiners, lawyers and judicial clerks, and computer and information systems managers.

[205] FinCEN uses hourly wage data for the following occupations to estimate an average hourly financial institution employee wage: chief executives, financial managers, compliance officers, and financial clerks. FinCEN also includes the hourly wages for lawyers and judicial clerks, as well as for computer and information systems managers.

$46.70;[206] and a financial institution hourly wage estimate of $67.23. Multiplying these hourly wage estimates by their corresponding benefits factor (1.62[207] for government agencies and 1.42[208] for private industry) produces a fully loaded hourly compensation amounts of approximately $108 for Federal agencies, $76 for State, local, and Tribal agencies, and $95 per hour for financial institutions. These wage estimates are summarized in Table 3:

Table 3—Fully Loaded Wage Estimates

Entity Type	Mean Hourly Wage	Benefits Factor	Fully Loaded Hourly Wage
Federal government agency[1]	$66.78	1.62	$108
State government agency	$46.02	1.62	$75
Local government agency	$47.37	1.62	$77
Equal weighted average for State, local, and Tribal agencies[2,3]	$46.70	1.62	$76
Financial institution	$67.23	1.42	$95

[1] FinCEN assumes the same hourly wage estimate for foreign requesters as for Federal agencies.

[2] This estimate does not include Tribal wages, as BLS does not provide any estimates for Tribal agencies. FinCEN welcomes comment on this estimate.

[3] FinCEN calculates a simple average of the hourly wage estimate of State and local agencies. Estimating the average State and local agency hourly wage using a value-weighted approach based on the likely proportion of State versus local agency participants using internal FinCEN BSA data produced a similar hourly wage estimate.

1. Costs

Each of the affected entities would have costs associated with the proposed rule if it elects to access FinCEN's BOI database. The costs would vary based on the access procedures for the authorized recipients.[209] The proposed rule would require different access procedures for domestic agencies, foreign requesters, and financial institutions. FinCEN would also incur costs for administering access to authorized recipients.

A. Domestic Agencies

Domestic agencies must meet multiple requirements to receive BOI. Whether the costs of these requirements would be one-time, ongoing, or recurring, and whether the costs accrue on a per-recipient or per-request basis varies from requirement to requirement. Additionally, some requirements are administrative and involve the creation of documents, while others involve IT. To estimate the costs for meeting these requirements, FinCEN consulted with multiple Federal agencies and utilized statistics regarding active entities with BSA data access. Requirements are summarized in Table 4, which is followed by more detailed analysis. Costs associated with each requirement are summarized in Table 5, at the end of this section.

[206] To estimate a single hourly wage estimate for State, local, and Tribal agencies, FinCEN calculated an average of the May 2021 mean hourly wage estimates for State government agencies and for local government agencies (($46.02 + $47.37)/2 = $46.70), as wages are available for both of these types of government workers in the BLS occupational wage data. BLS data does not include an estimate for Tribal government worker and thus FinCEN does not include a Tribal government worker wage estimate in this average. FinCEN welcomes comment on how to obtain wage estimates for Tribal government workers.

[207] The ratio between benefits and wages for State and local government workers is $21.15 (hourly benefits)/$34.32 (hourly wages) = 0.62, as of March 2022. The benefit factor is 1 plus the benefit/wages ratio, or 1.62. *See* U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation Historical Listing,* available at *https://www.bls.gov/web/ecec/ececqrtn.pdf.* The State and local government workers series data for March 2022 is available at *https://www.bls.gov/web/ecec/ecec-government-dataset.xlsx.* FinCEN applies the same benefits factor to Federal workers.

[208] The ratio between benefits and wages for private industry workers is $11.42 (hourly benefits)/$27.19 (hourly wages) = 0.42, as of March 2022. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation: Private industry dataset* (March 2022), available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

[209] The costs would also vary by institution size and investigation caseload, but for simplicity, FinCEN estimates an average impact by category of authorized recipient throughout the analysis.

Table 4—Requirements for Domestic Agencies [1]

#	Requirement	Timing of Cost	Type of Cost
1	Enter into an agreement with FinCEN and establish standards and procedures	One-time	Administrative
2	Establish and maintain a secure system to store BOI	Ongoing	IT
3	Establish and maintain an auditable system of standardized records for requests	Ongoing	IT
4	Restrict access to appropriate persons within the agency, all of whom must undergo training[2]	Ongoing (Training cost is per recipient)	Administrative
5	Conduct an annual audit and cooperate with FinCEN's annual audit	Annual	Administrative
6	Obtain certification of standards and procedures initially and then semi-annually, by the head of the agency	Semi-annual	Administrative
7	Provide initial and then an annual report on procedures	Annual	Administrative
8	Submit written certification for each request that it meets certain agency requirements	Ongoing (Cost is per request)	Administrative

[1] In addition to the requirements in this table, the proposed rule requires that a domestic agency shall limit, to the greatest extent practicable, the scope of BOI it seeks. However, there is no associated cost estimated for this requirement, and it is not included within the table.

[2] While FinCEN does not assess a cost for restricting access, FinCEN assesses a cost related to the training requirement included under this provision.

Enter into an agreement with FinCEN and establish standards and procedures. For requirement #1, FinCEN assumes that domestic agencies would incur costs during the first year of implementation. FinCEN received the following feedback from different agencies on the amount of time needed for these requirements. Agencies described the types of activities expected to meet these requirements in their responses, but the feedback applies to estimated burden for requirement #1:

- Approximately 15 to 20 hours to formalize policies and procedures.
- Approximately 40 hours to review, analyze and implement any unique standards and procedures of FinCEN's database into the agency's current secure systems.
- Approximately 300 hours to draft and shepherd standards and procedures.

Therefore, in alignment with the feedback FinCEN received during outreach efforts, FinCEN assumes it would take a domestic agency, on average, between 15 and 300 business hours to complete this one-time task. Using an hourly wage estimate of $108 per hour for Federal agencies results in a one-time cost between approximately $1,620 and $32,400 per Federal agency ((15 hours × $108 per hour = $1,620) and (300 hours × $108 per hour = $32,400)). Using an hourly wage estimate of $76 per hour for State, local, and Tribal agencies results in a one-time cost between approximately $1,140 and $22,800 per State, local, and Tribal agency ((15 hours × $76 per hour = $1,140) and (300 hours × $76 per hour = $22,800)). To estimate aggregate costs, FinCEN multiplies these ranges by 208 total Federal agencies [210] and 209 State, local, and Tribal agencies,[211] resulting in a total one-time cost between approximately $0.6 million and $11.5 million ((208 Federal agencies × $1,620 per Federal agency + 209 State, local, and Tribal agencies × $1,140 per State, local, and Tribal agency = $575,220) and (208 Federal agencies × $32,400 per Federal agency + 209 State, local, and Tribal agencies × $22,800 per State, local, and Tribal agency = $11,504,400)).

Establish and maintain a secure system to store BOI. The cost of requirement #2 would vary depending on the existing IT infrastructure of the domestic agency. Some agencies may be able to build upon existing systems that generally meet the security and confidentiality requirements. Other agencies may need to create new systems. FinCEN received the following feedback from outreach on this subject.

[210] This is derived from 202 Federal law enforcement, national security and intelligence agencies and agency subcomponents plus six Federal regulators.

[211] This is derived from 153 State and local law enforcement agencies plus 56 State regulators that supervise entities with CDD obligations.

Agencies described the types of activities expected to meet these requirements in their responses, but the feedback applies to estimated burden for requirement #2:

- Approximately 60 hours to establish a secure system for BOI, based on the method of access. That agency further suggested that maintaining the secure storage system would require a periodic review of about 4 hours to assure system integrity.
- Approximately 300 hours to incorporate BOI into existing information systems. Once the system is established, maintenance would be a minimal additional ongoing cost.
- Approximately no cost, assuming that the BOI would be accessed similarly to BSA data (*i.e.,* in a web-based system maintained by FinCEN). This was the conclusion of multiple agencies. One agency further noted that this overall process would have little to no financial impact on the agency, as FinCEN would establish the web-based portal, maintain the secure storage system of the data, and develop mechanisms to safeguard the information contained therein from unauthorized access.

Consistent with feedback from agencies, FinCEN expects that certain agencies (in particular, Federal agencies) would bear *de minimis* IT costs because Federal agencies already have secure systems and networks in place as well as sufficient storage capacity in accordance with Federal Information Security Management Act (FISMA) standards.[212] Therefore, FinCEN assumes a range of burden for requirement #2 in year 1 of *de minimis* to 300 hours, and an ongoing burden of *de minimis* to 4 hours.

Using an hourly wage estimate of $108 per hour for Federal agencies results in an initial cost between approximately *de minimis* costs and $32,400 (300 hours × $108 per hour = $32,400), and $432 annually thereafter (4 hours × $108 per hour = $432) per Federal agency. Using an hourly wage estimate of $76 per hour for State, local, and Tribal agencies results in an initial cost between approximately *de minimis* costs and $22,800 (300 hours × $76 per hour = $22,800), and $304 annually thereafter (4 hours × $76 per hour = $304) per State, local, and Tribal agency. To estimate aggregate costs, FinCEN multiplies these ranges by 208 total Federal agencies, and 209 State, local, and Tribal agencies, resulting in a total year 1 cost between approximately *de minimis* and $11.5 million (208 Federal agencies × $32,400 per Federal agency + 209 State, local, and Tribal agencies × $22,800 per State, local, and Tribal agency = $11,504,400). The ongoing annual cost would be between approximately *de minimis* and $0.2 million (208 Federal agencies × $432 per Federal agency + 209 State, local, and Tribal agencies × $304 per State, local, and Tribal agency = $153,392).

Establish and maintain an auditable system of standardized records for requests. As with requirement #2, the ongoing IT costs from requirement #3 would vary depending on the existing IT infrastructure of the domestic agency. FinCEN received the following feedback from outreach on this subject. Agencies described the types of activities expected to meet these requirements in their responses, but the feedback applies to estimated burden for requirement #3:

- Approximately 60 hours would be required to establish a storage system for record requests that is in compliance with both FinCEN and the agency's applicable policies and procedures. This estimate includes a review of the agency's Memorandum of Understanding (MOU) with FinCEN and consultation with appropriate personnel responsible for access to and disclosure of such records. Additionally, the agency suggested that maintenance of BOI requests would require an estimated 20 hours on an ongoing basis.
- Approximately 200 hours would be needed to incorporate BOI into record storage systems and minimal ongoing cost.
- Approximately no additional costs, as another agency noted that the cost would already be included in the estimate for establishing standards and procedures, and that if BOI is treated similarly to BSA data, there would not be ongoing costs.

FinCEN expects that certain agencies (in particular, Federal agencies) would bear *de minimis* IT costs because Federal agencies already have secure systems and networks in place as well as sufficient storage capacity in accordance with FISMA standards. Therefore, based on agency feedback, FinCEN assumes a range of burden for requirement #3 in year 1 of *de minimis* to 200 hours, and an ongoing burden of *de minimis* to 20 hours.

Using an hourly wage estimate of $108 per hour for Federal agencies results in an initial cost between approximately *de minimis* costs and $21,600 (200 hours × $108 per hour = $21,600), and $2,160 annually thereafter (20 hours × $108 per hour = $2,160) per Federal agency. Using an hourly wage estimate of $76 per hour for State, local, and Tribal agencies results in an initial cost between approximately *de minimis* costs and $15,200 (200 hours × $76 per hour = $15,200), and $1,520 annually thereafter (20 hours × $76 per hour = $1,520) per State, local, and Tribal agency. To estimate aggregate costs, FinCEN multiplies these ranges by 208 total Federal agencies, and 209 State, local, and Tribal agencies, resulting in a total year 1 cost between approximately *de minimis* and $7.7 million (208 Federal agencies × $21,600 per Federal agency + 209 State, local, and Tribal agencies × $15,200 per State, local, and Tribal agency = $7,669,600). The ongoing annual cost would be between approximately *de minimis* and $0.8 million (208 Federal agencies × $2,160 per Federal agency + 209 State, local, and Tribal agencies × $1,520 per State, local, and Tribal agency = $766,960).

Restrict access to appropriate persons within the agency, all of whom must undergo training. Requirement #4 notes that employees that receive BOI access would be required to undergo training. The number of authorized recipients that would have BOI access at a given agency would vary. Using the active entities with access to BSA data as of January 2022 as a proxy, and consistent with information provided by a number of agencies, FinCEN anticipates that each Federal agency could have anywhere between approximately 1 and 1,600 recipients of BOI data while each State, local, and Tribal agency could have anywhere between 1 and 68 recipients of BOI.[213]

To estimate the cost of this training, FinCEN assumes that each employee that would access the BOI data would be required to undergo 1 hour of training per year.[214] Using an hourly wage estimate of $108 per hour for Federal agencies results in an annual cost between approximately $108 and $172,800 (1 employee × 1 hour × $108 per hour = $108) and (1,600 employees × 1 hour × $108 per hour)) per Federal agency. Using an hourly wage estimate of $76 per hour for State, local, and Tribal agencies results in an annual cost

[212] Under FISMA, Federal agencies need to provide information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of information collected or maintained by an agency. Federal agencies also need to comply with the information security standards and guidelines developed by NIST. 44 U.S.C. 3553.

[213] The range provided is an estimate of the lowest and highest number of users for Federal agencies and for State and local agencies respectively as of a given date in January 2022 with access to BSA data through FinCEN's database.

[214] The assumption of one training hour is in alignment with the current training requirement for accessing BSA data. However, one notable difference is that the proposed BOI training requirement is annual, not biennial.

between approximately $76 and $5,168 (1 employee × 1 hour × $76 per hour = $76) and (68 employees × 1 hour × $76 per hour = $5,168)) per State, local, and Tribal agency.

