AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 87 Thursday

No. 249 December 29, 2022

Pages 79977–80432

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.

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Title 3—

The President

Proclamation 10509 of December 23, 2022

To Take Certain Actions Under the African Growth and Opportunity Act and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Proclamation 7853 of December 10, 2004, the President designated Burkina Faso as a beneficiary sub-Saharan African country for purposes of section 506A(a)(1) of the Trade Act of 1974, as amended (the ''Trade Act''), as added by section 111(a) of the African Growth and Opportunity Act (the ''AGOA'') (title I of Public Law 106–200, 114 Stat. 251, 257–58 (19 U.S.C. 2466a(a)(1))).

2. Section 506A(a)(3) of the Trade Act (19 U.S.C. 2466a(a)(3)) provides that the President shall terminate the designation of a country as a beneficiary sub-Saharan African country for purposes of section 506A if the President determines that the country is not making continual progress in meeting the requirements described in section 506A(a)(1) of the Trade Act.

3. Pursuant to section 506A(a)(3) of the Trade Act, I have determined that Burkina Faso does not meet the requirements described in section 506A(a)(1) of that Act. Accordingly, I have decided to terminate the designation of Burkina Faso as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act, effective January 1, 2023.

4. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in section 3 of the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Implementation Act'') (Public Law 99–47, 99 Stat. 82 (19 U.S.C. 2112 note)). Section 4(b) of the USIFTA Implementation Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties, as the President determines to be required or appropriate to carry out the USIFTA. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (United States-Israel Agreement Concerning Certain Aspects of Trade in Agricultural Products (the ''2004 Agreement'')).

5. In Proclamation 7826 of October 4, 2004, the President determined, pursuant to section 4(b) of the USIFTA Implementation Act and consistent with the 2004 Agreement, that, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, it was necessary to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel. Each year from 2008 through 2021, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004

Agreement. To carry out the extension agreements, the President in Proclamations 8334 of December 31, 2008; 8467 of December 23, 2009; 8618 of December 21, 2010; 8770 of December 29, 2011; 8921 of December 20, 2012; 9072 of December 23, 2013; 9223 of December 23, 2014; 9383 of December 21, 2015; 9555 of December 15, 2016; 9687 of December 22, 2017; 9834 of December 21, 2018; 9974 of December 26, 2019; 10128 of December 22, 2020; and 10326 of December 23, 2021, modified the Harmonized Tariff Schedule of the United States (HTS) to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period. On December 8, 2022, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2023, and to allow for further negotiations on an agreement to replace the 2004 Agreement. Pursuant to section 4(b) of the USIFTA Implementation Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2023, for specified quantities of certain agricultural products of Israel, as provided in Annex I of this proclamation.

6. Proclamation 7971 of December 22, 2005, implemented the United States-Morocco Free Trade Agreement (USMFTA) with respect to the United States and, pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (the ''USMFTA Act'') (19 U.S.C. 3805 note), made the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15, and the schedule of duty reductions with respect to Morocco set forth in Annex IV of the USMFTA.

7. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3005(a)) directs the United States International Trade Commission (the ''Commission'') to keep the HTS under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection. Pursuant to sections 1205(c) and (d) of the 1988 Act (19 U.S.C. 3005(c) and (d)), in 2016 and 2021 the Commission recommended modifications to the HTS to conform the HTS to amendments made to the International Convention on the Harmonized Commodity Description and Coding System and the Protocol thereto (the ''Convention'').

8. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on the recommendations of the Commission under section 1205 of the 1988 Act if the President determines that the modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States.

9. Proclamation 9549 of December 1, 2016, and Proclamation 10326 of December 23, 2021, modified the HTS pursuant to section 1206 of the 1988 Act to conform the HTS to the amendments to the Convention. However, the HTS modifications authorized in Proclamation 9549 and Proclamation 10326 included certain technical errors.

10. I have determined that additional modifications to the HTS are necessary or appropriate to carry out the staged reductions in rates of duty previously proclaimed in Proclamation 7971, including certain technical or conforming changes within the tariff schedule.

11. Section 604 of the Trade Act, as amended (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 111(a) of the AGOA, sections 506A(a)(1) and 506A(a)(3) of the Trade Act, section 4(b) of the USIFTA Implementation Act, and section 604 of the Trade Act, as amended, do proclaim that:

(1) The designation of Burkina Faso as a beneficiary sub-Saharan African country for purposes of section 506A of the Trade Act is terminated, effective January 1, 2023.

(2) In order to reflect in the HTS that beginning January 1, 2023, Burkina Faso shall no longer be designated as a beneficiary sub-Saharan African country, general note 16(a) to the HTS is modified by deleting ''Burkina Faso'' from the list of beneficiary sub-Saharan African countries. Note 7(a) to subchapter II and note 1 to subchapter XIX of chapter 98 of the HTS are each modified by deleting ''Burkina Faso,'' from the list of beneficiary countries. Further, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by deleting ''Burkina Faso;'' from the list of lesser developed beneficiary sub-Saharan African countries.

(3) The modifications to the HTS set forth in paragraphs (1) through (2) of this proclamation shall be effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2023.

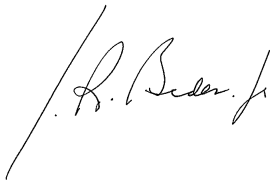
(4) In order to implement tariff commitments under the 2004 Agreement through December 31, 2023, the HTS is modified as set forth in Annex I of this proclamation.

(5) The modifications and technical rectifications to the HTS made by Annex I of this proclamation shall enter into effect on the applicable dates set forth in Annex I of this proclamation.

(6) In order to make the modifications and technical rectifications to the HTS described in clauses 6 through 11 of this proclamation, the HTS is modified as set forth in Annex II of this proclamation. These modifications and technical rectifications shall enter into effect on the applicable dates set forth in Annex II of this proclamation.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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ANNEX I

TEMPORARY EXTENSION OF CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered for consumption, or withdrawn from warehouse for consumption, on or after January 1, 2023, and through the close of December 31, 2023, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by striking "December 31, 2022," and by inserting in lieu thereof "December 31, 2023,".

2. U.S. note 3 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2023" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2023" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2023" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2023" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the "Applicable time period" column in the table "Calendar year 2023" and by adding at the end of the "Quantity (kg)" column opposite such year the quantity "707,000".

ANNEX II

TO MODIFY THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES TO MAKE THE FOLLOWING CORRECTIONS

1. Effective with respect to goods of Morocco under the terms of general note 27 to the Harmonized Tariff Schedule of the United States (HTS), entered for consumption or withdrawn from warehouse for consumption on or after January 1, 2023:

A. The Rate of Duty 1-Special subcolumn for subheading 3006.93.20 is modified by deleting the rate of duty "See 9912.17.05, 9912.17.35 (MA)" and inserting "See 9822.03.01 (MA)" in lieu thereof.

B. The article description of heading 9822.03.01 is modified by deleting "or 2106.90.97" and inserting ", 2106.90.97 or 3006.93.20" in lieu thereof.

2. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 27, 2022, the HTS is hereby modified as follows:

A. Subheading 2903.44.00 is redesignated 2903.44.10.

B. The article description of subheading 8407.32.20 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

C. The superior text to subheading 8407.33.30 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

D. The superior text to subheading 8407.34.14 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

E. The superior text to subheading 8407.34.44 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

F. The article description of subheading 8408.20.20 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

G. The superior text to subheading 8409.91.30 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

H. The article description of subheading 8409.99.91 is modified by deleting "8701.20" and inserting "8701.21, 8701.22, 8701.23, 8701.24 or 8701.29" in lieu thereof.

I. The superior text to subheading 8522.90.25 is modified by deleting "8519.81.40" and inserting "8519.81.41" in lieu thereof.

J. The superior text to subheading 8706.00.03 is modified by deleting “8701.20” and inserting “8701.21, 8701.22, 8701.23, 8701.24 or 8701.29” in lieu thereof.

K. The article description of subheading 8708.40.11 is modified by deleting “8701.20” and inserting “8701.21, 8701.22, 8701.23, 8701.24 or 8701.29” in lieu thereof.

L. The article description of subheading 9027.90.45 is modified by deleting “9027.80” and inserting “9027.81 or 9027.89” in lieu thereof.

M. The article descriptions of subheadings 9027.90.56, 9027.90.64 and 9027.90.84 are modified by deleting “or 9027.80” and inserting “9027.81 or 9027.89” in lieu thereof.

3. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after January 01, 2017, the Harmonized Tariff Schedule of the United States is hereby modified as follows:

A. The article description of subheading 4012.19.20 is modified by deleting “8701.90.10” and inserting “8701.91.10, 8701.92.10, 8701.93.10, 8701.94.10 or 8701.95.10” in lieu thereof.

B. The superior text to subheading 4012.20.15 is modified by deleting “8701.90.10” and inserting “8701.91.10, 8701.92.10, 8701.93.10, 8701.94.10 or 8701.95.10” in lieu thereof.

C. The article description of subheading 8466.93.96 is modified by deleting “8456.10” and inserting “8456.11, 8456.12” in lieu thereof.

[FR Doc. 2022–28473
Filed 12–28–22; 8:45 am]
Billing code 7020–02–C

Presidential Documents

Executive Order 14090 of December 23, 2022

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems*. The rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)), as adjusted under 5 U.S.C. 5303, are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7401, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service*. The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries*. The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5311–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 4501) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a)) at Schedule 7.

Sec. 4. *Uniformed Services*. The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments*.

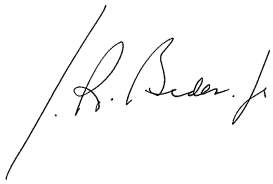
(a) Pursuant to section 5304 of title 5, United States Code, and my authority to implement an alternative level of comparability payments under section 5304a of title 5, United States Code, locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register*.

Sec. 6. *Administrative Law Judges*. Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates*. Schedule 8 is effective January 1, 2023. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2023.

Sec. 8. *Prior Order Superseded*. Executive Order 14061 of December 22, 2021, is superseded as of the effective dates specified in section 7 of this order.



THE WHITE HOUSE,

December 23, 2022.

Billing code 3395–F3–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

	1	2	3	4	5	6	7	8	9	10
GS-1	$20,999	$21,704	$22,401	$23,097	$23,794	$24,202	$24,893	$25,589	$25,617	$26,273
GS-2	23,612	24,174	24,956	25,617	25,906	26,668	27,430	28,192	28,954	29,716
GS-3	25,764	26,623	27,482	28,341	29,200	30,059	30,918	31,777	32,636	33,495
GS-4	28,921	29,885	30,849	31,813	32,777	33,741	34,705	35,669	36,633	37,597
GS-5	32,357	33,436	34,515	35,594	36,673	37,752	38,831	39,910	40,989	42,068
GS-6	36,070	37,272	38,474	39,676	40,878	42,080	43,282	44,484	45,686	46,888
GS-7	40,082	41,418	42,754	44,090	45,426	46,762	48,098	49,434	50,770	52,106
GS-8	44,389	45,869	47,349	48,829	50,309	51,789	53,269	54,749	56,229	57,709
GS-9	49,028	50,662	52,296	53,930	55,564	57,198	58,832	60,466	62,100	63,734
GS-10	53,990	55,790	57,590	59,390	61,190	62,990	64,790	66,590	68,390	70,190
GS-11	59,319	61,296	63,273	65,250	67,227	69,204	71,181	73,158	75,135	77,112
GS-12	71,099	73,469	75,839	78,209	80,579	82,949	85,319	87,689	90,059	92,429
GS-13	84,546	87,364	90,182	93,000	95,818	98,636	101,454	104,272	107,090	109,908
GS-14	99,908	103,238	106,568	109,898	113,228	116,558	119,888	123,218	126,548	129,878
GS-15	117,518	121,435	125,352	129,269	133,186	137,103	141,020	144,937	148,854	152,771