To estimate the aggregate annual costs, FinCEN uses aggregate user counts of active BSA data users based on internal FinCEN data from January 2022, which provides a more reasonable estimate of the likely number of authorized recipients than assuming the previously estimated ranges would apply to each domestic agency. Therefore, based on internal data, FinCEN expects that approximately 11,000 Federal employees and 1,800 employees of State, local, and Tribal agencies would require annual training to access BOI data.[215] This translates into an aggregate annual training cost of approximately $1.3 million (11,000 Federal employees × 1 hour × $108 per hour + 1,800 State, local, and Tribal employees × 1 hour × $76 per hour = $1,324,800).

Conduct an annual audit and cooperate with FinCEN's annual audit; initially and then semi-annually certify standards and procedures by the head of the agency; annually provide a report on procedures. Requirements #5–7 are administrative costs that a domestic agency would incur on an annual or semi-annual basis. Specifically, they require an agency to: (1) conduct an annual audit and cooperate with FinCEN's annual audit; (2) certify standards and procedures by the head of the agency semi-annually; and (3) provide an annual report on procedures to FinCEN. Based on feedback from outreach, FinCEN assumes it would take a given agency between 10 hours and 160 hours per year to meet these three requirements.

FinCEN received the following feedback from domestic agencies regarding the estimated costs of these requirements. Agencies described the types of activities expected to meet these requirements in their responses, but the feedback applies to estimated burden for requirements #5–7:

- Approximately 40 hours would be needed to perform an annual audit related to compliance of standards, procedures and storage of data. Once acceptable and verifiable procedures are in place, annual reporting to FinCEN would require approximately 20 hours and an annual outlay of 30 hours to review and proceed with internal processes that would result in the agency head's semi-annual certification. Thus, the aggregate annual estimate of compliance burden would be approximately 120 hours (40 hours for audit + (2 × 30 hours for agency head certification) + 20 hours for reporting).
- Approximately 100 hours to conduct an annual audit by internal auditors, 40 hours to prepare an annual report, and 20 hours to prepare for review and certification, totaling 160 hours.
- Approximately 0 hours to conduct an annual audit given the assumption that FinCEN would maintain the database, and 10 to 20 hours for the annual report and agency head review.[216]
- Approximately 120 to 160 hours. One agency's liaison to FinCEN is responsible for, among other duties, reviewing the results of an annual audit conducted by FinCEN relating to system usage, and ensuring personnel are in compliance with the policies and procedures set forth by FinCEN.[217] The liaison spends anywhere from 120 to 160 hours each year on these duties relating to BSA data. One agency anticipates that a similar number of the liaison's hours would be attributed to BOI, and the administrative, procedural, or legal requirements that may come with it.

Using an hourly wage estimate of $108 per hour for Federal agencies results in annual costs between approximately $1,080 and $17,280 per Federal agency ((10 hours × $108 per hour = $1,080) and (160 hours × $108 per hour = $17,280)). Using an hourly wage estimate of $76 per hour for State, local, and Tribal agencies results in annual costs between approximately $760 and $12,160 per State, local, and Tribal agency ((10 hours × $76 per hour = $760) and (160 hours × $76 per hour = $12,160)). To estimate annual aggregate costs, FinCEN multiplies these ranges by 208 total Federal agencies and 209 State, local, and Tribal agencies, resulting in a total annual cost between approximately $0.4 million and $6.1 million ((208 Federal agencies × $1,080 per Federal agency + 209 State, local, and Tribal agencies × $760 per State, local, and Tribal agency = $383,480) and (208 Federal agencies × $17,280 per Federal agency + 209 State, local, and Tribal agencies × $12,160 per State, local, and Tribal agency = $6,135,680)).

Submit written certification for each request that it meets certain agency requirements. Finally, for requirement #8, domestic agencies are required to submit a written certification for each request for BOI. The written certification would be in the form and manner prescribed by FinCEN. FinCEN anticipates that this certification would be submitted to FinCEN via an electronic form. The number of requests for BOI that would be submitted to FinCEN by domestic agencies in any given year would vary.

FinCEN assumes that submitting a request to FinCEN for BOI would take one employee approximately 15 minutes, or 0.25 hours, per request. This is based on FinCEN's experience with submitting requests for BSA data in FinCEN Query, which similarly require a written justification for a search request. Certification requirements vary by authorized recipient type under the proposed rule.[218] FinCEN expects that requests submitted by State, local, and Tribal law enforcement agencies would have 20 to 30 hours of burden in addition to the 0.25 hours of burden per request owing to an additional requirement that a court of competent jurisdiction, including any officer of such a court, issue a court authorization for the agency to seek the information in a criminal or civil investigation.[219] For purposes of estimating the cost of these additional hours of burden, FinCEN applies the hourly wage estimate for State, local, and Tribal employees and assumes that this cost would be incurred by the State, local or Tribal agency. In practice, employees within the court system may also incur costs related to this requirement. FinCEN welcomes comment on the appropriate

[215] These estimates are based on the number of users that directly access BSA data through FinCEN's internal system; there are a limited number of other ways that users may access BSA data, which are not accounted for here. Furthermore, FinCEN does not estimate growth of BOI authorized recipients throughout the 10-year time horizon of this analysis. However, FinCEN acknowledges that the number of BOI authorized recipients could increase significantly after the first year of implementation of the BOI reporting requirements as awareness of the ability to access and utility of BOI increases.

[216] This estimate assumes that FinCEN would have audit responsibilities, and the tracking of auditable activity would be maintained by FinCEN's system. This is similar to the current BSA data structure. Therefore, the agency assumes that it would not independently bear costs related to this audit function.

[217] Additionally, the liaison disseminates protocols to authorized personnel relating to requesting and maintaining access to BSA data.

[218] While Federal and regulatory agencies must certify that their request is related to specific activities, State, local, and Tribal law enforcement agencies must certify that a court of competent jurisdiction, including any officer of such a court, has authorized the agency to seek the information in a criminal or civil investigation.

[219] FinCEN believes a 20 to 30 hour burden estimate for the additional requirement of obtaining court authorization for a BOI request would reflect the time needed for activities associated with obtaining a court authorization. FinCEN requests comment on whether this understanding is accurate.

wage rate and burden for such an estimation.

Using an hourly wage estimate of $108 per hour for Federal employees results in a per request cost of approximately $27 per Federal agency (0.25 hours × $108 per hour = $27). Using an hourly wage estimate of $76 per hour for State, local, and Tribal employees results in a per request cost of approximately $19 per State and local regulator (0.25 hours × $76 per hour = $19) and between approximately $1,539 and $2,299 per State, local, and Tribal law enforcement agency ((20.25 hours × $76 per hour = $1,539) and (30.25 hours × $76 per hour = $2,299)).

To estimate a per agency annual cost, FinCEN uses BSA data request statistics from Fiscal Year 2021 as a proxy. Using these data, FinCEN estimates that each Federal agency could submit between 1 and 323,000 requests for BOI annually while each State, local, and Tribal agency could submit between 1 and 23,000 requests for BOI annually.[220] Therefore, the estimated annual cost is between $27 and $8.7 million (($27 per request × 1 request) and ($27 per request × 323,000 requests = $8,721,000)) per Federal agency. The annual cost is between $19 and $0.4 million (($19 per request × 1 request) and ($19 per request × 23,000 requests = $437,000)) per State and local regulator. The annual cost is between $1,539 and $52.9 million (($1,539 per request × 1 request = $1,539) and ($2,299 per request × 23,000 requests = $52,877,000) per State, local, and Tribal law enforcement agency. FinCEN acknowledges that there is burden associated with the requirement to obtain a court authorization. As a result, State, local, or Tribal law enforcement agencies may submit fewer requests for BOI information than requests for BSA information, which do not impose similar requirements. FinCEN requests comment from such authorities on whether this requirement would make it less likely that they would submit BOI requests, when compared with BSA requests.

Using FinCEN's internal BSA request data as a proxy, FinCEN anticipates that Federal agencies could submit as many as 2 million total BOI requests annually and that State, local, and Tribal agencies could submit as many as 230,000 total BOI requests annually.[221] [222] The internal number of BSA requests provides a more reasonable estimate of the likely number of aggregate requests than assuming the previously estimated ranges would apply to each domestic agency. This translates into aggregate annual costs between $362.4 million and $514.4 million ((2 million Federal requests × $27 per request + 30,000 State and local regulatory requests × $19 per request + 200,000 State, local, and Tribal law enforcement requests × $1,539 per request = $362,370,000) and (2 million Federal requests × $27 per request + 30,000 State and local regulatory requests × $19 per request + 200,000 State, local, and Tribal law enforcement requests × $2,299 per request = $514,370,000)).

Table 5 presents the estimated costs to domestic agencies, as well as SROs, for requirements #1–8. Table 5 includes both the per agency cost and the aggregate costs for each requirement. The estimated average per agency cost in year 1 is between $2,835 and $9.0 million per Federal agency, between $1,995 and $0.5 million per State and local regulator, between $3,515 and $53 million per State, local, and Tribal law enforcement agency, and between $2,494 to $0.6 million per SRO.[223] The estimated average per agency cost each year after the first year of implementation is between $1,215 and $8.9 million per Federal agency, between $855 and $0.4 million per State and local regulator, between $2,375 and $52.9 million per State, local, and Tribal law enforcement agency, and between $1,069 to $0.5 million per SRO. The total estimated aggregate cost to domestic agencies in year 1 is between $364.7 million and $553.1 million, and then between $364.1 million and $523.3 million each year thereafter.

BILLING CODE 4810–02–P

[220] The range is an estimate of the lowest and highest number of BSA data requests received through FinCEN's database from Federal agencies and for State and local agencies respectively during Fiscal Year 2021.

[221] Of the 230,000 anticipated total annual State, local, and Tribal BOI requests, approximately 30,000 are expected from State regulators and approximately 200,000 from State, local, and Tribal law enforcement agencies.

[222] While FinCEN does not estimate growth of requests throughout the 10-year time horizon of this analysis, the number of BOI requests could increase significantly after the first years of implementation of the BOI reporting requirements as awareness of the ability to access and utility of BOI increases.

[223] To calculate total costs to SROs, FinCEN calculated a ratio that applied the estimated costs to State regulators (which would have access requirements similar to SROs) to the wage rate estimated herein for financial institutions, since SROs are private organizations. FinCEN requests comment on this assessment. As noted previously, SROs would not have direct access to the beneficial ownership IT system, but rather may receive BOI through re-disclosure.

Table 5—Costs to Domestic Agencies

#	Requirement	Year 1 Cost Per Agency	Years 2+ Cost Per Agency	Aggregate Costs Year 1	Aggregate Costs Years 2+
1	Enter into an agreement with FinCEN and establish standards and procedures	$1,620 to $32,400 per Federal agency $1,140 to $22,800 per State, local, and Tribal agency	$0	$0.6 million to $11.5 million	$0
2	Establish and maintain a secure system to store BOI	*de minimis* to $32,400 per Federal agency *de minimis* to $22,800 per State, local, and Tribal agency	*de minimis* to $432 per Federal agency *de minimis* to $304 per State, local, and Tribal agency	*de minimis* to $11.5 million	*de minimis* to $0.2 million
3	Establish and maintain an auditable system of standardized records for requests	*de minimis* to $21,600 per Federal agency *de minimis* to $15,200 per State, local, and Tribal agency	*de minimis* to $2,160 per Federal agency *de minimis* to $1,520 per State, local, and Tribal agency	*de minimis* to $7.7 million	*de minimis* to $0.8 million
4	Restrict access to appropriate persons within the agency, which specifies that each appropriate person will undergo training[1]	$108 to $172,800 per Federal agency $76 to $5,168 per State, local, and Tribal agency	$108 to $172,800 per Federal agency $76 to $5,168 per State, local, and Tribal agency	$1.3 million	$1.3 million
5	Conduct an annual audit and cooperate with FinCEN's annual audit	$1,080 to $17,280 per Federal agency $760 to $12,160 per State, local, and Tribal agency	$1,080 to $17,280 per Federal agency $760 to $12,160 per State, local, and Tribal agency	$0.4 million to $6.1 million	$0.4 million to $6.1 million
6	Obtain certification of standards and procedures initially and then semi-annually, by the head of the agency				

#	Requirement	Year 1 Cost Per Agency	Years 2+ Cost Per Agency	Aggregate Costs Year 1	Aggregate Costs Years 2+
7	Provide initial and then an annual report on procedures				
8	Submit written certification for each request that it meets certain agency requirements[2]	$27 to $8.7 million per Federal agency $19 to $0.4 million per State and local regulator $1,539 to $52.9 million per State, local, and Tribal law enforcement agency	$27 to $8.7 million per Federal agency $19 to $0.4 million per State and local regulator $1,539 to $52.9 million per State, local, and Tribal law enforcement agency	$362.4 million to $514.4 million	$362.4 million to $514.4 million
	Total	**$2,835 to $9.0 million per Federal agency** **$1,995 to $0.5 million per State and local regulator** **$3,515 to $53 million per State, local, and Tribal law enforcement agency** **$2,494 to $0.6 million per SRO**	**$1,215 to $8.9 million per Federal agency** **$855 to $0.4 million per State and local regulator** **$2,375 to $52.9 million per State, local, and Tribal law enforcement agency** **$1,069 to $0.5 million per SRO**	**$364.7 million to $553.1 million**	**$364.1 million to $523.3 million**

[1] The per agency annual cost is estimated using a range of the minimum and maximum number of Federal employees and of State, local, and Tribal employees of any agency that access BSA data. The aggregate costs are estimated using the total number of Federal employees and of State, local, and Tribal employees that directly access BSA data.

[2] The per agency annual cost is estimated using a range of the minimum and maximum number of requests of any agency that access BSA data. The aggregate costs are estimated using the total number of BSA data requests from Fiscal Year 2021 for Federal agencies, State and local regulators, and State, local, and Tribal law enforcement agencies.

BILLING CODE 4810–02–C

In addition to the costs listed in Table 5, Federal agencies may incur costs related to submitting requests on behalf of foreign requesters. These costs are

estimated in the next section. Federal agencies may also bear costs related to enforcement in cases of unauthorized disclosure and use of BOI; however, these costs have not been estimated in this analysis, as the level of compliance with the proposed rule is unknown.

B. Foreign Requesters

Foreign requesters must meet multiple requirements to receive BOI. FinCEN does not have an estimate of the number of foreign requesters that may elect to request and access BOI, or which requesters would do so under an applicable international treaty, agreement, or convention, or through another channel available under the proposed rule, and welcomes public comment on how to estimate this number. Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention would not have certain requirements under the proposed rule, given that such requesters would be governed by standards and procedures under the applicable international treaty, agreement, or convention. However, FinCEN does not differentiate between types of foreign requesters in this analysis, given the lack of data. Though FinCEN is unable to estimate aggregate costs on foreign requesters at this time given the lack of data on the number of foreign requesters that may access BOI, FinCEN provides partial cost estimates of the requirements on a given foreign requester. Requirements are summarized in Table 6, which is followed by a more detailed analysis. Costs associated with each requirement are summarized in Table 7 at the end of this section.

Table 6—Requirements for Foreign Requesters [1]

#	Requirement	Timing of Cost	Type of Cost
1	Establish standards and procedures	One-time	Administrative
2	Establish a secure system to store BOI	Ongoing	IT
3	Restrict access to appropriate persons within the entity, which specifies that appropriate persons will undergo training	Ongoing per requester	Administrative
4	Provide information for each request to an intermediary Federal agency	Ongoing per request	Administrative

[1] In addition to the requirements in this table, the proposed rule requires that a foreign requester shall limit, to the greatest extent practicable, the scope of BOI it seeks. However, there is no associated cost estimated for this requirement, and it is not included within the table.

Establish standards and procedures. For requirement #1, FinCEN assumes that foreign requesters would incur costs during the first year of implementation. FinCEN assumes it would take a foreign requester, on average, between one and two full business weeks (or, between 40 and 80 business hours) to establish standards and procedures. This estimate is a FinCEN assumption based on its experience coordinating with foreign partners. FinCEN requests comment on the accuracy of this estimate. Using an hourly wage estimate of $108 per hour for Federal agencies, which FinCEN assumes is a comparable hourly wage estimate for foreign requesters, FinCEN estimates this one-time cost would be between approximately $4,320 and $8,640 per foreign requester ((40 hours × $108 per hour) and (80 hours × $108 per hour)). Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention would not have this requirement under the proposed rule, given that such requesters would be governed by standards and procedures under the applicable international treaty, agreement, or convention. However, FinCEN does not differentiate between types of foreign requesters in this analysis, given the lack of data.

Establish a secure system to store BOI. For requirement #2, the cost of the ongoing IT requirement would vary depending on the existing infrastructure of the foreign requester. FinCEN believes that foreign requesters already have secure systems and networks in place as well as sufficient storage capacity, given their ongoing coordination with the U.S. Government on a variety of matters, which likely adhere to applicable data security standards. Therefore, FinCEN assumes *de minimis* IT costs. FinCEN welcomes comment on this assumption. Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention would not have this requirement under the proposed rule, given that such requesters would be governed by security standards under the applicable international treaty, agreement, or convention. However, FinCEN does not differentiate between types of foreign requesters in this analysis, given the lack of data.

Restrict access to appropriate persons within the agency, which specifies that appropriate persons will undergo training. For requirement #3, FinCEN assumes that each foreign requester that would access the BOI data would be required to undergo 1 hour of training per year. Using an estimated hourly wage amount of $108, this results in an annual training cost of approximately $108 per foreign requester.

Provide information for each request to an intermediary Federal agency. For requirement #4, FinCEN assumes that providing information for a BOI request to a Federal intermediary agency would take one foreign requester approximately 45 minutes, or 0.75 hours, per request. This estimate is based on FinCEN's assumption that a request for BOI submitted directly by a Federal agency on its own behalf would

take approximately 15 minutes; given the additional information required for a foreign-initiated request, FinCEN proposes tripling that estimate for foreign requests. Using an hourly wage estimate of $108 per hour, this would result in a per request cost of approximately $81 per foreign requester (0.75 hours × $108 per hour = $81). Based on feedback from agencies, FinCEN believes that the total number of foreign requests could range between approximately 200 and 900 per year.[224] This would result in an aggregate annual cost to foreign requesters between approximately $16,200 and $72,900 ((200 requests × $81 per request = $16,200) and (900 requests × $81 per request = $72,900)).

FinCEN also assumes that Federal agencies that submit requests on behalf of foreign requesters to FinCEN would incur additional costs; FinCEN itself expects to incur costs from the submission of such requests. Therefore, FinCEN estimates that BOI requests on behalf of foreign requesters would require approximately two hours of one Federal employee's time, resulting in a cost per request of approximately $216 (2 hours × $108 per hour). This would result in a total annual cost to Federal agencies between approximately $43,200 and $194,400 ((200 requests × 2 hours × $108 per hour = $43,200) and (900 requests × 2 hours × $108 per hour = $194,400)).

Table 7 presents the estimated costs to foreign requesters for each of requirements #1–4.

Table 7—Costs to Foreign Requesters [1]

#	Requirement	Year 1 Cost Per Requester	Years 2+ Cost Per Requester	Aggregate Costs Year 1	Aggregate Cost Years 2+
1	Establish standards and procedures	$4,320 – $8,640	$0	Unknown	Unknown
2	Establish a secure system to store BOI	*de minimis*	*de minimis*	*de minimis*	*de minimis*
3	Restrict access to appropriate persons within the entity, which specifies that each appropriate person will undergo training[2]	$108 per requester	$108 per requester	Unknown	Unknown
4	Provide information for each request to an intermediary Federal agency [3]	$81 per request	$81 per request	$16,200 to $72,900	$16,200 to $72,900
	Total	**$4,509 to $8,829**	**$189**	**$16,200 to $72,900**	**$16,200 to $72,900**

[1] Due to a lack of data on the number of potential foreign requesters that may elect to access BOI, it is not possible to estimate the aggregate foreign requester costs from requirements #1 and #4. The per requester and aggregate cost estimates for foreign requesters are partial, given that aggregate costs for two of the four requirements are unknown, since FinCEN does not have an estimate of the number of foreign requesters. FinCEN requests comment on an estimate of the number of potential foreign requesters that may request BOI.

[2] While FinCEN does not assess a cost for restricting access, FinCEN assesses a cost related to the training requirement included under this provision. Since FinCEN does not have an estimate of the number of foreign requesters, FinCEN does not estimate an aggregate cost associated with this requirement.

[3] In addition to imposing costs on foreign requesters, BOI requests from foreign requesters would impose a burden on Federal agencies, as Federal agencies would submit such BOI requests to FinCEN on behalf of the foreign requester. FinCEN expects Federal agencies' efforts and coordination to result in two hours of burden, or approximately $216 per request

C. Financial Institutions

Financial institutions must meet multiple requirements to access BOI. Requirements are summarized in Table 8, which is followed by a more detailed analysis. Costs associated with each requirement are summarized in Table 9, at the end of this section.

[224] FinCEN recognizes that the number of BOI requests from foreign requesters may be higher in reality, as no such U.S. beneficial ownership IT system currently exists. The existence of a centralized U.S. BOI source may in fact result in a higher number of annual requests by foreign requesters. FinCEN welcomes comment on this estimate.

Table 8—Requirements for Financial Institutions [1]

#	Requirement	Timing of Cost	Type of Cost
1	Establish administrative and physical safeguards	One-time	Administrative
2	Establish technical safeguards	Ongoing	IT
3	Obtain and document customer consent	One-time	Administrative
4	Submit written certification for each request that it meets certain requirements	Ongoing per request	Administrative
5	Undergo training[2]	Ongoing per recipient	Administrative

[1] In addition to the requirements in this table, the proposed rule requires that financial institutions shall restrict access to BOI. However, FinCEN does not estimate a cost for this requirement, and it is not included within the table.

[2] While the proposed rule does not explicitly require training, FinCEN believes that the safeguards in the proposed rule would require authorized recipients of BOI at these institutions to undergo training. Additionally, FinCEN anticipates that access to the beneficial ownership IT system would be conditioned on recipients of BOI undergoing training.

Establish administrative and physical safeguards. For requirement #1, FinCEN assumes that financial institutions would incur costs during the first year of implementation. FinCEN assumes it would take a financial institution, on average, between one and two full business weeks (or, between 40 and 80 business hours) to establish administrative and physical safeguards. This estimate is a FinCEN assumption based on its experience with the financial services industry. FinCEN requests comment on the accuracy of this estimate. Using an hourly wage estimate of $95 per hour for financial institutions, FinCEN estimates this one-time cost would be between approximately $3,800 and $7,600 per financial institution. To estimate aggregate costs, FinCEN multiplies this range by 16,252 total financial institutions resulting in a total cost between approximately $61.8 million and $123.5 million (($3,800 per institution × 16,252 financial institutions = $61,757,600) and ($7,600 per institution × 16,252 financial institutions = $123,515,200), respectively)).

Establish technical safeguards. For requirement #2, the cost of the ongoing IT requirement would vary depending on the existing infrastructure of the financial institution. FinCEN believes that most financial institutions already have secure systems and networks in place as well as sufficient storage capacity, given existing requirements with regard to protection of customers' nonpublic personal information.[225] Therefore, FinCEN assumes *de minimis* IT costs. FinCEN requests comment on this assumption.

Obtain and document customer consent. For requirement #3, FinCEN assumes that financial institutions would incur costs during the first year of implementation due to updating customer consent forms and processes. Specifically, FinCEN assumes it would take a financial institution, on average, approximately 10 hours in year 1 to conduct these activities. This number is based on FinCEN's underlying assumption that such implementation would involve relatively minimal resources to update forms and workflows. From year 2 and onward, FinCEN believes costs associated with obtaining and documenting customers' consent would be negligible because consent forms and processes have already been established and because this requirement is a one-time and not a periodic requirement for a given customer. FinCEN requests comments from financial institutions in particular on these assumptions. Using an hourly wage estimate of $95 per hour for financial institutions, FinCEN estimates this one-time cost would be approximately $950 per financial institution. To estimate aggregate costs, FinCEN multiplies this estimate by 16,252 total financial institutions, resulting in a total cost of approximately $15.8 million ($950 per institution × 16,252 financial institutions = $15,439,400).

Submit written certification for each request that it meets certain requirements. For requirement #4, the written certifications would be submitted in the form and manner prescribed by FinCEN. FinCEN anticipates that this certification would be submitted to FinCEN via an electronic form. FinCEN assumes that submitting a request to FinCEN for BOI would take one employee approximately 15 minutes, or 0.25 hours, per request. For purposes of this analysis, FinCEN assumes a range of

[225] As noted in the proposed rule, financial institutions may have established information procedures to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act, and applicable regulations issued thereunder, with regard to the protection of customers' nonpublic personal information. If a financial institution is not subject to section 501 of the Gramm-Leach-Bliley Act, such institutions may be required, recommended, or authorized under applicable Federal or State law to have similar information procedures with regard to protection of customer information.

approximately 5 million to 6.1 million total requests from financial institutions per year. The minimum amount assumes that the number of BOI requests from financial institutions each year would equal the number of new entities that qualify as a ''reporting company'' required to submit BOI. As estimated in the final BOI reporting rule's RIA, this is approximately 5 million entities annually.[226] The maximum amount assumes that financial institutions would request BOI for each new legal entity customer at the time of account opening, in alignment with the 2016 CDD Rule,[227] resulting in approximately 6.1 million entities.[228] For purposes of this analysis, FinCEN assumes that financial institutions would submit BOI requests related to newly open legal entity customer accounts in alignment with the 2016 CDD Rule. FinCEN requests comment, in particular from financial institutions, on whether this range is accurate. Therefore, the estimated aggregate annual cost of this requirement is between approximately $118.8 million and $144.7 million ((5 million total requests × 0.25 hours per request × $95 per hour = $118,750,000) and (6.1 million total requests × 0.25 hours per request × $95 per hour = $144,700,000), respectively). The per institution annual cost of requirement #3 is between approximately $7,310 and $8,904 (($118.8 million/16,252 financial institutions) and ($144.7 million/16,252 financial institutions), respectively).

Undergo training. Last, requirement #5 pertains to training for individuals that access BOI. To estimate the cost of this training, FinCEN assumes a range of authorized recipients per financial institution. FinCEN believes a range is appropriate given the variation in institution size, complexity, and business models across the 16,252 financial institutions. Based on feedback from Federal agency outreach, FinCEN assumes a minimum of one financial institution employee and a maximum of six financial institution employees would undergo annual BOI training. Using an hourly wage rate of $95 per hour, and assuming each authorized recipient would need to undergo one hour of training each year, FinCEN estimates a per institution annual training cost between approximately $95 and $570 ((1 employee × 1 hour × $95 per hour = $95) and (6 employees × 1 hour × $95 per hour = $570)). To estimate aggregate costs, FinCEN uses SBA size standards and identifies approximately 14,051 small financial institutions and 2,201 large financial institutions (16,252 total financial institutions − 14,051 small financial institutions). Furthermore, FinCEN assumes one to two employees per small financial institution and five to six employees per large financial institution.[229] This results in an estimated minimum average hourly cost of $146 ((14,051 small institutions × 1 employee × $95 per hour + 2,201 large institutions × 5 employees × $95 per hour)/16,252 total financial institutions) and a maximum average hourly cost of $241 ((14,051 small institutions × 2 employees × $95 per hour + 2,201 large institutions × 6 employees × $95 per hour)/16,252 total financial institutions). The estimated aggregate training cost is between approximately $2.4 million and $3.9 million per year ((14,051 small institutions × 1 employee × 1 training hour per person × $95 per hour + 2,201 large institutions × 5 employees × 1 hour × $95 per hour = $2,380,320) and (14,051 small institutions × 2 employees × 1 hour × $95 per hour + 2,201 large institutions × 6 employees × 1 hour × $95 per hour = $3,924,260)).