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$117,518	$95,225	$77,160	$62,523	$50,662	$45,290	$40,488	$36,195	$32,357
2	121,044	98,082	79,475	64,399	52,182	46,649	41,703	37,281	33,328
3	124,675	101,024	81,859	66,331	53,747	48,048	42,954	38,399	34,328
4	128,415	104,055	84,315	68,321	55,360	49,490	44,242	39,551	35,357
5	132,268	107,177	86,844	70,370	57,021	50,974	45,570	40,738	36,418
6	136,236	110,392	89,450	72,481	58,731	52,504	46,937	41,960	37,511
7	140,323	113,704	92,133	74,656	60,493	54,079	48,345	43,219	38,636
8	144,532	117,115	94,897	76,895	62,308	55,701	49,795	44,515	39,795
9	148,868	120,628	97,744	79,202	64,177	57,372	51,289	45,851	40,989
10	152,771	124,247	100,676	81,578	66,102	59,093	52,828	47,226	42,219
11	152,771	127,974	103,697	84,026	68,085	60,866	54,412	48,643	43,485
12	152,771	131,814	106,807	86,546	70,128	62,692	56,045	50,102	44,790
13	152,771	135,768	110,012	89,143	72,232	64,573	57,726	51,605	46,133
14	152,771	139,841	113,312	91,817	74,399	66,510	59,458	53,154	47,517

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306) and Directors of Medical Centers and Veterans Integrated Service Networks (38 U.S.C. 7401(4))*

	Minimum	Maximum
	$141,022	$212,100**
Physician, Podiatrist, and Dentist Base and Longevity Pay Schedule*		
Physician Grade	$115,587	$169,529
Dentist Grade	115,587	169,529
Podiatrist Grade	115,587	169,529
Chiropractor and Optometrist Schedule		
Chief Grade	$117,518	$152,771
Senior Grade	99,908	129,878
Intermediate Grade	84,546	109,908
Full Grade	71,099	92,429
Associate Grade	59,319	77,112
Expanded-Function Dental Auxiliary Schedule****		
Director Grade	$117,518	$152,771
Assistant Director Grade	99,908	129,878
Chief Grade	84,546	109,908
Senior Grade	71,099	92,429
Intermediate Grade	59,319	77,112
Full Grade	49,028	63,734
Associate Grade	42,190	54,844
Junior Grade	36,070	46,888

* Pursuant to 38 U.S.C. 7404(a)(2)(A) and (e), this schedule does not apply to the Director of Nursing Service or any incumbents who are physicians, podiatrists, or dentists. See also 38 U.S.C. 7404(a)(2)(B).

** Pursuant to 38 U.S.C. 7404(a)(3)(B), for positions that are covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level II of the Executive Schedule. For positions that are not covered by a certified performance appraisal system, the maximum rate of basic pay may not exceed the rate of basic pay payable for level III of the Executive Schedule.

*** Pursuant to 38 U.S.C. 7431, Veterans Health Administration physicians, podiatrists, and dentists paid under the Physician, Podiatrist, and Dentist Base and Longevity Pay schedule may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$141,022	$212,100
Agencies without a Certified SES Performance Appraisal System	$141,022	$195,000

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

Level I	$235,600
Level II	212,100
Level III	195,000
Level IV	183,500
Level V	172,100

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

Vice President	$272,100
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

Chief Justice of the United States	$298,500
Associate Justices of the Supreme Court	285,400
Circuit Judges	246,600
District Judges	232,600
Judges of the Court of International Trade	232,600

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2023)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10*	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$12,170.70	$12,570.00	$12,834.30	$12,908.10	$13,238.40	$13,789.50	$13,918.20	$14,441.70	$14,592.60	$15,043.50	$15,696.60
O-7	10,113.00	10,582.80	10,800.30	10,973.40	11,286.00	11,595.30	11,952.60	12,308.70	12,666.60	13,789.50	14,737.80
O-6**	7,669.20	8,425.20	8,978.10	8,978.10	9,012.60	9,398.70	9,450.00	9,450.00	9,987.00	10,936.20	11,493.60
O-5	6,393.30	7,202.10	7,700.40	7,794.30	8,105.70	8,291.40	8,700.60	9,001.80	9,389.70	9,982.80	10,265.40
O-4	5,516.40	6,385.20	6,812.10	6,906.30	7,301.70	7,726.20	8,254.80	8,665.50	8,951.10	9,115.50	9,210.30
O-3***	4,849.80	5,497.80	5,933.40	6,469.80	6,780.30	7,120.50	7,340.10	7,701.60	7,890.60	7,890.60	7,890.60
O-2***	4,190.70	4,772.70	5,496.90	5,682.60	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30
O-1***	3,637.20	3,786.00	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$6,469.80	$6,780.30	$7,120.50	$7,340.10	$7,701.60	$8,007.00	$8,182.50	$8,421.00
O-2E	-	-	-	5,682.60	5,799.30	5,983.80	6,295.50	6,536.70	6,715.80	6,715.80	6,715.80
O-1E	-	-	-	4,576.80	4,887.00	5,067.90	5,252.70	5,433.90	5,682.60	5,682.60	5,682.60
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$5,012.40	$5,391.30	$5,546.10	$5,698.20	$5,960.70	$6,220.20	$6,483.00	$6,877.80	$7,224.30	$7,554.00	$7,824.30
W-3	4,577.70	4,767.90	4,964.10	5,027.70	5,232.30	5,635.80	6,055.80	6,253.80	6,482.70	6,718.20	7,142.40
W-2	4,050.30	4,433.40	4,551.00	4,632.30	4,894.80	5,302.80	5,505.60	5,704.50	5,948.10	6,138.60	6,310.80
W-1	3,555.00	3,938.10	4,040.70	4,258.20	4,515.00	4,893.90	5,070.60	5,318.70	5,561.70	5,753.10	5,929.20

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2023, which is $17,675.10 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2023, which is $14,341.80 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2023)
Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					COMMISSIONED OFFICERS						
O-10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*	$17,675.10*
O-9	17,201.40	17,449.80	17,675.10*	17,675.10*	17,675.10*	17,675.10*	17,675.10*	17,675.10*	17,675.10*	17,675.10*	17,675.10*
O-8	16,298.10	16,700.10	16,700.10	16,700.10	16,700.10	17,118.30	17,118.30	17,545.80	17,545.80	17,545.80	17,545.80
O-7	14,737.80	14,737.80	14,737.80	14,813.70	14,813.70	15,110.10	15,110.10	15,110.10	15,110.10	15,110.10	15,110.10
O-6**	12,050.40	12,367.50	12,688.80	13,310.70	13,310.70	13,576.50	13,576.50	13,576.50	13,576.50	13,576.50	13,576.50
O-5	10,544.70	10,861.80	10,861.80	10,861.80	10,861.80	10,861.80	10,861.80	10,861.80	10,861.80	10,861.80	10,861.80
O-4	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30	9,210.30
O-3***	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60	7,890.60
O-2***	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30	5,799.30
O-1***	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80	4,576.80
					COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****						
O-3E	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00	$8,421.00
O-2E	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80	6,715.80
O-1E	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60	5,682.60
					WARRANT OFFICERS						
W-5	$8,912.10	$9,364.20	$9,701.10	$10,073.40	$10,073.40	$10,578.00	$10,578.00	$11,106.00	$11,106.00	$11,662.50	$11,662.50
W-4	8,087.70	8,473.80	8,791.50	9,153.60	9,153.60	9,336.30	9,336.30	9,336.30	9,336.30	9,336.30	9,336.30
W-3	7,428.30	7,599.60	7,781.40	8,029.50	8,029.50	8,029.50	8,029.50	8,029.50	8,029.50	8,029.50	8,029.50
W-2	6,517.20	6,652.80	6,760.20	6,760.20	6,760.20	6,760.20	6,760.20	6,760.20	6,760.20	6,760.20	6,760.20
W-1	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40	6,143.40

* Basic pay is limited to the rate of basic pay for level II of the Executive Schedule in effect during calendar year 2023, which is $17,675.10 per month for officers at pay grades O-7 through O-10. This includes officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Chief of Space Operations, Commandant of the Coast Guard, Chief of the National Guard Bureau, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)).

** Basic pay is limited to the rate of basic pay for level V of the Executive Schedule in effect during calendar year 2023, which is $14,341.80 per month, for officers at pay grades O-6 and below.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member, a warrant officer, or a warrant officer and an enlisted member which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2023)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
						ENLISTED MEMBERS					
E-9*	-	-	-	-	-	-	$6,055.50	$6,192.90	$6,365.70	$6,568.80	$6,774.90
E-8	-	-	-	-	-	$4,957.20	5,176.50	5,312.10	5,474.70	5,650.80	5,968.80
E-7	$3,445.80	$3,760.80	$3,905.10	$4,095.30	$4,244.70	4,500.60	4,644.90	4,900.50	5,113.50	5,258.70	5,413.50
E-6	2,980.50	3,279.90	3,424.80	3,565.50	3,711.90	4,042.20	4,170.90	4,419.90	4,496.10	4,551.30	4,616.40
E-5	2,730.30	2,914.20	3,055.20	3,199.20	3,423.90	3,658.50	3,851.70	3,874.80	3,874.80	3,874.80	3,874.80
E-4	2,503.50	2,631.60	2,774.10	2,914.80	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30
E-3	2,259.90	2,402.10	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60
E-2	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20
E-1**	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60
E-1***	1,773.00	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $9,786.00 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2023)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
					ENLISTED MEMBERS						
E-9*	$7,102.80	$7,381.50	$7,673.70	$8,121.60	$8,121.60	$8,526.90	$8,526.90	$8,953.80	$8,953.80	$9,402.30	$9,402.30
E-8	6,130.20	6,404.40	6,556.50	6,930.90	6,930.90	7,069.80	7,069.80	7,069.80	7,069.80	7,069.80	7,069.80
E-7	5,473.20	5,674.50	5,782.50	6,193.50	6,193.50	6,193.50	6,193.50	6,193.50	6,193.50	6,193.50	6,193.50
E-6	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40	4,616.40
E-5	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80	3,874.80
E-4	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30	3,039.30
E-3	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60	2,547.60
E-2	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20	2,149.20
E-1**	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60	1,917.60
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, Senior Enlisted Advisor of the Space Force, Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, or Senior Enlisted Advisor to the Chief of the National Guard Bureau, basic pay for this grade is $9,786.00 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,273.20.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

Locality Pay Area*	Rate
Alaska	31.32%
Albany-Schenectady, NY-MA	19.45%
Albuquerque-Santa Fe-Las Vegas, NM	17.63%
Atlanta—Athens-Clarke County—Sandy Springs, GA-AL	23.02%
Austin-Round Rock, TX	19.40%
Birmingham-Hoover-Talladega, AL	17.41%
Boston-Worcester-Providence, MA-RI-NH-ME	31.05%
Buffalo-Cheektowaga, NY	21.35%
Burlington-South Burlington, VT	18.31%
Charlotte-Concord, NC-SC	18.63%
Chicago-Naperville, IL-IN-WI	29.79%
Cincinnati-Wilmington-Maysville, OH-KY-IN	21.35%
Cleveland-Akron-Canton, OH	21.69%
Colorado Springs, CO	19.11%
Columbus-Marion-Zanesville, OH	21.27%
Corpus Christi-Kingsville-Alice, TX	17.10%
Dallas-Fort Worth, TX-OK	26.37%
Davenport-Moline, IA-IL	18.21%
Dayton-Springfield-Sidney, OH	20.59%
Denver-Aurora, CO	29.05%
Des Moines-Ames-West Des Moines, IA	17.13%
Detroit-Warren-Ann Arbor, MI	28.37%
Harrisburg-Lebanon, PA	18.59%
Hartford-West Hartford, CT-MA	30.91%
Hawaii	21.17%
Houston-The Woodlands, TX	34.47%
Huntsville-Decatur-Albertville, AL	20.96%
Indianapolis-Carmel-Muncie, IN	17.57%
Kansas City-Overland Park-Kansas City, MO-KS	18.18%
Laredo, TX	20.64%
Las Vegas-Henderson, NV-AZ	18.76%
Los Angeles-Long Beach, CA	34.89%
Miami-Fort Lauderdale-Port St. Lucie, FL	24.14%
Milwaukee-Racine-Waukesha, WI	21.74%
Minneapolis-St. Paul, MN-WI	26.39%
New York-Newark, NY-NJ-CT-PA	36.16%
Omaha-Council Bluffs-Fremont, NE-IA	17.52%
Palm Bay-Melbourne-Titusville, FL	17.30%
Philadelphia-Reading-Camden, PA-NJ-DE-MD	27.84%
Phoenix-Mesa-Scottsdale, AZ	21.44%
Pittsburgh-New Castle-Weirton, PA-OH-WV	20.37%
Portland-Vancouver-Salem, OR-WA	24.98%
Raleigh-Durham-Chapel Hill, NC	21.37%
Richmond, VA	21.38%
Sacramento-Roseville, CA-NV	28.30%
San Antonio-New Braunfels-Pearsall, TX	18.00%
San Diego-Carlsbad, CA	32.01%
San Jose-San Francisco-Oakland, CA	44.15%
Seattle-Tacoma, WA	29.57%
St. Louis-St. Charles-Farmington, MO-IL	19.10%
Tucson-Nogales, AZ	18.40%
Virginia Beach-Norfolk, VA-NC	17.94%
Washington-Baltimore-Arlington, DC-MD-VA-WV-PA	32.49%
Rest of U.S	16.50%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2023)