Table 9 presents the estimated costs to financial institutions for each of requirements #1–5. Table 9 illustrates both the financial institution cost and the aggregate cost for each requirement. The estimated average cost per financial institution in year 1 is between approximately $12,206 and $17,854 and between approximately $7,456 and $9,304 each year thereafter. The estimated aggregate costs from requirements #1–5 for financial institutions are between approximately $198.4 million and $290.1 million in the first year of implementation, and then between approximately $121.2 million and $151.2 million each year thereafter.

[226] In the final BOI reporting rule's RIA, the analysis assumes 13.1 percent growth in new entities from 2020 through 2024, and then a stable same number of approximately 5 million new entities each year thereafter through 2033. FinCEN included an alternative estimate which assumed that the rate of new entities created will grow at a rate of approximately 13.1 percent per year from 2020 through 2033. This resulted in a new entity annual formation estimate of 5 million in the year of the effective date of the final BOI reporting rule which increases to approximately 5.6 million ten years after the effective date of the final BOI reporting rule (2033). *See* 87 FR 59582 (Sept. 30, 2022).

[227] The CTA requires that the 2016 CDD Rule be revised given FinCEN's BOI reporting and access requirements. Therefore, this estimate and assumption may change after that revision.

[228] The 2016 CDD Rule estimated that each financial institution with CDD requirements will open, on average, 1.5 new legal entity accounts per business day. The rule also assumed there are 250 business days per year, which is in alignment with the number of business days in 2022. Therefore, FinCEN estimates that financial institutions would need to conduct CDD requirements for a minimum of approximately 6.1 million legal entities per year (16,252 financial institutions × 1.5 accounts per day × 250 business days per year = 6,094,500 new legal entity accounts opened per year).

[229] FinCEN acknowledges this number could significantly vary across financial institutions. FinCEN requests comment on these assumptions.

Table 9—Costs to Financial Institutions

#	Requirement	Year 1 Cost Per Institution	Years 2+ Cost Per Institution	Aggregate Costs Year 1	Aggregate Cost Years 2+
1	Establish administrative and physical safeguards	$3,800 to $7,600	$0	$61.8 million to $123.5 million	$0
2	Establish technical safeguards	*de minimis*	*de minimis*	*de minimis*	*de minimis*
3	Obtain and document customer consent	$950	$0	$15.4 million	$0
4	Submit written certification for each request that it meets certain requirements	$7,310 to $8,904	$7,310 to $8,904	$118.8 million to $144.7 million	$118.8 million to $144.7 million
5	Undergo training	$146 to $241	$146 to $241	$2.4 million to $3.9 million	$2.4 million to $3.9 million
	Total	**$12,206 to $17,695**	**$7,456 to $9,145**	**$198.4 million to $287.5 million**	**$121.2 million to $148.6 million**

D. FinCEN

In addition to the costs of accessing BOI data as a domestic agency, FinCEN would incur costs from managing the access of other authorized recipients. To administer BOI access, FinCEN would need to: develop training materials and agreements with domestic agencies; conduct ongoing outreach with authorized recipients on the access requirements and respond to inquiries from authorized recipients; conduct audits of authorized responsibilities; develop procedures to review authorized recipients' standards and procedures, and requests as needed; and potentially reject requests or suspend access if requirements are not met. FinCEN currently administers access to the FinCEN Query system, which involves similar considerations; therefore, FinCEN would build on its experience to administer BOI access. FinCEN would also incur an initial cost in setting up internal processes and procedures for administering BOI access.[230] FinCEN does not have a cost estimate for these specific activities, but notes that the final BOI reporting rule's RIA included an estimated annual personnel cost of approximately $10 million associated with the reporting requirements.[231] FinCEN assumes that personnel costs associated with the access requirements would be of a similar magnitude, and therefore includes a $10 million annual FinCEN cost in its total cost estimates for this proposed rule.

2. Benefits

The proposed rule would result in benefits for authorized recipients. Currently, authorized recipients may obtain BOI through a variety of means; however, the proposed rule would put in place a system of direct and cost-saving access to the information. FinCEN has quantitatively estimated such benefits in this analysis. However, the proposed rule would also have non-quantifiable benefits to authorized recipients of BOI and to society more widely. This proposed rule would facilitate U.S. national security, intelligence, and law enforcement activity by providing access to BOI which, as noted in the final BOI reporting rule's RIA, would make these activities more effective and efficient. These activities would be more effective and efficient because the improved ownership transparency would enhance Federal agencies' ability to investigate, prosecute, and disrupt the financing of terrorism, other transnational security threats, and other types of domestic and transnational financial crimes. Additionally, Treasury would gain efficiencies in its efforts to identify the ownership of legal entities, resulting in improved analysis, investigations, and policy decisions on a variety of subjects. The Internal Revenue Service could obtain access to BOI for tax administration purposes, which may provide benefits for tax compliance. Federal regulators may also obtain benefits by accessing BOI in civil law enforcement matters.

Similarly, the proposed rule would facilitate and make more efficient investigations by State, local, and Tribal law enforcement agencies. Access to BOI through FinCEN would prevent such agencies from spending time and resources to identify BOI. Foreign requesters would also reap similar benefits.

Financial institutions could gain access to key information, including potentially additional beneficial owners, for their CDD processes, and State regulatory agencies and SROs could use BOI to supervise financial institutions' compliance with CDD requirements. However, FinCEN is not estimating benefits related to these types of entities at this time, given the pending revisions to the CDD Rule. FinCEN anticipates

[230] FinCEN would also develop the beneficial ownership IT system that allows for the varying types of access. The costs associated with developing and maintaining this IT system are addressed in the final BOI reporting rule's RIA.

[231] 87 FR 59578 (Sept. 30, 2022).

that the benefits to financial institutions in meeting their CDD obligations, and the benefits to regulatory agencies in supervising financial institutions for compliance with CDD requirements, would be discussed in that rulemaking.

These stated benefits are in alignment with feedback FinCEN has received from a number of agencies as part of the outreach efforts FinCEN conducted in formulating the proposed rule. One agency noted that BOI would serve as an additional resource to investigators because having access to BOI would enable them to immediately identify a subject who owns a company, which would save time conducting additional investigations to develop subject identity information. A second agency also stated access to BOI could save time and resources. One agency noted that the vital data would further investigations and result in more successful and impactful investigations. Another agency provided similar feedback and noted that having access to BOI would significantly enhance investigations and bolster any analytical product that is prepared for the agency's cases; and that a central repository of BOI would save a multitude of hours that would otherwise be spent researching secretary of State records, conducting law enforcement database queries, and/or conducting open-source intelligence research to identify a company's ownership. One agency noted that the benefit would depend upon the scope of access.

To quantify the potential benefits to various stakeholders of being able to access BOI, FinCEN asked for input from numerous agencies about cost savings that would result from such access; cost savings are one, but not the sole, benefit of BOI access. One agency estimated that, contingent upon the nature and complexity of each individual case's specific need for BOI resources, access to BOI would save as much as an approximately 300 hours annually.[232] Another agency suggested that, with higher caseloads, having access to BOI could save investigations as much as thousands of hours annually; another noted that several hours per case would be saved by not having to search multiple databases for company information. A fourth agency suggested that having access to BOI could save investigations as much as 20,000 hours annually that could be repurposed toward other tasks.

Therefore, based on this feedback, FinCEN assumes a potential quantifiable benefit range of cost savings between 300 and 20,000 hours annually, per domestic agency.[233] [234] This is equivalent to a per Federal agency dollar savings between $32,400 and $2.2 million (300 hours × $108 per hour = $32,400) and (20,000 hours × $108 per hour = $2,160,000) and a per State, local, and Tribal agency dollar savings between $22,800 and $1.5 million (300 hours × $76 per hour = $22,800 and 20,000 hours × $76 per hour = $1,520,000), depending on the number and complexity of the investigations.

The minimum dollar value of the benefits of the proposed rule implied by these assumptions in Year 1 is $10.2 million ((208 Federal agencies × 300 hours per agency × $108 per hour) + (153 State, local, and Tribal law enforcement agencies × 300 hours per agency × $76 per hour) = $10,227,600). The maximum estimated aggregate annual savings is $681.8 million ((208 Federal agencies × 20,000 hours per agency × $108 per hour) + (153 State, local, and Tribal law enforcement agencies × 20,000 hours per agency × $76 per hour) = $681,840,000). These estimates only pertain to cost savings benefits; agencies could also gain other benefits from accessing BOI, such as investigative law enforcement value, that are not quantified in this analysis. Therefore, FinCEN believes the benefits could be greater than the cost savings estimated here.

As stated previously in the RIA, FinCEN assumes that no Federal agency or State, local or Tribal law enforcement agency will access BOI unless the benefits of doing so are at least equal to the costs, given that BOI access is optional. Non-quantifiable benefits would be included in this consideration, as well as the quantifiable benefits estimated in the analysis. In addition to the direct benefits of saving agencies time and money, accessing BOI would lead to other secondary benefits, as discussed in the final BOI reporting rule's RIA.[235] BOI would also further the missions of the agencies to combat crime, as well as contribute to national security, intelligence, and law enforcement, and other activities. Therefore, the benefits to agencies of accessing BOI would be more than saving costs, as it would lead to more effective and efficient investigations. Enabling effective and efficient investigations would have additional secondary benefits of making it more difficult to launder money through shell companies and other entities, in turn strengthening national security and enhancing financial system transparency and integrity. Barriers to money laundering encourage a more secure economy and more economic activity, as businesses would have more trust in the legitimacy of new business partners. Finally, the sharing of BOI with foreign partners, subject to appropriate protocols consistent with the CTA, may further transnational investigations, tax enforcement, and the identification of national and international security threats. These secondary benefits are not accounted for in this analysis since they are accounted for in the final BOI reporting rule RIA. However, these benefits cannot come to fruition without authorized recipients gaining access to BOI, as considered in this proposed rulemaking. Therefore, the benefits between the final BOI reporting rule and this proposed rule are inextricably linked.

3. Overall Impact

Overall, FinCEN estimates the potential quantifiable impact of the proposed rule could be between $108.7 million in net savings and $840.7 million in net costs in the first year of implementation of the rule, and then from $186.5 million in net savings to $672.0 million in net costs on an ongoing annual basis. Table 10 summarizes the estimated aggregate yearly impact of the proposed rule.

[232] Per the agency's feedback, this would comprise a range between 50 and 100 investigations utilizing BOI.

[233] Regarding regulators, FinCEN assumes that the benefit would relate to civil law enforcement activities rather than examination activities.

[234] The estimated amount of direct benefits from reduced investigation time and resources does not account for any potential savings to financial institutions that access BOI. Any potential benefits to financial institutions for accessing BOI will be accounted for in the forthcoming CDD Rule revision.

[235] *See* 87 FR 59579–59580 (Sept. 30, 2022).

Table 10—Aggregate Yearly Impact of the Proposed Rule (Dollars in millions)

Entity Costs and Benefits	Total Impact Year 1	Total Impact Years 2+
Domestic agency costs[1,2]	$364.7 to $553.3	$364.1 to $523.5
Foreign requester costs	$0.02 to $0.07	$0.02 to $0.07
Financial institution costs	$198.4 to $287.5	$121.2 to $148.6
FinCEN costs[3]	$10	$10
Aggregate costs	*$573.1 to $850.9*	*$495.3 to $682.2*
Aggregate benefits	*-[10.2 to $681.8]*	*-[$10.2 to $681.8]*
Total (net cost)	**-$108.7 to $840.7**	**- $186.5 to $672.0**

[1] This estimate includes aggregate annual costs to Federal agencies engaged in law enforcement, national security and intelligence activities, offices of the U.S. Department of the Treasury including FinCEN, State, local, and Tribal law enforcement agencies, and both Federal and State regulators. Costs to SROs are also included in this aggregation.

[2] This estimate includes the additional aggregate annual costs between approximately $43,200 and $194,400 to Federal agencies from submitting and coordinating BOI requests on behalf of foreign partners.

[3] This includes only costs to FinCEN associated with managing the BOI database. Costs to FinCEN as an authorized recipient of BOI are included in the domestic agencies estimates.

The estimated, quantifiable, aggregate annual benefits of the rule, which only reflects potential cost savings to agencies, would be between approximately $10.2 and $681.8 million. Likewise, FinCEN expects that the aggregate annual quantifiable costs of the rule would be somewhere between approximately $573.1 and $850.9 million in year 1, and between approximately $495.3 and $682.2 million each year thereafter. FinCEN believes that, in practice, entities may choose to access BOI only if the benefits to their operational needs, which includes cost savings and other non-quantifiable benefits, outweigh the costs associated with the requirements for accessing BOI.

Using the maximum net cost impact estimates from Table 10 as an upper bound of the potential impact of this proposed rule, FinCEN determines the present value over a 10-year horizon of approximately $5.9 billion at the three percent discount rate and approximately $4.9 billion at the seven percent discount rate.

ii. Section of Proposed Rule Regarding FinCEN Identifier Use by Entities

The proposed rule would establish a process through which a reporting company may report another reporting company's FinCEN identifier and full legal name in lieu of the information otherwise required under 31 CFR 1010.380(b)(1), subject to certain limitations. This proposed rule would affect reporting companies that choose to report FinCEN identifiers of another reporting company in their BOI report. It may also affect reporting companies' decision on whether or not to request a FinCEN identifier.

FinCEN considered whether the proposed rule would result in any additional cost to reporting companies beyond what is estimated in the final BOI reporting rule's RIA.[236] FinCEN assesses that the proposed rule is consistent with the assumption in the final BOI reporting rule's RIA that the cost associated with using entities' FinCEN identifiers is accounted for in the BOI report cost estimates. The proposed rule could reduce burden for reporting companies that choose to report another reporting company's FinCEN identifier because the reporting company would provide fewer pieces of information on the BOI report. However, FinCEN assesses such burden reduction is likely to be minimal relative to the total cost of filling out and submitting the report. Additionally, it is unknown by FinCEN how many entities may choose to utilize the proposed rule. Therefore, FinCEN does not estimate costs or benefits associated with the proposed rule beyond what is separately stated in the final BOI reporting rule RIA. Similarly, FinCEN does not include alternatives regarding this proposed rule beyond what is included in the final BOI reporting rule RIA.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act[237] (RFA) requires an agency either to provide an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. The section of the proposed rule regarding BOI access would apply to a

[236] The final BOI reporting rule's RIA did not estimate the number of reporting companies that will obtain FinCEN identifiers. The mechanism for reporting companies to obtain a FinCEN identifier will be to either check a box on its initial BOI report or submit an updated BOI report with the box checked. Therefore, FinCEN assumed that the cost of reporting companies obtaining FinCEN identifiers was included in the initial BOI report cost estimates in the final BOI reporting rule RIA. *See* 87 FR 59578 (Sept. 30, 2022).

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

substantial number of small entities. FinCEN has attempted to minimize the burden to the greatest extent practicable, but the proposed rule may nevertheless have a significant economic impact on small entities.

Accordingly, FinCEN has prepared an IRFA. FinCEN welcomes comments on all aspects of the IRFA. A final regulatory flexibility analysis will be conducted after consideration of comments received. The IRFA addresses the BOI access sections of the proposed rule. With respect to the sections of the proposed rule addressing the use of FinCEN identifiers, FinCEN does not assess any additional costs associated with the proposed rule beyond the costs separately considered in the final BOI reporting rule's RIA.[238] Therefore, FinCEN does not consider the proposed rule's FinCEN identifier provisions in the following RFA calculations or conclusions.

i. Statement of the Need for, and Objectives of, the Proposed Rule

As previously noted, the proposed rule is necessary to implement Section 6403 of the CTA. The purpose of the proposed rule is to implement the retention and disclosure requirements of Section 6403 and to establish appropriate protocols to protect the security and confidentiality of the BOI.

ii. Small Entities Affected by the Proposed Rule

To assess the number of small entities affected by the proposed rule, FinCEN separately considered whether any small businesses, small organizations, or small governmental jurisdictions, as defined by the RFA, would be affected. FinCEN concludes that small businesses would be substantially affected by the proposed rule. Each of these three categories is discussed below within this section.

In defining ''small business,'' the RFA relies on the definition of ''small business concern'' from the Small Business Act.[239] This definition is based on size standards (either average annual receipts or number of employees) matched to industries.[240] Assuming maximum non-mandated participation by small financial institutions, the proposed rule would affect approximately all 14,051 small financial institutions. All of these small financial institutions would have a significant economic impact in the first year of implementation, which FinCEN believes meets the threshold for a substantial number. Therefore, FinCEN concludes the proposed rule would have a significant economic impact on a substantial number of small entities.

FinCEN assumes the economic impact on an individual small entity is significant if the total estimated impact in a given year is greater than 1 percent of the small entity's total receipts for that year. FinCEN estimates the cost for small financial institutions to comply with the sections of the proposed rule addressing BOI access would be between approximately $12,155 and $17,644 in year 1, and approximately $7,405 and $9,094 annually in subsequent years, as indicated in Table 9.[241] FinCEN then compares these per financial institution cost estimates to the average total receipts for the smallest size category for each type of financial institution from the 2017 Census survey data, adjusted for inflation.[242] The analysis indicates that, even when considering the minimum year 1 impact of $12,155, the smallest entities of all types of financial institutions would incur an economic impact that exceeds 1 percent of receipts for that industry. Therefore, FinCEN expects that the proposed rule would have a significant economic impact on a substantial number of small entities.

In defining ''small organization,'' the RFA generally defines it as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.[243] FinCEN anticipates that the proposed rule would not affect ''small organizations,'' as defined by the RFA.

The RFA generally defines ''small governmental jurisdiction[s]'' as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.[244] While State, local, and Tribal government agencies may be affected by the proposed rule, FinCEN does not believe that government agencies of jurisdictions with a population of less than 50,000 would be included in such agencies. Therefore, no ''small governmental jurisdictions'' are expected to be affected.

iii. Compliance Requirements

Under the proposed rule accessing BOI is not mandatory; therefore, the proposed rule would not impose requirements in the strictest sense. However, the proposed rule would require those that wish to access BOI to establish standards and procedures or safeguards, and to comply with other requirements. In particular, financial institutions would develop and implement administrative, technical, and physical safeguards reasonably designed to protect the security, confidentiality, and integrity of BOI. Financial institutions would also be required to obtain and document customer consent, as well as maintain a record of such consent for five years after it was last relied upon, which may require updates to existing policies and procedures. The proposed rule would also require those that wish to access BOI provide a written certification for each BOI request, in the form and manner prescribed by FinCEN. FinCEN intends to provide additional detail regarding the form and manner of BOI requests for all categories of authorized recipients through specific instructions and guidance as it continues developing the beneficial ownership IT system. To the extent required by the PRA, FinCEN would publish for notice and comment any proposed information collection associated with BOI requests.

Small entities affected by the proposed rule, which FinCEN assesses to be small financial institutions, would be required to comply with these requirements if they access BOI. FinCEN assumes that the professional expertise needed to comply with such requirements already exists at small financial institutions with CDD obligations.

[238] *See* 87 FR 59577–59578 (Sept. 30, 2022).

[239] *See* 5 U.S.C. 601(3).

[240] *See* U.S. Small Business Administration, *Table of Small Business Size Standards Matched to North American Industry Classification System Codes* (Jul. 14, 2022), available at *https://www.sba.gov/sites/default/files/2022-07/Table%20of%20Size%20Standards_Effective%20July%2014%202022_Final-508.pdf.*

[241] The minimum and maximum costs for small entities can be determined by using $95 (1 employee × $95 per hour) as the minimum cost for training in Table 9 and using $190 (2 employees × $95 per hour) as the maximum cost for training.

[242] FinCEN inflation adjusted the 2017 Census survey data using *Implicit Price Deflators for Gross Domestic Product* quarterly data from the U.S. Bureau of Economic Analysis, available at *https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIkNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyMSJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ.* FinCEN estimated an inflation factor of approximately 1.14 (the gross domestic product deflator in the first quarter of 2017 is 107.038, while in the fourth quarter of 2021 it was 121.708; hence the inflation factor is 121.708/107.038 = 1.14). FinCEN then applied this inflation adjustment factor of 1.14 to the 1 percent of average annual receipts in the 2017 Census survey data for each financial industry affected by this proposed rule to estimate the latest inflation-adjusted dollar value threshold of 1 percent of annual receipts.

[243] 5 U.S.C. 601(4).

[244] 5 U.S.C. 601(5).

iv. Duplicative, Overlapping, or Conflicting Federal Rules

There are no Federal rules that directly duplicate, overlap, or conflict with the proposed rule. The proposed rule is closely related to FinCEN's recent publication of the final BOI reporting rule.[245] The final BOI reporting rule finalizes regulations to implement the CTA's BOI reporting requirements, which describe who must file a report, what information must be provided, and when a report is due. In contrast, this NPRM proposes appropriate protocols for access to and disclosure of BOI. The final BOI reporting rule's RIA estimated the cost to the public of reporting and updating BOI and information related to FinCEN identifiers. The final BOI reporting rule's RIA also estimated the cost to FinCEN of developing and maintaining this reporting mechanism, costs to other government agencies as a result of reporting requirements, and the benefits of the requirements. FinCEN has aimed to not duplicate costs and benefits covered in the final BOI reporting rule herein.

v. Significant Alternatives That Reduce Burden on Small Entities

In considering significant alternatives that would alter burdens on small entities, FinCEN applies two of the previously described alternative scenarios to small financial institutions.

a. Reduce Training Burden

The first alternative would be to reduce the training requirement for BOI authorized recipients, which includes appropriate training for authorized recipients of BOI as well as annual training for access to the beneficial ownership IT system. In its analysis, FinCEN assumes that each authorized recipient that would access BOI would be required to undergo one hour of training per year.[246] Here, FinCEN considers the scenario where authorized recipients would instead be required to undergo one hour of training every two years, in alignment with the current BSA data access requirements. This scenario could result in savings every other year of $108 to $172,800 per Federal agency, $76 to $5,168 per State, local, and Tribal agency, $95 to $6,460 per SRO,[247] $108 per foreign requester, and $146 to $241 per financial institution. The aggregate savings could be as much as $3.7 million to $5.2 million ($1.3 million total for domestic agencies and SROs + $2.4 to $3.9 million for financial institutions) every other year. This alternative scenario could result in savings every other year of approximately $95 to $190 per small financial institution. The aggregate savings could be as much as approximately $1.3 million to $2.7 million (($95 × 14,051 small financial institutions = $1,334,845) and ($190 × 14,051 small financial institutions = $2,669,690)) every other year. Given the sensitive nature of the BOI data,[248] FinCEN believes that maintaining an annual training requirement for BOI authorized recipients and access to the beneficial ownership IT system is necessary to protect the security and confidentiality of the BOI.

b. Change Customer Consent Requirement

Another alternative that FinCEN considered is altering the customer consent requirement for financial institutions. Under the proposed rule, financial institutions would be required to obtain and document customer consent once for a given customer. FinCEN considered an alternative approach in which FinCEN would directly obtain the reporting company's consent. Under this scenario, financial institutions would not need to spend time and resources on the one-time implementation costs of approximately 10 hours in year 1 to create consent forms and processes. Using an hourly wage estimate of $95 per hour for financial institutions, FinCEN estimates this would result in a one-time savings per financial institution of approximately $950. To estimate aggregate savings under this scenario, FinCEN multiplies this value by 16,252 financial institutions resulting in a total savings of approximately $15.4 million ($950 per institution × 16,252 financial institutions = $15,439,400). The cost savings for small financial institutions under this scenario would be approximately $13.3 million ($950 per institution × 14,051 small financial institutions = $13,348,450). Though this alternative results in a savings to financial institutions, including small entities, FinCEN believes that financial institutions are better positioned to obtain consent—and to track consent revocation—given their direct customer relationships and ability to leverage existing onboarding and account maintenance processes. Therefore, FinCEN decided not to propose this alternative.

C. Paperwork Reduction Act

The reporting requirements in the proposed rule are being submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA).[249] Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Written comments and recommendations for the proposed information collection can be submitted by visiting *www.reginfo.gov/public/do/PRAMain.* This particular document may be found by selecting ''Currently Under Review—Open for Public Comments'' or by using the search function. Comments are welcome and must be received by February 14, 2023. In accordance with requirements of the PRA, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerns the collection of information as it relates to the proposed rule and is presented to assist those persons wishing to comment on the information collection.

The PRA analysis included herein is for the sections of the proposed rule relating to BOI access. It does not include the sections of the proposed rule addressing the use of FinCEN identifiers for entities because FinCEN does not assess any additional burden or costs associated with the proposed rule beyond the costs and burden separately considered in the final BOI reporting rule's PRA analysis for BOI reports.[250]

Reporting and Recordkeeping Requirements: The proposed rule would require State, local, and Tribal agencies and financial institutions that wish to access BOI to conduct the following activities: establish standards and procedures or safeguards and undergo annual training. Financial institutions would also be required to obtain and document customer consent, maintaining a record of such consent for five years after it was last relied upon, which may require updates to existing processes and creation of consent forms. The proposed rule would also require State, local, and Tribal agencies and financial institutions that wish to access

[245] *See* 87 FR 59498 (Sept. 30, 2022).

[246] The assumption of one training hour is in alignment with the current training requirement for accessing BSA data. However, one notable difference is that the proposed BOI training requirement is annual, not biennial.

[247] To calculate total costs to SROs, FinCEN calculated a ratio that applied the estimated costs to State regulators (which would have access requirements similar to SROs) to the wage rate estimated herein for financial institutions, since SROs are private organizations. FinCEN requests comment on this assessment.

[248] As noted in the preamble, the CTA establishes that BOI is ''sensitive information'' and it imposes strict confidentiality and security restrictions on the storage, access, and use of BOI. *See* CTA, Section 6402(6), (7).

[249] *See* 44 U.S.C. 3506(c)(2)(A).

[250] *See* 87 FR 59589–59591 (Sept. 30, 2022).

BOI to provide a written certification for each BOI request. FinCEN intends to provide additional detail regarding the form and manner of BOI requests for all categories of authorized users through specific instructions and guidance as it continues developing the beneficial ownership IT system. To the extent required by the PRA, FinCEN would publish for notice and comment any proposed information collection associated with BOI requests. In addition, the proposed rule would require State, local, and Tribal agencies to establish and maintain a secure system to store BOI, as well as an auditable system of standardized records for requests, conduct an annual audit, certify standards and procedures by the agency head semi-annually, and provide an annual report on procedures, resulting in additional recordkeeping and reporting requirements. Finally, the proposed rule would require that SROs follow the same security and confidentiality requirements outlined herein for State, local, and Tribal agencies, if they obtain BOI through re-disclosure by a Federal functional regulator or financial institution.

OMB Control Numbers: 1506–XXXX.

Frequency: As required; varies depending on the requirement.

Description of Affected Public: State, local and Tribal agencies, SROs, and financial institutions with CDD obligations, as defined in the proposed rule. While others from Federal and foreign requesters are able to access BOI after meeting specific requirements, FinCEN does not include them in the PRA analysis because the regulations implementing the PRA define ''person'' as an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, Tribal, or local government or a branch of a political subdivision.[251] For foreign requesters in particular, FinCEN assumes that such requests would be made at the national level.

Estimated Number of Respondents: 16,463 entities. This total is composed of an estimated 209 State, local, and Tribal agencies, of which 153 are State, local, and Tribal law enforcement agencies and 56 are State regulatory agencies, 2 SROs, and 16,252 financial institutions.[252] While the requirements in the proposed rule are only imposed on those that optionally access BOI, for purposes of PRA burden analysis, FinCEN assumes maximum participation from State, local, and Tribal agencies, SROs, and financial institutions.