AL-3/A	$122,400
AL-3/B	131,800
AL-3/C	141,300
AL-3/D	150,800
AL-3/E	160,400
AL-3/F	169,600
AL-2	178,900
AL-1	183,500

[FR Doc. 2022–28474
Filed 12–28–22; 8:45 am]
Billing code 6325–39–C

Rules and Regulations

Federal Register

Vol. 87, No. 249

Thursday, December 29, 2022

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

The Code of Federal Regulations is sold by the Superintendent of Documents.

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 2, 5, 8, 10, 11 and 12

[Docket OFR–2022–0001]

Discontinuation of *Public Papers of the Presidents* Book Series and Removal of Microfiche as Official Format of the Federal Register and Code of Federal Regulations

AGENCY: Administrative Committee of the **Federal Register**.

ACTION: Final rule; request for comment.

SUMMARY: This final rule with request for comment discontinues the *Public Papers of the Presidents of the United States* (''*Public Papers*''), an annual print edition of certain presidential documents. The *Public Papers* annual print edition is based on the text of the *Daily Compilation of Presidential Documents,* which is a daily online-only publication that will remain available free of charge on the internet. This rule also removes microfiche as an official format of the **Federal Register** and Code of Federal Regulations. Finally, the rule updates the relevant regulations to reflect the current location of the online formats of these publications and the current physical address of the Office of the Federal Register.

DATES: This final rule is effective December 29, 2022. Comments must be submitted by January 30, 2023 to be considered.

ADDRESSES: You may send comments, identified by OFR–2022–0001, by any of the following methods:

- *Federal eRulemaking Portal: www.Regulations.gov*. Go to *Regulations.gov*, search for OFR–2022–0001, and locate this document from the ''Documents'' tab or go to *www.regulations.gov/docket/OFR–2022–0001/document* and locate this document in the docket.
- *Email: fr.comments@nara.gov*. Include OFR–2022–0001 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Katerina Horska, Director of Legal Affairs and Policy, Office of the Federal Register, or Miriam Vincent, Staff Attorney, Legal Affairs and Policy, Office of the Federal Register at *Fedreg.legal@nara.gov,* or 202–741–6030.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Under the Federal Register Act (44 U.S.C. chapter 15), the Administrative Committee of the Federal Register (''Administrative Committee'' or ''ACFR'') is responsible for issuing regulations governing **Federal Register** publications. The Administrative Committee has general authority under 44 U.S.C. 1506 to determine the manner and form for publishing the **Federal Register** and its special editions. The Administrative Committee is also responsible for regulations governing the Code of Federal Regulations (''CFR''). 44 U.S.C. 1510. Regulations promulgated by the ACFR under sections 1506 and 1510 are subject to approval by the President, who has delegated approval authority to the Attorney General and the Archivist of the United States. E.O. 10530, sec. 6(b), 3 CFR part 189 (1954); *see also* 3 U.S.C 301 note. The Administrative Committee, with the approval of the Acting Archivist and the Attorney General, is amending its regulations in 1 CFR parts 2, 5, 8, 10, 11, and 12 to discontinue one of the **Federal Register** special edition publications, the *Public Papers of the Presidents of the United States* (''*Public Papers*'') series, and to remove microfiche as an official format of the **Federal Register** and CFR. This rule also updates the physical address of the Office of the Federal Register (''OFR'').

A. Discontinuation of the Public Papers

The *Public Papers* is a special edition of the **Federal Register**, *see* 1 CFR 10.10, that is compiled and issued by the OFR. The publication started in 1957 in response to a recommendation of the National Historical Publications Commission.[1] The *Public Papers* initially contained the compilation of the weekly series of Presidential documents, the *Weekly Compilation of Presidential Documents* (''*Weekly Compilation*''). In 2009, the Administrative Committee discontinued the *Weekly Compilation,* replacing it with the *Daily Compilation of Presidential Documents* (''*Daily Compilation*''). *See* Availability and Official Status of the Compilation of Presidential Documents, 74 FR 3950, 3952 (Jan. 21, 2009). The *Daily Compilation* is a daily, online-only collection of the official publication of materials released by the White House Press Secretary. *See* 1 CFR 10.2, 10.3. It is available free of charge to the public. During the Carter Administration, the *Public Papers* became a compilation of the already compiled *Weekly Compilation* documents instead of a set of individually selected and curated papers. With the January 2009 change from the *Weekly Compilation* to the *Daily Compilation,* the *Public Papers* switched from compiling the *Weekly Compilations* from a particular time period to compiling the *Daily Compilations* from the same time period. 74 FR at 3950; *see also* 1 CFR 10.11, 10.12. Volumes of the *Public Papers* are generally published twice a year as physical, hard-bound books, with each volume spanning approximately a six-month period; the National Archives and Records Administration's Office of Presidential Libraries, in partnership with the OFR, created electronic copies of the published volumes for online access.[2]

Currently, the *Public Papers* have limited reach; most of the materials are accessed online through the *Daily Compilation.* As of 2022, the Government Publishing Office (''GPO'') sells only approximately 13 to 20 copies of each volume. Discontinuing the *Public Papers* will not change the nature or quantity of presidential materials that are published; instead, it will change only the format of those materials. The materials will remain available to any person or entity that is interested in them because all presidential documents, including transcripts of speeches and other spoken remarks and photographs contained in the *Public Papers,* are already published elsewhere—including in the *Daily Compilation*—in readily accessible formats. The *Daily Compilation* is also more timely; it is usually available within a few days of an event featuring the President, whereas the *Public Papers,* as a result of their lengthy production process, are available, at the soonest, months after the fact.

The discontinuation of the printed volumes would save government resources in production and publication, and the *Daily Compilation* would continue to provide public access to the same material. Therefore, this change will have no significant impact on the material that itself is included in the *Public Papers.* For these reasons, the Administrative Committee is discontinuing production of the *Public Papers.*

B. Removal of Microfiche as Official Format

Currently, the Administrative Committee regulations require that GPO produce the **Federal Register** and CFR in three formats: in paper, in microfiche, and in Portable Document Format (''PDF'') through GPO's GovInfo website (*www.govinfo.gov*). 1 CFR 5.10, 8.6.[3] Microfiche is a format consisting of a flat sheet of film on which writing or other information is stored and which can be accessed using a microfiche reader. Material stored in microfiche cannot be searched by keyword unless the material is separately digitized after the production of the microfiche itself. Because of (1) the widespread availability of more easily searchable online editions of the **Federal Register** and the CFR via GovInfo, (2) the ready availability of endorsed but unofficial internet formats of these publications on *FederalRegister.gov* (*www.federalregister.gov*) and eCFR (*www.ecfr.gov*), and (3) the limited availability of microfiche readers, microfiche is now a little-used alternative format for accessing those publications. Currently, there are no non-Government subscribers to microfiche, compared to the millions of users of the online formats of the **Federal Register** and eCFR.

On October 28, 2014, the Administrative Committee issued a Notice of Proposed Rulemaking (''omnibus NPRM''), which proposed to remove the list of official formats from the CFR and replace the list with regulations that describe in detail the factors the ACFR uses to determine which formats will be official. Revision of Regulations, 79 FR 64133, 64134. In response to the proposed rule, two commenters expressed concern that removing the explicit identification of certain formats as official will impact the public by leading to discontinuation of the formats on which the public relies. These commenters believed that it is important that the ACFR learn about users' needs before removing microfiche as an official format. The Administrative Committee understands these commenters' concerns and asked GPO to provide the subscription numbers for microfiche formats of the **Federal Register** and CFR. As of September 6, 2022, there were no agencies receiving microfiche **Federal Register** subscriptions and only five agencies receiving five copies of the CFR in the microfiche format. Also, although some Federal depository libraries (''FDLs'') received microfiche subscriptions in past years, all FDLs, by September 6, 2022, had discontinued their subscriptions to microfiche. Thus, the only microfiche subscribers at present are five Federal Government agencies for five copies of the CFR.

Additionally, of the more than 9,000 contractors that GPO works with, there is only one contractor that submitted bids for the creation of microfiche products in recent years. GPO therefore has difficulty finding multiple bidders when it attempts to contract for the publication of the microfiche formats of the **Federal Register** and CFR.

The limited number of subscribers, the scarcity of contractors continuing to produce microfiche, and the inability to actively search within this format (in contrast to online formats), demonstrate that the microfiche format is obsolete. Given the lack of microfiche use and the widespread availability of the **Federal Register** and CFR in other formats, removing microfiche as an official format will have no significant impact on the availability of material published in the **Federal Register** and CFR, and retaining that format would offer no benefit. The costs and administrative burden of maintaining the microfiche format are accordingly unjustified, and the Administrative Committee is removing microfiche as an official format of the **Federal Register** and the CFR.

II. Comments Requested

The ACFR welcomes comments related to any of the changes finalized in this rule and will consider these comments in making any future regulatory changes regarding the topics being currently addressed. If relevant, substantive adverse comments are received, the Administrative Committee may respond by publishing a supplemental final rule, addressing the comments in the final rule stemming from the omnibus NPRM, or initiating a new rulemaking.

III. Regulatory Analysis

The Administrative Committee developed this rule after considering numerous statutes and executive orders related to rulemaking. Below is a summary of the Administrative Committee's determinations after analysis of these statutes and executive orders.

A. Administrative Procedure Act (''APA'')

The Administrative Committee has determined that notice and comment and a delay in the effective date of this rule are unnecessary under the exceptions to these requirements for ''good cause.'' The APA provides that notice and comment are unnecessary ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Similarly, a delay in the effective date is not required when the agency finds ''good cause'' for dispensing with the delay and publishes that finding with the rule. 5 U.S.C. 553(d)(3).

The ''unnecessary'' prong of the good cause exception applies ''when an administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *N. Carolina Growers' Ass'n, Inc.* v. *United Farm Workers,* 702 F.3d 755, 766 (4th Cir. 2012) (quotation marks omitted). ''Congress intended that rule making be exempted as unnecessary when amendments are minor or merely technical, and of little public interest.'' *Id.* (quotation marks omitted). Rules qualify for the good cause exception under the ''unnecessary'' prong when the agency is issuing ''a minor rule or amendment in which the public is not particularly interested.'' *Id.* at 466–67 (quotation marks omitted); *see also Util. Solid Waste Activities Grp.* v. *E.P.A.,* 236 F.3d 749, 755 (D.C. Cir. 2001) (similar).

The ''unnecessary'' prong of the good cause exception applies to the discontinuation of the *Public Papers* because that discontinuation is inconsequential to any potentially affected industry and to the public at large. Discontinuing the *Public Papers* will not change the nature or quantity of presidential documents that are published; instead, it will simply change the format of those documents. The documents will remain available to any person or entity that is interested in them because all documents contained in the *Public Papers* are already published elsewhere in readily accessible formats. The discontinuation accordingly will have an ''insignificant . . . impact'' on any member of the public. *See N. Carolina Growers' Ass'n,* 702 F.3d at 766.

For similar reasons, the ''unnecessary'' prong of the good cause exception applies to the removal of microfiche as an official format of the **Federal Register** and CFR; this removal is inconsequential to any potentially affected industry and to the public at large. All documents currently published in microfiche will remain available in other, easily accessible formats, such as the online and hard-copy formats of the **Federal Register** and CFR. The only subscribers to the microfiche format are a handful of Federal agencies. No individuals or institutions (whether part of the FDL network or otherwise) are receiving microfiche for their personal use or for library collections. The ACFR acknowledges that, in 2014, two comments on the omnibus NPRM suggested that members of the public still use microfiche, but now, eight years later,[4] zero individual members of the public subscribe to that format. Moreover, to the extent that members of the public might have once relied on microfiche formats accessible through FDLs, the fact that all FDLs have discontinued their microfiche subscriptions indicates that microfiche is no longer relevant to the public. Indeed, any member of the public who relied on an FDL to access the **Federal Register** or CFR through microfiche could use that same FDL's computer resources to access these publications' online formats. Finally, the scarcity of contractors available to create the microfiche format underscores the extent to which the public and members of the printing industry have moved beyond microfiche. The ACFR accordingly believes that the good cause exception applies to this rule because the rule is ''inconsequential to the industry and to the public.'' *N. Carolina Growers' Ass'n, Inc.,* 702 F.3d at 766.

The Administrative Committee also believes that good cause exists for making this rule effective without a 30-day delay from the date of publication in the **Federal Register**. The 30-day waiting period ''is intended to give affected parties time to adjust their behavior before the final rule takes effect.'' *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992). Here, members of the public will not need time to adjust their behavior because all of the information and documents contained in the *Public Papers,* the **Federal Register**, and the CFR are either already available online or are published online almost immediately after their production. Thus, even in the absence of a delay in the date of this rule, members of the public will experience no interruption in their access to government information and documents.

Although the good cause exception applies to this rule, the ACFR welcomes comments from interested persons on all matters related to the final rule. The ACFR will consider these comments in making any future regulatory changes regarding the topics addressed in this rulemaking.

B. Executive Order 12866 and 13563

The final rule has been drafted in accordance with the principles of section 1(b) of Executive Order 12866 (Principles of Regulation), and Executive Order 13563 (Improving Regulation and Regulatory Review). The Administrative Committee has determined that this final rule is not a significant regulatory action, as defined under section 3(f) of Executive Order 12866. Because the Office of Management and Budget did not review this rule under section 6(b) of Executive Order 12866, the ACFR need not publish any information under section 6(a)(3)(E) of that order.

C. Regulatory Flexibility Act

The Administrative Committee certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule imposes no requirements on small entities. Also, as described above, only a single contractor submitted bids for the production of microfiche products to GPO in recent years. Thus, even assuming the contractor in question qualifies as a small entity, and even assuming that removing microfiche as an official format would affect that entity, the rule will not have a significant economic impact on a ''substantial number'' of small entities. *See* 5 U.S.C. 605(b). Finally, any member of the public, including persons employed by or representing small entities, can continue to access **Federal Register** publications for free through GPO's website, *www.govinfo.gov.*

D. Federalism

This rule has no federalism implications under Executive Order 13132 (Federalism). It does not impose compliance costs on State or local governments or preempt State law.

E. Congressional Review

This rule is not a major rule as defined by 5 U.S.C. 804(2). The Administrative Committee will submit a rule report, including a copy of this final rule, to each House of the Congress and to the Comptroller General of the United States as required under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1986.

Endnotes:

[1] Office of the Federal Register, Public Papers of the Presidents (last reviewed Nov. 15, 2022), *https://www.archives.gov/federal-register/publications/presidential-papers.html.*

[2] *Supra* note 1. This rule discontinues the *Public Papers* as a whole, and the series will end with the Obama Administration. As of December 29, 2022, the Administrative Committee will not produce any new volumes in any format (in paper or online). Digital copies of existing volumes will remain available.

[3] The regulations currently refer to GPO Access, a predecessor website of GovInfo. GPO developed GovInfo and its predecessor websites to implement GPO's mandate under 44 U.S.C. 4101(a) to ''provide a system of online access to the Congressional Record, the **Federal Register**,'' and other documents. This rule amends sections 5.10, 8.6, 11.2, and 11.3 of ACFR's regulations to reflect the name of the current website.

[4] During these eight years, the Government has continued to make online access to its official publications easier for the public. *See, e.g.,* Press Release, GPO to Retire the Federal Digital System website (Nov. 29, 2018) (describing the launch of the GovInfo website and the ''many enhancements'' it offered to help the public access documents from all three branches of the Federal Government).

List of Subjects

1 CFR Part 2

Federal Register publications, Government publications, Organization and functions (Government agencies).

1 CFR Part 5

Administrative practice and procedure, **Federal Register** publications, Government publications.

1 CFR Part 8

Administrative practice and procedure, Code of Federal Regulations, Government publications.

1 CFR Part 10

Government publications, Presidential documents, Public Papers of the Presidents of the United States, Daily Compilation of Presidential Documents.

1 CFR Part 11

Code of Federal Regulations, **Federal Register**, Government publications, Daily Compilation of Presidential Documents.

1 CFR Part 12

Code of Federal Regulations, Compilation of Presidential Documents, **Federal Register** publications, Government publications, Public Papers of Presidents of U.S.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register, with the approval of the Acting Archivist of the United States and the Attorney General, amends 1 CFR parts 2, 5, 8, 10, 11, and 12 as set forth below:

PART 2—[AMENDED]

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189; 1 U.S.C. 112, 113.

■ 2. In § 2.3, revise paragraph (b) to read as follows:

§ 2.3 Office of the Federal Register; location; office hours.

* * * * *

(b) The office is located at 732 N. Capitol Street NW, suite A–734, Washington, DC.

* * * * *

§ 2.5 [Amended]

■ 3. In § 2.5(c), remove the text ''the ''Public Papers of the Presidents of the United States,'' ''.

PART 5—[AMENDED]

■ 4. The authority citation for part 5 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 5.10 [AMENDED]

■ 5. In § 5.10, remove the text ''the following formats: paper; microfiche; and online on GPO Access'' and add, in its place, the text ''paper and online on *www.govinfo.gov*''.

PART 8—[AMENDED]

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

Authority: 44 U.S.C. 1506, 4101, 1510; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

§ 8.6 [Amended]

■ 7. Amend § 8.6 as follows:
■ a. Remove paragraph (a)(2);
■ b. Redesignate paragraph (a)(3) as paragraph (a)(2);
■ c. In newly redesignated paragraph (a)(2), remove the text ''GPO Access'' and add, in its place, the text ''*www.govinfo.gov*''*;* and
■ d. In paragraph (b), remove the text '', set requirements for microfiche images,''

PART 10—[AMENDED]

■ 8. The authority citation for part 10 is revised to read as follows:

Authority: 44 U.S.C. 1506, 4101; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1598 Comp., p. 189.

Subpart B—[Removed and Reserved]

■ 9. Remove and reserve subpart B, consisting of §§ 10.10 through 10.13.

PART 11—[AMENDED]

■ 10. The authority citation for part 11 is revised to read as follows:

Authority: 44 U.S.C. 1506, 1510, 4101; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

§ 11.1 [Amended]

■ 11. In § 11.1, remove the words ''and microfiche editions'' and add, in their place, the word ''format''.

■ 12. Revise § 11.2 to read as follows:

§ 11.2 Federal Register.

(a) The subscription price for the paper format of the daily **Federal Register** is $749 per year. A combined subscription to the daily **Federal Register**, the monthly **Federal Register** Index, and the monthly LSA (List of CFR Sections Affected) is $808 per year for the paper format. Six-month subscriptions for the paper format are also available at one-half the annual rate. Those prices exclude postage. 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 fewer than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages.

(b) The online format of the **Federal Register** is available on Government Publishing Office websites.

■ 13. Revise § 11.3 to read as follows:

§ 11.3 Code of Federal Regulations.

(a) The subscription price for a complete set of the Code of Federal Regulations is $1,019 per year for the bound, paper format. Those prices exclude postage. The prevailing postal rates will be applied to orders according to the delivery method requested. The Government Publishing Office (GPO) sells individual volumes of the paper format of the Code of Federal Regulations at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee.

(b) The online format of the Code of Federal Regulations is available on GPO websites.

PART 12—[AMENDED]

■ 14. The authority citation for part 12 is revised to read as follows:

Authority: 44 U.S.C. 1506, 1510, 4101; sec. 6, E.O. 10530, 19 FR 2709; 3 CFR, 1954–1958 Comp., p. 189.

§ 12.2 [Amended]

■ 15. In § 12.2(a), remove the words ''or microfiche''.

§ 12.5 [Removed and Reserved]

■ 16. Remove and reserve § 12.5.

Debra Steidel Wall,

Chair, Administrative Committee of the Federal Register.

Hugh N. Halpern,

Member, Administrative Committee of the Federal Register.

Rosemary Hart,

Member, Administrative Committee of the Federal Register.

Approved:

Merrick B. Garland,

Attorney General.

Debra Steidel Wall,

Acting Archivist of the United States.

[FR Doc. 2022–28232 Filed 12–28–22; 8:45 am]

BILLING CODE 1301–00–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2019–0035]

RIN 0579–AE53

Domestic Quarantine Regulations; Quarantined Areas and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: We are revising the regulations that govern domestic quarantines for various plant pests by removing lists of quarantined areas and regulated articles from the regulations in order to maintain these lists on the Agency's web pages. We are making these amendments because they will allow the Agency to update the lists more responsively, using a notice-based, streamlined approach, while continuing to protect plant health.

DATES: Effective January 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, National Policy Manager, Office of the Deputy

Administrator, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737; (301) 851–2286; *lynn.evans-goldner@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under the Plant Protection Act (PPA, 7 U.S.C 7701 *et seq.*), the Secretary of Agriculture is authorized to restrict the interstate movement of plants, plants products, and other articles to prevent the dissemination of plant pests and noxious weeds within the United States, and to issue regulations and orders regarding such restrictions. The Secretary has delegated this authority to the Animal and Plant Health Inspection Service (APHIS).

Pursuant to the PPA, APHIS issued the regulations in 7 CFR part 301, ''Domestic Quarantine Notices'' (referred to below as the regulations), in order to prevent the interstate spread of plant pests within the United States. Accordingly, part 301 includes 18 subparts in the regulations, each addressing a specific plant pest, and each designating certain areas of the United States as quarantined [1] areas for a plant pest, designating certain articles that may present a risk of spread of the plant pest in question as regulated articles, and placing conditions on the interstate movement of regulated articles from quarantined areas.

On June 14, 2022, we published in the **Federal Register** (87 FR 35904–35923, Docket No. APHIS–2019–0035) a proposal [2] to revise the regulations that govern domestic quarantines for various plant pests by removing lists of quarantined areas and regulated articles from the regulations in order to maintain these lists on the Agency's web pages. As a result of this proposed revision, lists of quarantined areas and regulated articles would be moved from the regulations to websites for various plant pests that APHIS' Plant Protection and Quarantine (PPQ) program maintains. We also proposed to issue yearly notices in the **Federal Register** in order to communicate changes to the lists of quarantined areas, and issue notices as needed in order to make changes to the lists of regulated articles.

We solicited comments concerning our proposal for 60 days, ending August 15, 2022. We received no comments by that date. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

APHIS is removing from the regulations lists of areas and articles associated with various plant pests and placing the lists on the PPQ website. Specifically, the PPQ website (*https://www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases*) will house lists of quarantined, protected, suppressive, and generally infested areas; and lists of regulated articles, exempted articles, restricted articles, associated articles, and host articles. Changes to these lists will no longer require rulemaking. Rather, changes will be made using a notice-based regulatory process. This web-listing process will only be for certain programs that are already listed in the regulations.