Estimated Total Annual Reporting and Recordkeeping Burden:[253] FinCEN estimates that during year 1 the annual hourly burden would be 9,289,604 hours. In year 2 and onward, FinCEN estimates that the annual hourly burden would be 7,663,188 hours. The annual estimated burden hours for State, local, and Tribal entities as well as SROs is 6,261,856 hours in the first year, and 6,098,120 hours in year 2 and onward. As shown in Table 11, the hourly burden in year 1 for State, local, and Tribal entities and SROs includes the hourly burden associated with the following requirements in the NPRM: enter into an agreement with FinCEN and establish standards and procedures (Action B); establish a secure system to store BOI (Action D); establish and maintain an auditable system of standardized records for requests (Action E); submit written certification for each request that it meets certain requirements (Action G); restrict access to appropriate persons within the entity (Action H); conduct an annual audit and cooperate with FinCEN's annual audit (Action I); obtain certification of standards and procedures, initially and then semi-annually, by the head of the entity (Action J); and provide annual reports on procedures (Action K). The hourly burden in year 2 and onward for State, local, and Tribal entities and SROs is associated with the same requirements as year 1, with the exception of Action B because FinCEN expects this action will result in costs for these entities in year 1 only.

The annual estimated hourly burden for financial institutions is 3,027,748 hours in the first year and 1,565,068 hours in year 2 and onward. The hourly burden for financial institutions in year 1 is associated with the following: establish administrative and physical safeguards (Action A); establish technical safeguards (Action C); obtain and document customer consent (Action F); submit written certification for each request that it meets certain requirements (Action G); and undergo training (Action H). The hourly burden in year 2 and onward for financial institutions is associated only with the requirements for Actions G and H because FinCEN expects the other actions will result in costs for these entities in year 1 only.

Annual estimated burden declines in year 2 and onward because State, local, and Tribal agencies, SROs, and financial institutions no longer need to complete Actions A, B, and F, and have a lower hourly burden for Action E. Table 11 lists the type of entity, the number of entities, the hours per entity, and the total hourly burden by action. For Actions A, B, C, D, E, F, I, J, and K, the hours per entity are the maximum of the range estimated in the cost analysis of the RIA. For Action G and H, the hours per entity calculations are specified in footnotes to Table 11. Total annual hourly burden is calculated by multiplying the number of entities by the hours per entity for each action. In each subsequent year after initial implementation, FinCEN estimates that the total hourly annual burden is 7,663,188 due to Actions A, B, and F only imposing burdens in year 1 and Actions D and E having lower annual per entity burdens. This results in a 5-year average burden estimate of approximately 7,988,471 hours.[254]

BILLING CODE 4810–02–P

[251] *See* 5 CFR 1320.3(k).

[252] *See* Table 1 for the types of financial institutions covered by this notice.

[253] As previously noted, this is a partial amount of the maximum overall burden associated with the proposed rule given that the PRA analysis does not include the potential burden on Federal and foreign agencies. The full burden and cost are assessed in the RIA cost analysis.

[254] The 5-year average equals the sum of (Year 1 burden hours of 9,289,604 + Year 2 burden hours of 7,663,188 + Year 3 burden hours of 7,663,188 + Year 4 burden hours of 7,663,188 + Year 5 burden hours of 7,663,88) divided by 5.

Table 11—Annual Hourly Burden Associated With Proposed Rule Requirements

Action	Type of Entity	Number of Entities	Hours per Entity	Total Annual Hourly Burden
A. Establish administrative and physical safeguards	Financial institutions	16,252	80 in Year 1; 0 in Years 2+	1,300,160 in Year 1; 0 in Years 2+
B. Enter into an agreement with FinCEN and establish standards and procedures	State, local, and Tribal agencies and SROs	211	300 in Year 1; 0 in Years 2+	63,300 in Year 1; 0 in Years 2+
C. Establish technical safeguards	Financial institutions	16,252	0 in Year 1; 0 in Years 2+	0 in Year 1; 0 in Years 2+
D. Establish a secure system to store BOI	State, local, and Tribal agencies and SROs	211	300 in Year 1; 4 in Years 2+	63,300 in Year 1; 844 in Years 2+
E. Establish and maintain an auditable system of standardized records for requests	State, local, and Tribal agencies and SROs	211	200 in Year 1; 20 in Years 2+	42,200 in Year 1; 4,220 in Years 2+
F. Obtain and document customer consent	Financial institutions	16,252	10 in Year 1; 0 in Years 2+	162,520 in Year 1; 0 in Years 2+
G. Submit written certification for each request that it meets certain requirements[1]	Financial institutions	16,252	93.8 in Year 1; 93.8 in Years 2+	1,524,438 in Year 1; 1,524,438 in Years 2+
G. Submit written certification for each request that it meets certain requirements, including court authorization	State, local, and Tribal law enforcement	153	39,542.5 in Year 1; 39,542.5 in Years 2	6,050,003 in Year 1; 6,050,003 in Years 2+_

Action	Type of Entity	Number of Entities	Hours per Entity	Total Annual Hourly Burden
G. Submit written certification for each request that it meets certain requirements	State regulatory agencies and SROs	58	129.3 in Year 1; 129.3 in Years 2+	7,499 in Year 1; 7,499 in Years 2+
H. Undergo training[2]	Financial institutions	16,252	2.5 in Year 1; 2.5 in Years 2+	40,630 in Year 1; 40,630 in Years 2+
H. Restrict access to appropriate persons within the entity, which specifies that appropriate persons will undergo training[3]	State, local, and Tribal agencies and SROs	211	8.5 in Year 1, 8.5 in Years 2+	1,794 in Year 1; 1,794 in Years 2+
I. Conduct an annual audit and cooperate with FinCEN's annual audit	State, local, and Tribal agencies and SROs	211	160 in Year 1; 160 in Years 2+	33,760 in Year 1; 33,760 in Years 2+
J. Obtain certification of standards and procedures initially and then semi-annually, by the head of the entity	State, local, and Tribal agencies and SROs	211	Included in I.	Included in I.
K. Provide initial and then an annual report on procedures	State, local, and Tribal agencies and SROs	211	Included in I.	Included in I.
Total Annual Hourly Burden				9,289,604 in Year 1; 7,663,188 in Years 2+

[1] For all types of entity, the hours per entity for Action G is the per entity share of the aggregate burden estimated in the RIA.
[2] For financial institutions, the hours per entity for Action H equals the weighted average of the large and small financial institutions' maximum burden estimated in the RIA.
[3] For State, local, and Tribal agencies and SROs, the hours per entity for Action H equals the per entity share of the aggregate burden.

Estimated Total Annual Reporting and Recordkeeping Cost:[255] As described in Table 3, FinCEN calculated the fully loaded hourly wage for each type of affected entity type. Using these estimated wages, the total cost of the annual burden in year 1 would be $763,745,736 In year 2 and onward, FinCEN estimates that the total cost of the annual burden is $612,199,760, owing to Actions A, B, and F only imposing burdens in year 1 and Actions D and E having lower annual per entity burdens. The annual estimated cost for State, local, and Tribal agencies and SROs is $476,109,676 in the first year and $463,518,300 in year 2 and onward. The annual estimated cost for financial institutions is $287,636,060 in the first year and $148,681,460 in year 2 and

[255] As previously noted, this is a partial amount of the maximum overall cost associated with the proposed rule because the PRA analysis does not include the potential cost to Federal and foreign agencies. The full burden and cost of the rule are assessed in the RIA analysis.

onward. The 5-year average annual cost estimate is $642,508,955.[256]

Table 12—Annual Cost Associated With Proposed Rule Requirements

Action	Type of Entity	Hourly Wage	Total Annual Hourly Burden	Total Annual Cost
A. Establish administrative and physical safeguards	Financial institutions	$95	1,300,160 in Year 1; 0 in Years 2+	$123,515,200 in Year 1; $0 in Years 2+
B. Enter into an agreement with FinCEN and establish standards and procedures	State, local, and Tribal agencies	$76	63,300 in Year 1; 0 in Years 2+	$4,810,800 in Year 1; $0 in Years 2+
C. Establish technical safeguards	Financial institutions	$95	0 in Year 1; 0 in Years 2+	$0 in Year 1; $0 in Years 2+
D. Establish a secure system to store BOI	State, local, and Tribal agencies	$76	63,300 in Year 1; 844 in Years 2+	$4,810,800 in Year 1; $64,144 in Years 2+
E. Establish and maintain an auditable system of standardized records for requests	State, local, and Tribal agencies	$76	42,200 in Year 1; 4,220 in Years 2+	$3,207,200 in Year 1; $320,720 in Years 2+
F. Obtain and document customer consent	Financial institutions	$95	162,520 in Year 1; 0 in Years 2+	$15,439,400 in Year 1; $0 in Years 2+
G. Submit written certification for each request that it meets certain requirements	Financial institutions	$95	1,524,438 in Year 1; 1,524,438 in Years 2+	$144,821,610 in Year 1; $144,821,610 in Years 2+

[256] The 5-year average equals the sum of (Year 1 costs of $763,745,736 + Year 2 costs of $612,199,760 + Year 3 costs of $612,199,760 + Year 4 costs of $612,199,760 + Year 5 costs of $612,199,760) divided by 5.

Action	Type of Entity	Hourly Wage	Total Annual Hourly Burden	Total Annual Cost
G. Submit written certification for each request that it meets certain requirements, including court authorization	State, local, and Tribal law enforcement	$76	6,050,003 in Year 1; 6,050,003 in Years 2+	$459,800,228 in Year 1; $459,800,228 in Years 2+
G. Submit written certification for each request that it meets certain requirements	State regulatory agencies	$76	7,499 in Year 1; 7,499 in Years 2+	$569,924 in Year 1; $569,924 in Years 2+
H. Undergo training	Financial institutions	$95	40,630 in Year 1; 40,630 in Years 2+	$3,859,850 in Year 1; $3,859,850 in Years 2+
H. Restrict access to appropriate persons within the agency, which specifies that appropriate persons will undergo training	State, local, and Tribal agencies	$76	1,794 in Year 1; 1,794 in Years 2+	$136,344 in Year 1; $136,344 in Years 2+
I. Conduct an annual audit and cooperate with FinCEN's annual audit	State, local, and Tribal agencies	$76	33,760 in Year 1; 33,760 in Years 2+	$2,565,760 in Year 1; $2,565,760 in Years 2+
J. Obtain certification of standards and procedures initially and then semi-annually, by the head of the entity	State, local, and Tribal agencies	$76	Included in I.	Included in I.
K. Provide initial and then an annual report on procedures	State, local, and Tribal agencies	$76	Included in I.	Included in I.
Actions B, D, E, G, H, I-K	SRO	$95	2,196 in Year 1; 644 in Years 2+	$208,620 in Year 1; $61,180 in Years 2+
Total Annual Cost				**$ 763,745,736 in Year 1; $612,199,760 in Years 2+**

BILLING CODE 4810–02–C

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency assess anticipated costs and benefits and take certain other actions before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation. The proposed regulations regarding access by authorized recipients to BOI do not include any Federal mandate for State, local, and Tribal governments or the private sector.[257] Similarly, the proposed regulations that address how reporting companies would be able to use an entity's FinCEN identifier to fulfill their obligations under FinCEN's BOI reporting requirements do not contain a Federal mandate.

E. Questions for Comment

General Request for Comments under the Paperwork Reduction Act: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Other Requests for Comment: In addition, FinCEN generally invites comment on the accuracy of FinCEN's regulatory analysis. FinCEN specifically requests comment on the following, which are mentioned in the preceding text.

State, local, and Tribal agencies' BOI access estimates:

1. How many Tribal law enforcement agencies, and how many authorized recipients at such agencies, may access BOI on an annual basis?

2. What is an appropriate wage estimate for a Tribal government worker?

3. Should the burden estimate for court authorizations include the burden on court employees? If so, what would be the occupation code, wage, and estimated time burden of such employees?

4. Given the requirement to obtain court authorization to access BOI, are State, local, and Tribal agencies less likely to access BOI at the rate by which they access BSA information? If so, what is a reasonable estimate for the annual requests for BOI from these agencies?

SROs' BOI access estimates:

5. Is FinCEN's assessment of costs to SROs reasonable?

Foreign requesters' BOI access estimates:

6. How many foreign requesters may access BOI on an annual basis, and which requesters would do so under an applicable international treaty, agreement, or convention, or through another channel available under the proposed rule?

7. Is FinCEN's approximation that it would take a foreign requester, on average, between one and two full business weeks (or, between 40 and 80 business hours) to establish standards and procedures accurate?

8. Is the assumption that foreign requesters would have a *de minimis* IT cost to comply with the requirements in the proposed rule accurate?

9. Is the annual estimate of foreign requests for BOI reasonable?

Financial institutions' BOI access estimates:

10. Is FinCEN's approximation that it would take a financial institution, on average, between one and two full business weeks (or, between 40 and 80 business hours) to establish administrative and physical safeguards accurate?

11. Is the assumption that financial institutions would have a *de minimis* IT cost to comply with the requirements in the proposed rule accurate?

12. Is the burden estimate for obtaining and documenting customer consent reasonable? If not, what would be a reasonable estimate?

13. Are the assumptions that one to two employees per small financial institution and five to six employees per large institution would access BOI reasonable? If not, what would be reasonable estimates?

14. Is the estimated range of annual requests from financial institutions reasonable?

15. Are there additional categories of burden that FinCEN should consider in its burden estimates? If so, what are they, and what is the estimated burden per financial institution? Conversely, if any of the categories of burden in the estimates should not be included, identify those and explain why.

Small entities' estimates:

16. Are FinCEN's estimates of burden on small entities accurate, as calculated in the IRFA? If not, why, and on what basis should they be updated? Provide specific sources and data for alternative cost estimates for each category of burden per entity.

17. Is FinCEN's assumption that small governmental jurisdictions are unlikely to access BOI accurate?

FinCEN identifier analysis:

18. Is FinCEN correct in assuming that the proposed rule would not result in additional burden or cost to reporting companies beyond what is estimated in the final BOI reporting rule's RIA?

19. How many reporting companies are likely to use entities' FinCEN identifiers to comply with the BOI reporting requirements?

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency, Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Federally recognized tribes, Foreign persons, Holding companies, Indian law, Indians, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Tribal government, Time.