Potential cost savings are not quantified. The benefits of this rule to our stakeholders will be timelier and more easily accessible notification of changing phytosanitary information. The cost savings to the Agency will come from a more simplified process (*i.e.,* using fewer resources) when taking emergency action to prevent the dissemination of plant pests and diseases. The notice-based approach will require less time and fewer steps than publishing a rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.32–1 is amended by revising the definition of ''Regulated article'' to read as follows:

§ 301.32–1 Definitions.

* * * * *

Regulated article. Any article identified as a regulated article under § 301.32–2 as follows: listed as of January 30, 2023, added in accordance with § 301.32–2(b), or otherwise designated in accordance with § 301.32–2(c) or (d).

* * * * *

■ 3. Section 301.32.–2 is revised to read as follows:

§ 301.32–2 Regulated articles.

(a) *List of regulated articles.* Certain berries, fruits, nuts, and vegetables are regulated articles for one or more species of fruit fly unless the berries, fruits, nuts, or vegetables are canned, dried, or frozen below −17.8 °C (0 °F). The relevant commodity (both botanical name and common name), as well as the fruit fly species for which it is a regulated article, is found at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/fruit-flies/fruit-flies-home.*

(b) *Normal process for adding regulated articles.* (1) If the Administrator determines that an article

[1] Certain subparts refer to quarantined areas as ''regulated areas'' or ''infested areas.'' Since the term ''quarantined area'' is the most common in the regulations, and the terms all share a common meaning, we use ''quarantined area'' in this preamble as a general term inclusive of those other terms. We use the other terms only when context dictates their use.

[2] To view the proposed rule, go to *http://www.regulations.gov* and enter APHIS–2019–0035 in the Search field.

not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/fruit-flies/fruit-flies-home* presents a risk of spreading one or more species of fruit flies, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for the relevant species of fruit flies. The notice will provide the basis for this determination and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for the relevant species of fruit flies and listing it.

(c) *Soil and plants as regulated articles.* Soil is a regulated article if it is within the dripline of a regulated article that is listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/fruit-flies/fruit-flies-home* and that is annotated with an asterisk. Plants are regulated articles if they are producing or have produced species in the family Cucurbitaceae that are listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/fruit-flies/fruit-flies-home* as regulated articles for melon fruit fly.

(d) *Immediate designation of other regulated articles.* Any other product, article, or means of conveyance not listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/fruit-flies/fruit-flies-home* is a regulated article, if an inspector determines it presents a risk of spreading fruit flies, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.32–4 [Amended]

■ 4. Section 301.32–4 is amended in the introductory text by redesignating footnote 2 as footnote 1.

■ 5. Section 301.32–5 is amended as follows:

■ a. In paragraph (a) introductory text by redesignating footnote 3 as footnote 1;

■ b. In paragraph (b) introductory text by redesignating footnote 4 as footnote 2; and

■ c. By revising newly redesignated footnote 2.

The revision reads as follows:

§ 301.32–5 Issuance and cancellation of certificates and limited permits.

* * * * *

[2] See footnote 1 of this section.

§ 301.32–6 [Amended]

■ 6. Section 301.32–6 is amended in paragraph (a) by redesignating footnote 5 as footnote 1.

■ 7. Section 301.32–7 is amended in paragraph (a) as follows:

■ a. By redesignating footnote 6 as footnote 1; and

■ b. By revising newly redesignated footnote 1.

The revision reads as follows:

§ 301.32–7 Assembly and inspection of regulated articles.

* * * * *

[1] See footnote 1 to § 301.32–5(a).

■ 8. Section 301.38–1 is amended as follows:

■ a. In the definition of ''Certificate'' by removing the words ''of this subpart'';

■ b. By revising the definition of ''Protected area'';

■ c. By placing the definition of ''Regulated article'' in alphabetical order and revising the definition;

■ d. In the definition for ''Rust-resistant plants'':

■ i. By redesignating footnote 2 as footnote 1; and

■ ii. By removing the text ''under § 301.38–2 (a)(1) and (a)(2)'' and adding the text ''in accordance with § 301.38–2'' in its place; and

■ e. In the definition for ''Rust-susceptible plants'' by removing the text ''under § 301.38–2 (a)(1) and (a)(2)'' and adding the text ''in accordance with § 301.38–2'' in its place.

The revisions read as follows:

§ 301.38–1 Definitions.

* * * * *

Protected area. Those States or counties designated in accordance with § 301.38–3.

Regulated article. Any article identified as a regulated article under § 301.38–2 as follows: listed as of January 30, 2023, added in accordance with § 301.38–2(c), or otherwise designated in accordance with § 301.38–2(d).

* * * * *

■ 9. Section 301.38–2 is revised to read as follows:

§ 301.38–2 Regulated articles.

(a) *Rust-resistant regulated articles.* The Administrator has determined that certain *Berberis* species and varieties are rust-resistant. A list of all such articles is located at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry.*

(b) *Berberis, Mahoberberis, and Mahonia.* All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera Berberis, Mahoberberis, and Mahonia, except Mahonia cuttings for decorative purposes, are regulated articles.

(c) *Process for adding rust-resistant regulated articles*—(1) *Normal process.* (i) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry* meets the definition of *rust-resistant plants* found in this subpart, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a rust-resistant regulated article for black stem rust. The notice will provide the basis for this determination, and will request public comment.

(ii) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a rust-resistant regulated article for black stem rust and listing it.

(2) *Requested process.* A person may request that an additional rust-resistant variety be added to the list at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry.* The person requesting that a rust-resistant variety be added to the list must provide APHIS with a description of the variety, including a written description and color pictures that can be used by an inspector to clearly identify the variety and distinguish it from other varieties. If APHIS determines the variety should be added to the list, APHIS will propose to add it to the list pursuant to paragraph (c)(1) of this section.

(d) *Immediate designation of regulated articles.* Any other product or article not listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry* is a regulated article if an inspector determines it presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

(Approved by the Office of Management and Budget under control number 0579–0186)

■ 10. Section 301.38–3 is amended as follows:

■ a. In paragraph (a) by removing the words ''in paragraph (d)'' and adding

the words ''in accordance with paragraph (d)'' in their place;

■ b. In paragraph (c) by redesignating footnote 4 as footnote 1;

■ c. By revising paragraph (d); and

■ d. In paragraph (f) by removing the words ''in paragraph (d) of this section'' and adding ''at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry*'' in their place.

The revision reads as follows:

§ 301.38–3 Protected areas.

* * * * *

(d) The Administrator will publish a list of all protected areas on the Plant Protection and Quarantine (PPQ) website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/barberry/ct_barberry.* The list will include the date that the list was last updated. Lists of all protected areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of protected areas in accordance with this section, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the protected areas.

* * * * *

§ 301.38–4 [Amended]

■ 11. Section 301.38–4 is amended as follows:

■ a. In paragraphs (b)(1)(ii), (b)(2) introductory text, and (b)(2)(i) by removing the words ''of this subpart''; and

■ b. In paragraph (b)(2)(ii) by removing the text ''in § 301.38–2(a)(2) of this subpart'' and adding the text ''in accordance with § 301.38–2'' in its place.

§ 301.38–5 [Amended]

■ 12. Section 301.38–5 is amended in paragraph (a) by redesignating footnote 5 as footnote 1.

§ 301.38–6 [Amended]

■ 13. Section 301.38–6 is amended in paragraph (a) by redesignating footnote 6 as footnote 1.

■ 14. Section 301.38–8 is amended as follows:

■ a. By redesignating footnote 4 as footnote 1; and

■ b. By adding footnote 1.

The addition reads as follows:

§ 301.38–8 Costs and charges.

* * * * *

[1] See footnote 1 in § 301.38–3.

Subpart E [Amended]

■ 15. Subpart E, consisting of §§ 301.45 through 301.45–12, is amended by removing the words ''generally infested'' wherever they appear and adding the word ''quarantined'' in their place.

■ 16. Section 301.45 is amended by revising paragraph (a) to read as follows:

§ 301.45 Notice of quarantine; restrictions on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Pursuant to the provisions of sections 411, 412, 414, 431, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture hereby establishes a quarantine within the United States to prevent the spread of the gypsy moth, *Lymantria dispar* (Linnaeus), a dangerous insect injurious to forests and shade trees and not widely prevalent or distributed throughout the United States, and establishes regulations governing the interstate movement of regulated articles and outdoor household articles from quarantined areas of the United States.

* * * * *

■ 17. Section 301.45–1 is amended as follows:

■ a. By removing the definition for ''Generally infested area'';

■ b. In the definition for ''Qualified certified applicator'':

■ i. By Removing ''(1)'', ''(2)'', and ''(3)''; and

■ ii. By removing the words ''of this part''; and

■ c. By adding, in alphabetical order, a definition for ''Quarantine area''.

The addition reads as follows:

§ 301.45–1 Definitions.

* * * * *

Quarantine area. Any State, or portion thereof, listed as a generally infested area in accordance with § 301.45–2 or temporarily designated as a generally infested area in accordance with § 301.45–2(c).

* * * * *

■ 18. Section 301.45–2 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (c) by removing the text ''in § 301.45–3'' and adding the text ''at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/gypsy-moth/ct_gypsy_moth*'' in its place; and

■ c. In paragraph (d) by adding a sentence after the last sentence.

The revision and addition read as follows:

§ 301.45–2 Authorization to designate and terminate designation of quarantined areas.

(a) Except as provided in paragraphs (a)(1) and (2) of this section, the Administrator will designate as a quarantined area each State or each portion of a State in which a gypsy moth infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The Administrator will publish a list of all quarantined areas on the Plant Protection and Quarantine (PPQ) website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/gypsy-moth/ct_gypsy_moth.* The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Notwithstanding the criteria in the preceding sentences, an area will not be listed as a quarantined area if the Administrator determines that:

(1) The area is subject to a gypsy moth eradication program conducted by the Federal Government or a State government in accordance with the Eradication, Suppression, and Slow the Spread alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the United States Environmental Protection Agency on January 16, 1996; and

(2) State or Federal delimiting trapping surveys conducted in accordance with Section II, ''Survey Procedures—Gypsy Moth'' of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap is less than 10 and that the trapping surveys show that the eradication program is effectively diminishing the gypsy moth population of the area.

* * * * *

(d) * * * APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred.

§ 301.45–3 [Removed and Reserved]

■ 19. Section 301.45–3 is removed and reserved.

§ 301.45–4 [Amended]

■ 20. Section 301.45–4 is amended in paragraph (a)(1) by redesignating footnote 3 as footnote 1.

§ 301.48–1 [Amended]

■ 21. Section 301.48–1 is amended in the definition of ''Regulated airport'' by removing the words ''of this subpart''.

■ 22. Section 301.51–1 is amended as follows:

■ a. In the definition for ''Quarantined area'':

■ i. By removing the text ''in § 301.51–3(c) of this subpart'' and adding the text ''in accordance with § 301.51–2'' in its place; and

■ ii. By removing the words ''of this subpart'' after the citation ''§ 301.51–3(b)''; and

■ b. By revising the definition for ''Regulated article''.

The revision reads as follows:

§ 301.51–1 Definitions.

* * * * *

Regulated article. Any article identified as a regulated article under § 301.51–2 as follows: listed as of January 30, 2023, added in accordance with § 301.51–2(b), or otherwise designated in accordance with § 301.51–2(c).

* * * * *

■ 23. Sections 301.51–2 and 301.51–3 are revised to read as follows:

§ 301.51–2 Regulated articles.

(a) *List of regulated articles.* The Administrator has determined that certain articles present a risk of spreading Asian longhorned beetle. A list of all such articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/asian-longhorned-beetle/asian-longhorned-beetle.* Lists of all regulated articles may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(b) *Normal process for designating additional regulated articles.* (1) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/asian-longhorned-beetle/asian-longhorned-beetle* presents a risk of spreading Asian longhorned beetle, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for Asian longhorned beetle. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for Asian longhorned beetle and listing it.

(c) *Immediate designation of regulated articles.* Any other article, product, or means of conveyance not already listed in accordance with paragraph (a) of this section may be designated a regulated article on an immediate basis if an inspector determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the article, product, or means of conveyance that it is now subject to the restrictions of this subpart.

§ 301.51–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area each State or portion of a State in which the Asian longhorned beetle is present, in which the Administrator has reason to believe that the Asian longhorned beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where the Asian longhorned beetle has been found. The Administrator will publish a list of all quarantined areas (the quarantine list) on the Plant Protection and Quarantine (PPQ) website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/asian-longhorned-beetle/asian-longhorned-beetle.* The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Asian longhorned beetle.

(b) The Administrator may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to owner or person in possession of the nonquarantined area, or in the case of publicly owned land, to the person responsible for the management of nonquarantined area. Thereafter, the interstate movement of any regulated articles from an area temporarily designated as quarantined area is subject to this subpart. As soon as practicable, this area will either be added to the quarantine list or the Administrator will terminate the designation. The owner or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation has terminated will be given written notice of the termination as soon as practicable.

§ 301.51–6 [Amended]

■ 23. Section 301.51–6 is amended in paragraph (a) by redesignating footnote 3 as footnote 1.

§ 301.51–7 [Amended]

■ 25. Section 301.51–7 is amended in paragraph (a) by redesignating footnote 4 as footnote 1.

■ 26. Section 301.52 is revised to read as follows:

§ 301.52 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* The following States are quarantined to prevent the spread of the pink bollworm (*Pectinophora gossypiella* (Saund.)): Florida.

(b) *List of regulated articles.* The Deputy Administrator has determined that certain articles present a risk of spreading pink bollworm. A list of all such regulated articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/cotton-pests/cotton-pests.* Lists of all

regulated articles may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(c) *Normal process for designating additional regulated articles.* (1) If the Deputy Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/cotton-pests/cotton-pests* presents a risk of spreading pink bollworm, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for pink bollworm. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Deputy Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for pink bollworm and listing it.

(d) *Immediate designation of regulated articles.* An inspector may designate any other product, article, or means of conveyance as a regulated article for pink bollworm, if the inspector determines that it presents a risk of spreading pink bollworm, and after the inspector provides actual notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

■ 27. Section 301.52–1 is amended by revising the definitions of ''Regulated area'', ''Regulated articles'', and ''Suppressive area'' to read as follows:

§ 301.52–1 Definitions.

* * * * *

Regulated area. Any quarantined State, territory, or district, or any portion thereof, listed in accordance with § 301.52–2.

Regulated articles. Any article identified as a regulated article under § 301.52 as follows: listed as of January 30, 2023, added in accordance with § 301.52(c), or otherwise designated in accordance with § 301.52(d).

* * * * *

Suppressive area. That part of a regulated area where eradication of infestation is undertaken as an objective, as designated by the Deputy Administrator in accordance with § 301.52–2.

■ 28. Section 301.52–2 is revised to read as follows:

§ 301.52–2 Authorization for the Deputy Administrator to list regulated areas and suppressive or generally infested areas.

(a) The Deputy Administrator will list as a regulated area each State or portion of a State in which evidence of a reproducing population of pink bollworm is present, or in which there is reason to believe that pink bollworm is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator may divide any regulated area into a suppressive area and a generally infested area in accordance with the definitions of these terms in § 301.52–1. The Deputy Administrator will publish a list of all regulated areas, including the suppressive and generally infested areas therein, at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/cotton-pests/cotton-pests.* The list will include the date that the list was last updated. Lists of all regulated areas, including the suppressive and generally infested areas therein, may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of regulated areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the regulated areas. Less than an entire State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a regulated area will be adequate to prevent the artificial interstate spread of pink bollworm.

(b) [Reserved]

§ 301.52–2a [Removed and Reserved]

■ 29. Section 301.52–2a is removed and reserved.

30. Section 301.52–3 is amended as follows:

■ a. In the section heading by removing footnote 2; and

■ b. By revising the introductory text.

The revision reads as follows:

§ 301.52–3 Conditions governing the interstate movement of regulated articles from quarantined States.

Any regulated articles may be moved interstate from any quarantined State under the following conditions: [1]

* * * * *

[1] Requirements under all other applicable Federal domestic plant quarantines must also be met.

■ 31. Section 301.55–1 is amended as follows:

■ a. In the definition for ''Quarantined area'' by removing the text ''listed in § 301.55–3(c)'' and adding the text ''listed in accordance with § 301.55–3(a)'' in its place; and

■ b. By revising the definition for ''Regulated article''.

The revision reads as follows:

§ 301.55–1 Definitions.

* * * * *

Regulated article. Any article identified as a regulated article under § 301.55–2 as follows: listed as of January 30, 2023, added in accordance with § 301.55–2(b), or otherwise designated in accordance with § 301.55–2(c).

* * * * *

■ 32. Sections 301.55–2 and 301.55–3 are revised to read as follows:

§ 301.55–2 Regulated articles.

(a) *List of regulated articles.* The Administrator has determined that certain articles present a risk of spreading the South American cactus moth. A list of all such regulated articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/sa_insects/south-american-cactus-moth.* Lists of all regulated articles may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(b) *Normal process for designating additional regulated articles.* (1) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/sa_insects/south-american-cactus-moth* presents a risk of spreading South American cactus moth, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for South American cactus moth. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for South American cactus moth and listing it.

(c) *Immediate designation of regulated articles.* An inspector may designate any other product, article, or means of conveyance not listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/sa_insects/south-american-cactus-moth* as a regulated article if the inspector determines it presents a risk of spreading the South American cactus moth, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.55–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area each State, or each portion of a State, in which the South American cactus moth has been found by an inspector, in which the Administrator has reason to believe that the South American cactus moth is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities where South American cactus moth has been found. The Administrator will publish a list of all quarantined areas (the quarantine list) on the Plant Protection and Quarantine (PPQ) website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/sa_insects/south-american-cactus-moth.* The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will be adequate to prevent the interstate spread of the South American cactus moth.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this subpart along with written notice of the temporary designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, the area will be added to the quarantine list or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which designation is terminated will be given written notice of the termination as soon as practicable.

§ 301.55–4 [Amended]

■ 33. Section 301.55–4 is amended in the introductory text by redesignating footnote 3 as footnote 1.

§ 301.55–5 [Amended]

■ 34. Section 301.55–5 is amended in paragraph (a) introductory text by redesignating footnote 4 as footnote 1.

§ 301.55–6 [Amended]

■ 35. Section 301.55–6 is amended in paragraph (a) by redesignating footnote 5 as footnote 1.

■ 36. Section 301.55–7 is amended as follows:

■ a. In paragraph (a) by redesignating footnote 6 as footnote 1; and

■ b. By revising newly designated footnote 1.

The revision reads as follows:

§ 301.55–7 Assembly and inspection of regulated articles.

* * * * *

[1] See footnote 1 in § 301.55–5.

■ 37. Section 301.74–1 is amended as follows:

■ a. In the definition for ''Departmental permit'' by removing the words ''of this subpart'': and

■ b. By revising the definitions for ''Quarantined area'' and ''Regulated article''.

The revisions read as follows:

§ 301.74–1 Definitions.

* * * * *

Quarantined area. Any State, or any portion of a State, listed in accordance with § 301.74–3(a) or otherwise designated as a quarantined area in accordance with § 301.74–3(b).

Regulated article. Any article identified as a regulated article under § 301.74–2 as follows: listed as of January 30, 2023, added in accordance with § 301.74–2(a)(1) and (2), or otherwise designated in accordance with § 301.74–2(b), based on its susceptibility to the form or strain of plum pox detected in the quarantined area.

* * * * *

■ 38. Sections 301.74–2 and 301.74–3 are revised to read as follows:

§ 301.74–2 Regulated articles.

(a) The Administrator has determined that certain articles present a risk of spreading plum pox. A list of all such articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plum-pox/plumpox.* Lists of all regulated articles may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(1) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plum-pox/plumpox* presents a risk of spreading plum pox, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for plum pox. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for plum pox and listing it.

(b) An inspector may designate any other product or article as a regulated article, if the inspector determines it to present a risk of spreading plum pox, and after the inspector notifies the person in possession of the product or article that it is subject to the restrictions in this subpart.

§ 301.74–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area each State, or each portion of a State, in which plum pox has been detected through inspection and laboratory testing, or in which the Administrator has reason to believe that plum pox is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which plum pox has been detected. The Administrator will publish a list of all quarantined areas (the quarantine list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plum-pox/plumpox.* The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the interstate spread of plum pox.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this subpart along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the quarantine list or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which the quarantine designation is terminated will be given notice of the termination as soon as practicable.

§ 301.74–4 [Amended]

■ 39. Section 301.74–4 is amended in the introductory text by redesignating footnote 2 as footnote 1.

■ 40. Section 301.75–1 is amended as follows:

■ a. In the definitions for ''Commercial citrus-producing area'' and ''Quarantined area'' by removing the words ''of this subpart''; and

■ b. By revising the definition for ''Regulated article''.

The revision reads as follows:

§ 301.75–1 Definitions.

* * * * *

Regulated article. Any article identified as a regulated article under § 301.75–3 as follows: listed as of January 30, 2023, added in accordance with § 301.75–3(b), or otherwise designated in accordance with § 301.75–3(c).

* * * * *

■ 41. Sections 301.75–3 and 301.75–4 are revised to read as follows:

§ 301.75–3 Regulated articles.

(a) *List of regulated articles.* The Administrator has determined that certain articles present a risk of spread of citrus canker. A list of all such regulated articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/citrus-canker.* Lists of all regulated articles may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(b) *Normal process for designating additional regulated articles.* (1) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/citrus-canker* presents a risk of spread of citrus canker, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for citrus canker. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for citrus canker and listing it.

(c) *Immediate designation of regulated articles.* An inspector may designate any other product, article, or means of conveyance as a regulated article, if the inspector determines that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the provisions of this subpart.

§ 301.75–4 Quarantined areas.

(a) *Quarantined areas.* The Administrator will list as a quarantined area each State or portion of a State in which an infestation of citrus canker is found. The Administrator will publish a list of all quarantined areas (the quarantine list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/citrus-canker.* The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) *Survey.* No area has been designated a survey area.

(2) *Intrastate movement of regulated articles.* The State enforces restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those on the interstate movement of regulated articles from the quarantined area, except as follows:

(i) Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for processing, and the date the intrastate movement began;

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement;

(C) The vehicles, covers, and any containers used to carry the regulated

fruit intrastate are treated in accordance with part 305 of this chapter before leaving the premises where the regulated fruit is unloaded for processing; and

(D) All leaves, litter, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(ii) Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began;

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement;

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with part 305 of this chapter before leaving the premises where the regulated fruit is unloaded for packing;

(D) Any equipment that comes in contact with the regulated fruit at the packing plant is treated in accordance with part 305 of this chapter before being used to handle any fruit eligible for interstate movement to commercial citrus-producing areas; and

(E) All leaves and litter collected from the shipment of regulated fruit at the packing plant are either incinerated at the packing plant or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing plant, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with part 305 of this chapter before leaving the premises where the regulated fruit is unloaded for processing.

(iii) Grass, tree, and plant clippings may be moved intrastate from the quarantined area for disposal in a public landfill or for composting in a recycling facility, if all of the following conditions are met:

(A) The public landfill or recycling facility is located within the survey area described in paragraph (d)(1) of this section;

(B) The grass, tree, or plant clippings are completely covered during the movement from the quarantined area to the public landfill or recycling facility; and

(C) Any public landfill used is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(3) *Inspections.* (i) In the quarantined area, every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, between May 1 through December 31, by an inspector.

(ii) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(4) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with part 305 of this chapter upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with part 305 of this chapter upon leaving the grove or premises.