Authority and Issuance

For the reasons set forth in the Supplementary Information, FinCEN proposes to amend part 1010 of chapter X of title 31 of the Code of Federal Regulations, as amended September 30, 2022, at 87 FR 59498, effective January 1, 2024, as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.380, add paragraph (b)(4)(ii)(B) to read as follows:

§ 1010.380 Reports of beneficial ownership information.

* * * * *

(b) * * *

[257] FinCEN expects that requirements regarding private sector access will be clarified in the forthcoming revision of the CDD Rule.

(4) * * *

(ii) * * *

(B) A reporting company may report another entity's FinCEN identifier and full legal name in lieu of the information required under paragraph (b)(1) of this section with respect to the beneficial owners of the reporting company only if:

(*1*) The entity has obtained a FinCEN identifier and provided that FinCEN identifier to the reporting company;

(*2*) An individual is or may be a beneficial owner of the reporting company by virtue of an interest in the reporting company that the individual holds through the entity; and

(*3*) The beneficial owners of the entity and of the reporting company are the same individuals.

* * * * *

■ 4. In § 1010.950, revise the section heading and paragraph (a) to read as follows:

§ 1010.950 Availability of information—general.

(a) The Secretary has the discretion to disclose information reported under this chapter, other than information reported pursuant to § 1010.380, for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section. FinCEN may disclose information reported pursuant to § 1010.380 only as set forth in § 1010.955, and paragraphs (b) through (f) of this section shall not apply to the disclosure of such information.

* * * * *

■ 5. Add § 1010.955 to read as follows:

§ 1010.955 Availability of beneficial ownership information reported under this part.

(a) *Prohibition on disclosure.* Except as authorized in paragraphs (b), (c), and (d) of this section, information reported to FinCEN pursuant to § 1010.380 is confidential and shall not be disclosed by any individual who receives such information as—

(1) An officer, employee, contractor, or agent of the United States;

(2) An officer, employee, contractor, or agent of any State, local, or Tribal agency; or

(3) A director, officer, employee, contractor, or agent of any financial institution.

(b) *Disclosure of information by FinCEN*—(1) *Disclosure to Federal agencies for use in furtherance of national security, intelligence, or law enforcement activity.* Upon receipt of a request from a Federal agency engaged in national security, intelligence, or law enforcement activity for information to be used in furtherance of such activity, FinCEN may disclose information reported pursuant to § 1010.380 to such agency. For purposes of this section—

(i) National security activity includes activity pertaining to the national defense or foreign relations of the United States, as well as activity to protect against threats to the safety and security of the United States;

(ii) Intelligence activity includes all activities conducted by elements of the United States Intelligence Community that are authorized pursuant to Executive Order 12333, as amended, or any succeeding executive order; and

(iii) Law enforcement activity includes investigative and enforcement activities relating to civil or criminal violations of law. Such activity does not include the routine supervision or examination of a financial institution by a Federal regulatory agency with authority described in (b)(4)(ii)(A) of this section.

(2) *Disclosure to State, local, and Tribal law enforcement agencies for use in criminal or civil investigations.* Upon receipt of a request from a State, local, or Tribal law enforcement agency for information to be used in a criminal or civil investigation, FinCEN may disclose information reported pursuant to § 1010.380 to such agency if a court of competent jurisdiction has authorized the agency to seek the information in a criminal or civil investigation. For purposes of this section—

(i) A court of competent jurisdiction is any court with jurisdiction over the investigation for which a State, local, or Tribal law enforcement agency requests information under this paragraph.

(ii) A State, local, or Tribal law enforcement agency is an agency of a State, local, or Tribal government that is authorized by law to engage in the investigation or enforcement of civil or criminal violations of law.

(3) *Disclosure for use in furtherance of foreign national security, intelligence, or law enforcement activity.* Upon receipt of a request from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, or on behalf of a foreign central authority or foreign competent authority (or like designation) under an applicable international treaty, agreement, or convention, FinCEN may disclose information reported pursuant to § 1010.380 to such Federal agency for transmission to the foreign law enforcement agency, prosecutor, judge, foreign central authority, or foreign competent authority who initiated the request, provided that:

(i) The request is for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the foreign country; and

(ii) The request is:

(A) Made under an international treaty, agreement, or convention, or;

(B) When no such treaty, agreement, or convention is available, is an official request by a law enforcement, judicial, or prosecutorial authority of a trusted foreign country.

(4) *Disclosure to facilitate compliance with customer due diligence requirements*—(i) *Financial institutions.* Upon receipt of a request from a financial institution subject to customer due diligence requirements under applicable law for information to be used in facilitating such compliance, FinCEN may disclose information reported pursuant to § 1010.380 to such financial institution, provided each reporting company that reported such information consents to such disclosure. For purposes of this section, customer due diligence requirements under applicable law are the beneficial ownership requirements for legal entity customers at § 1010.230, as those requirements may be amended or superseded.

(ii) *Regulatory agencies.* Upon receipt of a request by a Federal functional regulator or other appropriate regulatory agency, FinCEN shall disclose to such agency any information disclosed to a financial institution pursuant to paragraph (b)(4)(i) of this section if the agency—

(A) Is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of such financial institution with customer due diligence requirements under applicable law;

(B) Will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section; and

(C) Has entered into an agreement with FinCEN providing for appropriate protocols governing the safekeeping of the information.

(5) *Disclosure to officers or employees of the Department of the Treasury.* Consistent with procedures and safeguards established by the Secretary—

(i) Information reported pursuant to § 1010.380 shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties the Secretary determines require such inspection or disclosure.

(ii) Officers and employees of the Department of the Treasury may obtain information reported pursuant to § 1010.380 for tax administration as defined in 26 U.S.C. 6103(b)(4).

(c) *Use of information*—(1) *Use of information by authorized recipients.* Unless otherwise authorized by FinCEN, any person who receives information disclosed by FinCEN under paragraph (b) of this section shall use such information only for the particular purpose or activity for which such information was disclosed. A Federal agency that receives information pursuant to paragraph (b)(3) of this section shall only use it to facilitate a response to a request for assistance pursuant to that paragraph.

(2) *Disclosure of information by authorized recipients.* (i) Any officer, employee, contractor, or agent of a requesting agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(1) or (2) or (b)(4)(ii) of this section may disclose such information to another officer, employee, contractor, or agent of the same requesting agency for the particular purpose or activity for which such information was requested, consistent with the requirements of paragraph (d)(1)(i)(F) of this section, as applicable. Any officer, employee, contractor, or agent of the U.S. Department of the Treasury who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(5) of this section may disclose such information to another Treasury officer, employee, contractor, or agent for the particular purpose or activity for which such information was requested consistent with internal Treasury policies, procedures, orders or directives.

(ii) Any director, officer, employee, contractor, or agent of a financial institution who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(4)(i) of this section may disclose such information to another director, officer, employee, contractor, or agent within the United States of the same financial institution for the particular purpose or activity for which such information was requested, consistent with the requirements of paragraph (d)(2) of this section.

(iii) Any director, officer, employee, contractor, or agent of a financial institution that receives information disclosed by FinCEN pursuant to paragraph (b)(4)(i) of this section may disclose such information to the financial institution's Federal functional regulator, a self-regulatory organization that is registered with or designated by a Federal functional regulator pursuant to Federal statute, or other appropriate regulatory agency, provided that the Federal functional regulator, self-regulatory organization, or other appropriate regulatory agency meets the requirements identified in paragraphs (b)(4)(ii)(A) through (C) of this section. A financial institution may rely on a Federal functional regulator, self-regulatory organization, or other appropriate regulatory agency's representation that it meets the requirements.

(iv) Any officer, employee, contractor, or agent of a Federal functional regulator that receives information disclosed by FinCEN pursuant to paragraph (b)(4)(ii) of this section may disclose such information to a self-regulatory organization that is registered with or designated by the Federal functional regulator, provided that the self-regulatory organization meets the requirements of paragraphs (b)(4)(ii)(A) through (C) of this section.

(v) Any officer, employee, contractor, or agent of a Federal agency that receives information from FinCEN pursuant to a request made under paragraph (b)(3) of this section may disclose such information to the foreign person on whose behalf the Federal agency made the request.

(vi) Any officer, employee, contractor, or agent of a Federal agency engaged in a national security, intelligence, or law enforcement activity, or any officer, employee, contractor, or agent of a State, local, or Tribal law enforcement agency, may disclose information reported pursuant to § 1010.380 that it has obtained directly from FinCEN pursuant to a request under paragraph (b)(1) or (2) of this section to a court of competent jurisdiction or parties to a civil or criminal proceeding.

(vii) Any officer, employee, contractor, or agent of a requesting agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(1), (b)(4)(ii), or (b)(5) of this section may disclose such information to any officer, employee, contractor, or agent of the United States Department of Justice for purposes of making a referral to the Department of Justice or for use in litigation related to the activity for which the requesting agency requested the information.

(viii) A law enforcement agency, prosecutor, judge, foreign central authority, or foreign competent authority of another country that receives information from a Federal agency pursuant to a request under paragraph (b)(3)(ii)(A) of this section may disclose and use such information consistent with the international treaty, agreement, or convention under which the request was made.

(ix) Except as described in this paragraph (c)(2), any information disclosed by FinCEN under paragraph (b) of this section shall not be further disclosed to any other person for any purpose without the prior written consent of FinCEN, or as authorized by applicable protocols or guidance that FinCEN may issue. FinCEN may authorize persons to disclose information obtained pursuant to paragraph (b) of this section in furtherance of a purpose or activity described in that paragraph.

(d) *Security and confidentiality requirements*—(1) Security *and confidentiality requirements for domestic agencies*—(i) General *requirements.* To receive information under paragraph (b)(1), (2), or (3) or (b)(4)(ii) of this section, a Federal, State, local, or Tribal agency shall satisfy the following requirements:

(A) *Agreement.* The agency shall enter into an agreement with FinCEN specifying the standards, procedures, and systems to be maintained by the agency, and any other requirements FinCEN may specify, to protect the security and confidentiality of such information. Agreements shall include, at a minimum, descriptions of the information to which an agency will have access, specific limitations on electronic access to that information, discretionary conditions of access, requirements and limitations related to re-disclosure, audit and inspection requirements, and security plans outlining requirements and standards for personnel security, physical security, and computer security.

(B) *Standards and procedures.* The agency shall establish standards and procedures to protect the security and confidentiality of such information, including procedures for training agency personnel on the appropriate handling and safeguarding of such information. The head of the agency, on a non-delegable basis, shall approve these standards and procedures.

(C) *Initial report and certification.* The agency shall provide FinCEN a report that describes the standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section and that includes a certification by the head of the agency, on a non-delegable basis, that the standards and procedures implement the requirements of this paragraph (d)(1).

(D) *Secure system for beneficial ownership information storage.* The agency shall establish and maintain a secure system in which such information shall be stored, that

complies with information security standards prescribed by FinCEN.

(E) *Auditability.* The agency shall establish and maintain a permanent, auditable system of standardized records for requests pursuant to paragraph (b) of this section, including, for each request, the date of the request, the name of the individual who makes the request, the reason for the request, any disclosure of such information made by or to the requesting agency, and information or references to such information sufficient to reconstruct the justification for the request.

(F) *Restrictions on personnel access to information.* The agency shall restrict access to information obtained from FinCEN pursuant to this section to personnel—

(*1*) Who are directly engaged in the activity for which the information was requested;

(*2*) Whose duties or responsibilities require such access;

(*3*) Who have received training pursuant to paragraph (d)(1)(i)(B) of this section or have obtained the information requested directly from persons who both received such training and received the information directly from FinCEN;

(*4*) Who use appropriate identity verification mechanisms to obtain access to the information; and

(*5*) Who are authorized by agreement between the agency and FinCEN to access the information.

(G) *Audit requirements.* The agency shall:

(*1*) Conduct an annual audit to verify that information obtained from FinCEN pursuant to this section has been accessed and used appropriately and in accordance with the standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section;

(*2*) Provide the results of that audit to FinCEN upon request; and

(*3*) Cooperate with FinCEN's annual audit of the adherence of agencies to the requirements established under this paragraph to ensure that agencies are requesting and using the information obtained under this section appropriately, including by promptly providing any information FinCEN requests in support of its annual audit.

(H) *Semi-annual certification.* The head of the agency, on a non-delegable basis, shall certify to FinCEN semi-annually that the agency's standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section are in compliance with the requirements of this paragraph (d)(1). One of the semi-annual certifications may be included in the annual report required under paragraph (d)(1)(i)(I) of this section.

(I) *Annual report on procedures.* The agency shall provide FinCEN a report annually that describes the standards and procedures that the agency uses to ensure the security and confidentiality of any information received pursuant to paragraph (b) of this section.

(ii) *Requirements for requests for disclosure.* A Federal, State, local, or Tribal agency that makes a request under paragraph (b)(1), (2), or (3) or (b)(4)(ii) of this section shall satisfy the following requirements in connection with each request that it makes and in connection with all such information it receives.

(A) *Minimization.* The requesting agency shall limit, to the greatest extent practicable, the scope of such information it seeks, consistent with the agency's purposes for seeking such information.

(B) *Certifications and other requirements.* (*1*) The head of a Federal agency that makes a request under paragraph (b)(1) of this section or their designee shall make a written certification to FinCEN, in the form and manner as FinCEN shall prescribe, that:

(*i*) The agency is engaged in a national security, intelligence, or law enforcement activity; and

(*ii*) The information requested is for use in furtherance of such activity, setting forth specific reasons why the requested information is relevant to the activity.

(*2*) The head of a State, local, or Tribal agency, or their designee, who makes a request under paragraph (b)(2) of this section shall submit to FinCEN, in the form and manner as FinCEN shall prescribe:

(*i*) A copy of a court order from a court of competent jurisdiction authorizing the agency to seek the information in a criminal or civil investigation; and

(*ii*) A written justification that sets forth specific reasons why the requested information is relevant to the criminal or civil investigation.