(5) *Destruction of infected plants and trees.* No more than 7 days after a State or Federal laboratory confirms that a regulated plant or regulated tree is infected, the State must provide written notice to the owner of the infected plant or infected tree that the infected plant or infected tree must be destroyed. The owner must have the infected plant or infected tree destroyed within 45 days after receiving the written notice.

(b) *Designation change.* The Administrator may designate any non-quarantined area as a quarantined area in accordance with paragraph (a) of this section upon giving written notice of this designation to the owner or persons in possession of the non-quarantined area. Thereafter, regulated articles may be moved interstate from that area only in accordance with this subpart. As soon as practicable, this area will be added to the quarantine list, or the Administrator will terminate the designation. The owner or person in possession of an area for which designation is terminated will be given written notice as soon as practicable.

(c) *Removal of areas from quarantine.* An area on the quarantine list will be removed from quarantine if the area has been without infestation for 2 years. The list will be changed, and the public informed of this change, in accordance with the process specified in paragraph (a) of this section.

§ 301.75–8 [Amended]

■ 42. Section 301.75–8 is amended in paragraph (c) by removing the words ''of this subpart''.

§ 301.75–10 [Amended]

■ 43. Section 301.75–10 is amended in paragraph (b) by removing the words ''of this subpart''.

■ 44. Section 301.76–1 is amended by revising the definition for ''Regulated article'' to read as follows:

§ 301.76–1 Definitions.

* * * * *

Regulated article. Any article identified as a regulated article under § 301.76–2 as follows: listed as of January 30, 2023, added in accordance with § 301.76–2(b), or otherwise designated in accordance with § 301.76–2(c).

* * * * *

■ 45. Section 301.76–2 is revised to read as follows:

§ 301.76–2 Regulated articles for Asian citrus psyllid and citrus greening.

(a) *List of regulated articles.* The Administrator has determined that certain articles present a risk of spreading Asian citrus psyllid and/or citrus greening. A list of all such regulated articles is located at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/acp* and *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/citrus-greening,* respectively. The list indicates whether the article is a regulated article for both citrus greening and Asian citrus psyllid, or just one of these two pests. Lists of all regulated

articles may also be obtained by request from any local Plant Protection and Quarantine office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(b) *Normal process for designating additional regulated articles.* (1) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/acpand/* or *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus/citrus-greening presentsariskofspreading Asiancitruspsyllidand/* or citrus greening, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for either or both of these pests. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article and listing it.

(c) *Immediate designation of regulated articles.* An inspector may designate any other product, article, or means of conveyance as a regulated article for Asian citrus psyllid and/or citrus greening, if the inspector determines that it presents a risk of spreading these pests, and after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

(d) *Exemption after certain methods of processing.* The Administrator may determine that certain methods of processing render regulated articles such that they no longer present a risk of spreading Asian citrus psyllid or citrus greening. Such methods are found at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/citrus.* Articles processed in such a manner are exempt from the regulations in this subpart.

§ 301.76–5 [Amended]

■ 46. Section 301.76–5 is amended as follows:

■ a. In paragraph (a)(1) by redesignating footnote 2 as footnote 1; and

■ b. In paragraph (e) by removing the words ''of this subpart''.

§ 301.76–6 [Amended]

■ 47. Section 301.76–6 is amended as follows:

■ a. In paragraph (a)(1) by redesignating footnote 3 as footnote 1 and removing ''7 CFR'';

■ b. In paragraph (b)(1) by redesignating footnote 4 as footnote 2;

■ c. In paragraph (c)(2)(i) by removing the citation ''paragraphs (c)(1)(i) through (c)(1)(iv)'' and adding the citation ''paragraphs (c)(1)(i) through (iv)'' in its place;

■ d. In paragraph (d) introductory text by redesignating footnote 5 as footnote 3; and

■ e. In paragraphs (d)(1) and (2) by removing ''7 CFR''.

§ 301.76–7 [Amended]

■ 48. Section 301.76–7 is amended as follows:

■ a. In paragraph (a)(1) by redesignating footnote 6 as footnote 1; and

■ b. In paragraph (b)(1) by removing ''7 CFR''.

§ 301.76–8 [Amended]

■ 49. Section 301.76–8 is amended in paragraph (a) by redesignating footnote 7 as footnote 1.

§ 301.76–9 [Amended]

■ 50. Section 301.76–9 is amended by redesignating footnote 8 as footnote 1.

■ 51. Section 301.80 is revised to read as follows:

§ 301.80 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines the States of North Carolina and South Carolina in order to prevent the spread of witchweed (*Striga* spp.), a parasitic plant that causes a dangerous disease of corn, sorghum, and other crops of the grass family and is not widely prevalent or distributed within and throughout the United States. Through the aforementioned authorities, the Secretary imposes a quarantine on the States of North Carolina and South Carolina with respect to the interstate movement from those States of regulated articles, issues regulations in this subpart governing the movement of such articles, and gives notice of this quarantine action.

(b) *Quarantine restrictions on the interstate movement of regulated articles.* No common carrier or other person shall move interstate from any quarantined State any regulated articles, except in accordance with the conditions prescribed in this subpart.

(c) *List of regulated articles.* The Deputy Administrator has determined that certain articles present a hazard of spread of witchweed. A list of all such regulated articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/SA_Weeds/SA_Noxious_Weeds_Program.* Lists of all regulated articles may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(d) *Normal process for designating additional regulated articles.* (1) If the Deputy Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/SA_Weeds/SA_Noxious_Weeds_Program* presents a hazard of spread of witchweed, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for witchweed. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Deputy Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for witchweed and listing it.

(e) *Immediate designation of regulated articles.* An inspector may designate any other article, product, or means of conveyance as a regulated article, if the inspector determines that it presents a hazard of spread of witchweed, and after the person in possession of the article has been so notified.

■ 52. Section 301.80–1 is amended by revising the definitions for ''Regulated area'', ''Regulated articles'', and ''Suppressive area'' to read as follows:

§ 301.80–1 Definitions.

* * * * *

Regulated area. Any quarantined State, or any portion thereof, designated as a regulated area in accordance with § 301.80–2.

Regulated articles. Any article identified as a regulated article under § 301.80 as follows: listed as of January 30, 2023, added in accordance with § 301.80(d), or otherwise designated in accordance with § 301.80(e).

* * * * *

Suppressive area. That portion of a regulated area where eradication of infestation is undertaken as an objective.

* * * * *

■ 53. Section 301.80–2 is revised to read as follows:

§ 301.80–2 Authorization to designate, and terminate designation of, regulated areas and suppressive or generally infested areas; and to exempt articles from certification, permit, or other requirements.

(a) *List of regulated areas and suppressive or generally infested areas.* The Deputy Administrator will list as a regulated area each quarantined State, or portion of a State, in which witchweed has been found or in which there is reason to believe that witchweed is present or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator may divide any regulated area into a suppressive area and generally infested area in accordance with definitions of these terms in § 301.80–1. The Deputy Administrator will publish a list of all regulated areas (the regulated areas list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/SA_Weeds/SA_Noxious_Weeds_Program*. The list will include the date that the list was last updated. Lists of all regulated areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*. After a change is made to the list of regulated areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the regulated areas. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of witchweed.

(b) *Temporary designation of regulated areas and suppressive or generally infested areas.* The Deputy Administrator or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and may designate the regulated area or portions thereof as a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a) of this section for designating such area, by serving written notice thereof on the owner or person in possession of such premises, and thereafter the interstate movement of regulated articles from such premises by any person having notice of the designation shall be subject to the applicable provisions of this subpart. As soon as practicable, such premises shall be added to the regulated areas list.

(c) *Termination of designation as a regulated area and a suppressive or generally infested area.* The Deputy Administrator shall terminate the designation provided for under paragraph (a) of this section of any area designated as a regulated area, or a suppressive or a generally infested area within a regulated area, when the Deputy Administrator determines that such designation is no longer required under the criteria specified in paragraph (a) of this section. Notification of this change in the list of regulated areas, or suppressive or generally infested areas within a regulated area, will be made in accordance with the process set forth in paragraph (a) of this section. The Deputy Administrator or an inspector shall terminate the designation provided for under paragraph (b) of this section of any premises designated as a regulated area or a suppressive or a generally infested area when the Deputy Administrator determines that such designation is no longer required under the criteria specified in paragraph (a) of this section, and notice thereof shall be given to the owner or person in possession of the premises.

(d) *Exemption of articles from certification, permit, or other requirements.* The Deputy Administrator may determine that a regulated article has been produced, processed, cleaned, or otherwise handled in a manner that is sufficient to allow the article to move interstate without hazard of spread of witchweed, provided that the article is not exposed to infestation after production, processing, cleaning, or other handling. The Deputy Administrator may also determine that a regulated article's intended use is such that it may be moved interstate without hazard of spread of witchweed. Such articles are exempt from the restrictions of this subpart. The list of regulated articles at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/SA_Weeds/SA_Noxious_Weeds_Program* is annotated to indicate the exemptions under this subpart.

§ 301.80–2a [Removed and Reserved]

■ 54. Section 301.80–2a is removed and reserved.

§ 301.80–2b [Removed and Reserved]

■ 55. Section 301.80–2b is removed and reserved.

■ 56. Section 301.80–3 is amended as follows:

■ a. In the section heading by removing footnote 3;

■ b. By revising paragraph (a) introductory text;

■ c. In paragraph (a)(2)(i) by removing the text ''§ 301.80–2b which exempts'' and adding the text ''§ 301.80–2 which exempt'' in its place;

■ d. In paragraph (a)(3)(ii)(A) by removing the citation ''§ 301.80–2b'' and adding the citation ''§ 301.80–2'' in its place; and

■ e. In paragraph (b), in the first sentence:

■ i. By redesignating footnote 4 as footnote 2 and revising newly redesignated footnote 2;

■ ii. By removing the words ''and so listed by him in a supplemental regulation''; and

■ iii. By removing footnote 5.

The revisions read as follows:

§ 301.80–3 Conditions governing the interstate movement of regulated articles from quarantined States.

(a) Any regulated articles, except soil samples for processing, testing, or analysis, may be moved interstate from any quarantined State under the following conditions: [1]

* * * * *

[1] Requirements under all other applicable Federal domestic plant quarantines must also be met.

[2] Provisions for laboratory approval may be obtained from your State's State Plant Health Director. Contact information can be found at *www.aphis.usda.gov/aphis/ourfocus/plant health/ppq-program-overview/CT_SPHD*.

■ 57. Sections 301.81–2 and 301.81–3 are revised to read as follows:

§ 301.81–2 Regulated articles.

(a) *List of regulated articles.* The Administrator has determined that certain articles present a risk of spread of the imported fire ant. A list of all such articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/imported-fire-ants/ct_imported_fire_ants*. Lists of all regulated articles may also be

obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*.

(b) *Normal process for designating additional regulated articles.* (1) If the Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/imported-fire-ants/ct_imported_fire_ants* presents a risk of spread of the imported fire ant, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for imported fire ant. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for the imported fire ant and listing it.

(c) *Immediate designation of regulated articles.* An inspector may designate any other article or means of conveyance as a regulated article if the inspector determines that it presents a risk of spread of the imported fire ant due to its proximity to an infestation of the imported fire ant, and after the inspector provides notification to the person in possession of the article or means of conveyance that it is now regulated under this subpart.

§ 301.81–3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area each State or portion of a State determined to be infested with the imported fire ant. The Administrator will also list as a quarantined area an area that is uninfested but determined to be in proximity to an infestation or that is determined to be inseparable from an infested locality for quarantine purposes; such a determination will be based on projections of spread of imported fire ant around the periphery of the infestation, as determined by previous years' surveys; availability of natural habitats and host materials, within the uninfested acreage, suitable for establishment and survival of imported fire ant populations; and the necessity of including uninfested acreage within the quarantined area in order to establish readily identifiable boundaries. The Administrator will publish a list of all quarantined areas (the quarantine list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/imported-fire-ants/ct_imported_fire_ants*. The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*. After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to the interstate movement restrictions imposed by this subpart; and

(2) Designating less than the entire State as a quarantined area will prevent the spread of the imported fire ant.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the quarantine list, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

■ 58. Section 301.81–4 is amended as follows:

■ a. In paragraph (a)(1) by removing the words ''of this subpart''; and

■ b. In paragraph (a)(3) by redesignating footnote 3 as footnote 1 and revising newly redesignated footnote 1.