(*3*) The head of a Federal agency, or their designee, who makes a request under paragraph (b)(3)(ii)(A) of this section shall:

(*i*) Retain for its records the request for information under the applicable international treaty, agreement, or convention;

(*ii*) Submit to FinCEN, in the form and manner as FinCEN shall prescribe: the name, title, email address, and telephone number for the individual from the Federal agency making the request; the name, title, agency, and country of the foreign person on whose behalf the Federal agency is making the request; the title and date of the international treaty, agreement, or convention under which the request is being made; and a certification that the information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country.

(*4*) The head of a Federal agency, or their designee, who makes a request under paragraph (b)(3)(ii)(B) of this section shall submit to FinCEN, in the form and manner as FinCEN shall prescribe:

(*i*) A written explanation of the specific purpose for which the foreign person is seeking information under paragraph (b)(3)(ii)(B) of this section, along with an accompanying certification that the information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country; will be used only for the particular purpose or activity for which it is requested; and will be handled consistent with the requirements of paragraph (d)(3) of this section;

(*ii*) The name, title, email address, and telephone number for the individual from the Federal agency making the request;

(*iii*) The name, title, agency, and country of the foreign person on whose behalf the Federal agency is making the request; and

(*iv*) Any other information that FinCEN requests in order to evaluate the request.

(*5*) The head of a Federal functional regulator or other appropriate regulatory agency, or their designee, who makes a request under paragraph (b)(4)(ii) of this section shall make a written certification to FinCEN, in the form and manner as FinCEN shall prescribe, that:

(*i*) The agency is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of a relevant financial institution with customer due diligence requirements under applicable law; and

(*ii*) The agency will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section.

(2) *Security and confidentiality requirements for financial institutions.* To receive information under paragraph (b)(4)(i) of this section, a financial institution shall satisfy the following requirements:

(i) *Restrictions on personnel access to information.* The financial institution

shall restrict access to information obtained from FinCEN under paragraph (b)(4)(i) of this section to directors, officers, employees, contractors, and agents within the United States.

(ii) *Safeguards.* The financial institution shall develop and implement administrative, technical, and physical safeguards reasonably designed to protect the security, confidentiality, and integrity of such information. The requirements of this paragraph (d)(2)(i) of this section shall be deemed satisfied to the extent that a financial institution:

(A) Applies such information procedures that the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information, modified as needed to account for any unique requirements imposed under this section; or

(B) If it is not subject to section 501 of the Gramm-Leach-Bliley Act, applies such information procedures with regard to the protection of its customers' nonpublic personal information that are required, recommended, or authorized under applicable Federal or State law and are at least as protective of the security and confidentiality of customer information as procedures that satisfy the standards of section 501 of the Gramm-Leach-Bliley Act.

(iii) *Consent to obtain information.* Before making a request for information regarding a reporting company under paragraph (b)(4)(i) of this section, the financial institution shall obtain and document the consent of the reporting company to request such information. The documentation of the reporting company's consent shall be maintained for 5 years after it is last relied upon in connection with a request for information under paragraph (b)(4)(i) of this section.

(iv) *Certification.* For each request for information regarding a reporting company under paragraph (b)(4)(i) of this section, the financial institution shall make a written certification to FinCEN that it:

(A) Is requesting the information to facilitate its compliance with customer due diligence requirements under applicable law;

(B) Has obtained the written consent of the reporting company to request the information from FinCEN; and

(C) Has fulfilled all other requirements of paragraph (d)(2) of this section.

(3) *Security and confidentiality requirements for foreign recipients of information.* (i) To receive information under paragraph (b)(3)(ii)(A) of this section, a foreign person on whose behalf a Federal agency made the request under that paragraph shall comply with all applicable handling, disclosure, and use requirements of the international treaty, agreement, or convention under which the request was made.

(i) To receive information under paragraph (b)(3)(ii)(B) of this section, a foreign person on whose behalf a Federal agency made the request under that paragraph shall ensure that the following requirements are satisfied:

(A) *Standards and procedures.* A foreign person who receives information pursuant to paragraph (b)(3)(ii)(B) of this section shall establish standards and procedures to protect the security and confidentiality of such information, including procedures for training personnel who will have access to it on the appropriate handling and safeguarding of such information.

(B) *Secure system for beneficial ownership information storage.* Such information shall be maintained in a secure system that complies with the security standards the foreign person applies to the most sensitive unclassified information it handles.

(C) *Minimization.* To the greatest extent practicable, the scope of information sought shall be limited, consistent with the purposes for seeking such information.

(D) *Restrictions on personnel access to information.* Access to such information shall be limited to persons—

(*1*) Who are directly engaged in the activity described in paragraph (b)(3) of this section for which the information was requested;

(*2*) Whose duties or responsibilities require such access; and

(*3*) Who have undergone training on the appropriate handling and safeguarding of information obtained pursuant to this section.

(e) *Administration of requests*—(1) Form *and manner of requests.* Requests for information under paragraph (b) of this section shall be submitted to FinCEN in such form and manner as FinCEN shall prescribe.

(2) *Rejection of requests.* (i) FinCEN will reject a request under paragraph (b)(4) of this section, and may reject any other request made pursuant to this section, if such request is not submitted in the form and manner prescribed by FinCEN.

(ii) FinCEN may reject any request, or otherwise decline to disclose any information in response to a request made under this section, if FinCEN, in its sole discretion, finds that, with respect to the request:

(A) The requester has failed to meet any requirement of this section;

(B) The information is being requested for an unlawful purpose; or

(C) Other good cause exists to deny the request.

(3) *Suspension of access.* (i) FinCEN may permanently debar or temporarily suspend, for any period of time, any requesting party from receiving or accessing information under paragraph (b) of this section if FinCEN, in its sole discretion, finds that:

(A) The requesting party has failed to meet any requirement of this section;

(B) The requesting party has requested information for an unlawful purpose; or

(C) Other good cause exists for such debarment or suspension.

(ii) FinCEN may reinstate the access of any requester that has been suspended or debarred under this paragraph (e)(3) upon satisfaction of any terms or conditions that FinCEN deems appropriate.

(f) *Violations*—(1) *Unauthorized disclosure or use.* Except as authorized by this section, it shall be unlawful for any person to knowingly disclose, or knowingly use, the beneficial ownership information obtained by the person, directly or indirectly, through:

(i) A report submitted to FinCEN under § 1010.380; or

(ii) A disclosure made by FinCEN pursuant to paragraph (b) of this section.

(2) For purposes of paragraph (f)(1) of this section, unauthorized use shall include accessing information without authorization, and shall include any violation of the requirements described in paragraph (d) of this section in connection with any access.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2022–27031 Filed 12–15–22; 8:45 am]

BILLING CODE 4810–02–P

Reader Aids

Federal Register

Vol. 87, No. 241

Friday, December 16, 2022

CUSTOMER SERVICE AND INFORMATION

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10501 74489
10502 74491
10503 74949
10504 75455
10505 76403

Administrative Orders:
Memorandums:
Memorandum of November 23, 2022 73621
Memorandum of November 28, 2022 74485
Memorandum of November 30, 2022 74479
Notices:
Notice of December 12, 2022 76547
Notice of December 12, 2022 76549

5 CFR

316 73623
531 ..... 74289, 76105

7 CFR

180 74951
457 76919
1710 74403
1720 74403
1785 74403
3560 ..... 74502, 75457

8 CFR

214 ..... 75891, 76816
274a 76816

10 CFR

50 73632
429 ..... 75144, 77298
431 ..... 75144, 77298

Proposed Rules:
429 74023
431 ..... 74023, 74850, 75388

11 CFR

Proposed Rules:
1 75518
4 75518
5 75518
6 75518
100 75518
102 75518
103 75518
104 75518
105 75518
106 75518
108 75518
109 75518
110 75518
111 75518
112 75518
113 75945
114 75518
116 75518
200 75518
201 75518
300 75518
9003 75518
9004 75518
9007 75518
9032 75518
9033 75518
9034 75518
9035 75518
9036 75518
9038 75518
9039 75518

12 CFR

204 73633
209 73634
1026 76551

13 CFR

Proposed Rules:
126 76585
130 76127
134 76585

14 CFR

21 75704
23 75704
25 ..... 74503, 75704
29 75704
33 75704
36 75704
39 ..... 73911, 73914, 73916, 73919, 73921, 74291, 74294, 74296, 74298, 75459, 75462, 75911, 75915, 75918, 76405, 76407, 76410, 76413, 76416, 76553, 76919, 76922
47 75704
49 75704
60 75704
61 75704
67 75704
71 ..... 73925, 73926, 73927, 73928, 73929, 73930, 73931, 73933, 73934, 73935, 73936, 74301, 74302, 74505, 74507, 74508, 74509, 74510, 74511, 74513, 74514, 74516, 74517, 74956, 74959, 74962, 74965, 75464, 75465, 75920, 75923, 75924, 75925, 76105, 76557, 76924
73 75704
91 75704
95 74303
97 ..... 75466, 75468, 75704

101.....75704
107.....75704
121.....75704
125.....75704
129.....75704
135.....75704
141.....75704
183.....75704
440.....75704

Proposed Rules:

21.....74994
25.....75424
39 .....73683, 73686, 74330, 74519, 74522, 74524, 74527, 74530, 74535, 74538, 75179, 75181, 75519, 75522, 75525, 75528, 76148, 76151, 76155, 76158, 76160, 76162, 76166, 76589, 77037, 77040
61.....75955
63.....75955
65.....75955
71 .....74048, 74049, 74050, 74052, 74053, 74055, 74332, 75531, 75533, 75973, 75974, 76169, 76429, 76592, 76593, 76594, 77043, 77044
91.....74995
110.....74995
119.....74995
121.....74995
125.....74995
136.....74995

15 CFR

734.....74966
736.....74966
740.....74966
742.....74966
744 .....74966, 75173, 76924
762.....74966
772.....74966
774.....74966

16 CFR

1307.....74311

Proposed Rules:

1.....74056

17 CFR

Proposed Rules:

1.....76374
Ch. II.....74057
39.....76698
140.....76698
229.....75975
232.....75975
240.....75975
249.....75975
270.....77172
274.....75975, 77172

18 CFR

101.....76928
201.....76928

Proposed Rules:

40.....74541

20 CFR

655.....76816

21 CFR

130.....76559
131.....76559
510.....76418
516.....76418, 76425
520.....76418
522.....76418
528.....76418
558.....76418
1308.....75470

Proposed Rules:

312.....75536, 75551

22 CFR

120.....74967

Proposed Rules:

120.....77046

25 CFR

585.....76928

Proposed Rules:

2.....73688
151.....74334
293.....74916

26 CFR

1.....73937, 76569
301.....75473, 76569

Proposed Rules:

1.....75185, 76430

29 CFR

2550.....73822
4044.....74968, 76576

Proposed Rules:

103.....73705

31 CFR

587 .....73635, 73636, 76930, 76931
594.....76932
598 .....73637, 73638, 73643. 73647

Proposed Rules:

1010.....77404

32 CFR

310.....76933, 76935

33 CFR

165 .....73648, 73650, 73937, 73938, 74969, 75928, 76105, 76425, 76937

Proposed Rules:

105.....74563
334.....74346, 74348

36 CFR

1220.....75930
1222.....75930

37 CFR

380.....73940
385.....76937
386.....73941

38 CFR

8.....73652

Proposed Rules:

38.....75196

39 CFR

20.....76942
111.....76577

Proposed Rules:

111.....76170

40 CFR

9.....73941
49.....75334
52 .....74314, 74316, 75932, 76107, 76944
61.....74319
80.....73956
122.....73965
123.....73965
180.....76944, 76946
271.....74971
272.....74971
312.....76578
372.....74518
721.....73941
725.....73941

Proposed Rules:

52 .....73706, 74060, 74349, 74355, 74356, 74573, 74577, 76171
60.....73708, 74702
81.....74577
84.....76738
122.....74066
123.....74066
131.....74361
170.....74072
271.....75020
372.....74379
721.....74072, 76597

42 CFR

412.....76109
413.....76109
482.....76109
485.....76109
495.....76109

Proposed Rules:

2.....74216
8.....77330
422.....76239
431.....76239
435.....76239
438.....76239
440.....76239
457.....76239

44 CFR

296.....75495

45 CFR

Proposed Rules:

156.....74097, 76239
164.....74216

46 CFR

294.....74977

47 CFR

1.....74987, 76949
8.....76959
64 .....75496, 75943, 76425
73.....76582

Proposed Rules:

4.....74102
8.....77048
64.....75199
73.....76434

48 CFR

Ch. 1.....73888, 73889
Ch. 2.....76988
1.....73894, 73902
2.....73894
3.....73894
4.....73890, 73894
5.....73894
6.....73894
7.....73894
8.....73894
9.....73894
10.....73894
11.....73894
12.....73894
13.....73890, 73894
14.....73894
15.....73894
16.....73894
17.....73889, 73894
18.....73890, 73894
19.....73894
22.....73890
23.....73894
24.....73894
25 .....73890, 73894, 76427
26.....73894
27.....73890, 73894
28.....73894
29.....73894
30.....73894
31.....73894
32.....73894
33.....73894
34.....73894
35.....73894
36.....73894
37.....73894
38.....73894
39.....73894
41.....73894
42.....73894
43.....73894
44.....73894
45.....73894
46.....73894
47.....73894
48.....73894
49.....73894
50.....73894
51.....73894
52.....73894
53 .....73889, 73890, 73894
212.....76980, 76984
225.....76980, 76984
252.....76980, 76984
512.....76111
515.....76583
516.....76583
552.....76111, 76583

Proposed Rules:

19.....76598
204.....77053
232.....77053
252.....77053, 77055

49 CFR

Proposed Rules:

390.....75206

50 CFR

17 .....73655, 73971, 73994, 76112, 76882, 77368
216.....76998
300.....74322
622 .....74013, 74014, 74989, 76125
635.....76427
648 .....74021, 74991, 75852
660 .....74328, 77000, 77007
665.....74991
679 .....74022, 75516, 74992
697.....75516

Proposed Rules:

10.....75977

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 15, 2022

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/—layouts/PG/register.aspx*.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.