The revision reads as follows:

§ 301.81–4 Interstate movement of regulated articles from quarantined areas.

* * * * *

[1] Provisions for laboratory approval may be obtained from your State's State Plant Health Director. Contact information can be found at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/CT_SPHD*.

§ 301.81–5 [Amended]

■ 59. Section 301.81–5 is amended as follows:

■ a. In paragraph (a) introductory text by redesignating footnote 4 as footnote 1;

■ b. In paragraph (a)(2) by redesignating footnote 5 as footnote 2; and

■ c. In paragraph (c) by removing the words ''of this subpart'' in the first sentence.

§ 301.81–6 [Amended]

■ 60. Section 301.81–6 is amended by redesignating footnote 6 as footnote 1.

■ 61. Section 301.81–8 is amended as follows:

■ a. In paragraph (a) by redesignating footnote 7 as footnote 1; and

■ b. By revising newly redesignated footnote 1.

The revision reads as follows:

§ 301.81–8 Assembly and inspection of regulated articles.

* * * * *

[1] See footnote 1 of § 301.81–5(a).

■ 62. Section 301.85 is revised to read as follows:

§ 301.85 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines the State of New York in order to prevent the spread of the golden nematode (*Globodera rostochiensis*), which causes a dangerous disease of potatoes and certain other plants and is not widely prevalent or distributed within and throughout the United States. Through the aforementioned authorities, the Secretary imposes a quarantine on the State of New York with respect to the interstate movement from that State of regulated articles, issues regulations in this subpart governing the movement of such articles, and gives notice of this quarantine action.

(b) *Quarantine restrictions on the interstate movement of regulated articles.* No common carrier or other person shall move interstate from any quarantined State any regulated articles, except in accordance with the conditions prescribed in this subpart.

(c) *List of regulated articles.* The Deputy Administrator has determined that certain articles present a hazard of spread of golden nematodes. A list of all such regulated articles is found on the

internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/golden-nematode/nematodes.* Lists of all regulated articles may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(d) *Normal process for designating additional regulated articles.* (1) If the Deputy Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/golden-nematode/nematodes* presents a hazard of spread of golden nematodes, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for golden nematode. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Deputy Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for golden nematode and listing it.

(e) *Immediate designation of regulated articles.* An inspector may designate any other article, product, or means of conveyance as a regulated article, if the inspector determines that it presents a hazard of spread of golden nematodes, and after the person in possession of the article has been so notified.

■ 63. Section 301.85–1 is amended by revising the definitions for ''Generally infested area'', ''Regulated area'', ''Regulated article'', and ''Suppressive area'' as follows:

§ 301.85–1 Definitions.

* * * * *

Generally infested area. Any part of a regulated area not designated as a suppressive area.

* * * * *

Regulated area. Any quarantined State, or any portion thereof, listed as a regulated area in accordance with § 301.85–2.

Regulated article. Any article identified as a regulated article under § 301.85 as follows: listed as of January 30, 2023, added in accordance with § 301.85(d), or otherwise designated in accordance with § 301.85(e).

* * * * *

Suppressive area. That portion of a regulated area where eradication of infestation is undertaken as an objective.

■ 64. Section 301.85–2 is revised to read as follows:

§ 301.85–2 Authorization for the Deputy Administrator to list regulated areas and suppressive or generally infested areas.

(a) *Criteria for designation and process for listing.* The Deputy Administrator will list as a regulated area each State or portion of a State in which golden nematode has been determined to be found or in which there is reason to believe that golden nematode is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator may divide any regulated area into a suppressive area and a generally infested area in accordance with the definitions of these terms in § 301.85–1. The Deputy Administrator will publish a list of all regulated areas, including the suppressive and generally infested areas therein, at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/golden-nematode/nematodes.* The list will include the date that the list was last updated. Lists of all regulated areas, including the suppressive and generally infested areas therein, may also be obtained by request from any local Plant Protection and Quarantine office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of regulated areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the regulated areas. Less than an entire State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a regulated area will be adequate to prevent the interstate spread of golden nematodes.

(b) *Temporary designation of regulated areas and suppressive or generally infested areas.* The Deputy Administrator or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a) of this section for listing such area, by serving written notice thereof on the owner or person in possession of such premises, and thereafter the interstate movement of regulated articles from such premises by any person having notice of the designation shall be subject to the applicable provisions of this subpart. As soon as practicable, such premises shall be added to the list of regulated areas if a basis then exists for their designation; otherwise the designation shall be terminated by the Deputy Administrator or an authorized inspector and notice thereof shall be given to the owner or person in possession of the premises.

(c) *Termination of designation as a regulated area and a suppressive or generally infested area.* The Deputy Administrator shall terminate the designation provided for under paragraph (a) of this section of any area listed as a regulated area and suppressive or generally infested area when he or she determines that such designation is no longer required under the criteria specified in paragraph (a) of this section.

(d) *Exemption of articles from certification, permit, or other requirements.* The Deputy Administrator may determine that a regulated article has been produced, processed, cleaned, or otherwise handled in a manner that is sufficient to allow the article to move interstate without hazard of spread of golden nematodes, provided that the article is not exposed to infestation after production, processing, cleaning, or other handling. The Deputy Administrator may also determine that a regulated article's intended use is such that it may be moved interstate without hazard of spread of golden nematodes. Such articles are exempt from the restrictions of this subpart. The list of regulated articles at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/golden-nematode/nematodes* is annotated to indicate the exemptions under this subpart.

§ 301.85–2a [Removed and Reserved]

■ 65. Section 301.85–2a is removed and reserved.

§ 301.85–2b [Removed and Reserved]

■ 66. Section 301.85–2b is removed and reserved.

■ 67. Section 301.85–3 is amended as follows:

■ a. In the section heading by removing footnote 2;

■ b. By revising the introductory text;

■ c. In paragraph (a)(2)(i) by removing the citation ''§ 301.85–2b'' and adding the citation ''§ 301.85–2(d)'' in its place;

■ d. By revising paragraph (a)(3)(ii); and

■ e. In paragraph (b), in the first sentence:

■ i. By redesignating footnote 3 as footnote 2 and revising newly redesignated footnote 2;

■ ii. By removing the words ''and so listed by him in a supplemental regulation''; and

■ iii. By removing footnote 4.

The revisions read as follows:

§ 301.85–3 Conditions governing the interstate movement of regulated articles from quarantined States.

(a) Any regulated articles except soil samples for processing, testing, or analysis may be moved interstate from any quarantined State under the following conditions:[1]

(3) * * *

(ii) Without a certificate or permit, if:

(A) The regulated articles are exempt from certification and permit requirements under the provisions of § 301.85–2(d); or

(B) The point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

* * * * *

[1]Requirements under all other applicable Federal domestic plant quarantines must also be met.

[2] Provisions for laboratory approval may be obtained from your State's State Plant Health Director. Contact information can be found at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/CT_SPHD.*

§ 301.86–2 [Amended]

■ 68. Section 301.86–2 is amended in paragraph (a) by redesignating footnote 2 as footnote 1.

■ 69. Section 301.86–5 is amended as follows:

■ a. In paragraph (a) introductory text by redesignating footnote 3 as footnote 1;

■ b. In paragraph (a)(1) by redesignating footnote 4 as footnote 2; and

■ c. In paragraph (b)(1) introductory text by redesignating footnote 5 as footnote 3 and revising newly redesignated footnote 3.

The revision reads as follows:

§ 301.86–5 Issuance and cancellation of certificates and limited permits.

* * * * *

[3] See footnote 1 of this section.

§ 301.86–6 [Amended]

■ 70. Section 301.86–6 is amended in paragraph (a) by redesignating footnote 6 as footnote 1.

■ 71. Section 301.86–7 is amended as follows:

■ a.In paragraph (a) by redesignating footnote 7 as footnote 1; and

■ b. Revising newly redesignated footnote 1.

The revision reads as follows:

§ 301.86–7 Assembly and inspection of regulated articles.

* * * * *

[1] See footnote 1 in § 301.86–5.

■ 72. Section 301.87 is amended as follows:

■ a. In the section heading by removing footnotes 1 and 2; and

■ b. By revising paragraph (a).

The revision reads as follows:

§ 301.87 Quarantine; restrictions on interstate movement of specified articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754),[1] [2] the Secretary of Agriculture establishes quarantines within the United States to prevent the artificial spread of leaf scald disease and gummosis disease. The regulations in this subpart govern the interstate movement from regulated areas of regulated articles.

* * * * *

[1] Any inspector is authorized to stop and inspect persons and means of conveyance, and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[2] Regulations concerning the movement of gummosis bacteria and leaf scald bacteria in commerce are contained in part 330 of this chapter.

■ 73. Section 301.87–1 is amended as follows:

■ a. In the definitions for ''Certificate'' and ''Limited permit'' by removing the words ''of this subpart''; and

■ b. By revising the definitions for ''Regulated area'' and ''Regulated article''.

The revisions read as follows:

§ 301.87–1 Definitions.

* * * * *

Regulated area. Any quarantined State, or any portion thereof, listed as a regulated area in accordance with § 301.87–3, or otherwise designated as a regulated area in accordance with § 301.87–3(b).

Regulated article. Any article identified as a regulated article under § 301.87–2 as follows: listed as of January 30, 2023, added in accordance with § 301.87–2(b), or otherwise designated in accordance with § 301.87–2(c).

* * * * *

■ 74. Sections 301.87–2 and 301.87–3 are revised to read as follows:

§ 301.87–2 Regulated articles.

(a) *List of regulated articles.* The Deputy Administrator has determined that certain articles present a risk of spread of sugarcane diseases. A list of all such articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plant-disease/sugarcane.* Lists of all regulated articles may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.*

(b) *Normal process for designating additional regulated articles.* (1) If the Deputy Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plant-disease/sugarcane* presents a risk of spread of sugarcane diseases, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for sugarcane diseases. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Deputy Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for sugarcane diseases and listing it.

(c) *Immediate designation of regulated articles.* Any other article, product, or means of conveyance not already listed in accordance with paragraph (a) of this section may be designated a regulated article on an immediate basis if an inspector determines that it presents a risk of spread of sugarcane diseases and provides actual notification to the person in possession of the article, product, or means of conveyance that it is now subject to the restrictions of this subpart.

§ 301.87–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator will list as a regulated area each State or portion of a State in which a sugarcane disease has been

found by an inspector, or in which the Deputy Administrator has reason to believe a sugarcane disease is present, or that the Deputy Administrator deems necessary to regulate based on its proximity to a sugarcane disease or its inseparability for enforcement purposes from localities where a sugarcane disease occurs. The Deputy Administrator will publish a list of all regulated areas (the regulated areas list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plant-disease/sugarcane*. The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directors and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*. After a change is made to the list of regulated areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to regulated areas. Less than an entire State will be designated as a regulated area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are substantially the same as those that are imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a regulated area will be adequate to prevent the artificial interstate spread of a sugarcane disease.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such an area. Written notice of the designation will be given to the owner or person in possession of the nonregulated area. Thereafter, the interstate movement of any regulated article from the area will be subject to this subpart. As soon as practicable, the area will either be added to the regulated areas list, or the Deputy Administrator or an inspector will terminate the designation. Notice thereof will be given the owner or person in possession of the area.

■ 75. Section 301.87–4 is amended as follows:

■ a. In the section heading by removing footnote 3;

■ b. By revising the introductory text; and

■ c. In paragraph (a) by removing the words ''of this subpart, or'' and adding ''; or'' in their place.

The revision reads as follows:

§ 301.87–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.

Any regulated article may be moved interstate from any regulated area in a quarantined State if moved under the following conditions: [1]

* * * * *

[1]Requirements under all other applicable Federal domestic plant quarantines must also be met.

■ 76. Section 301.87–5 is amended as follows:

■ a. In paragraph (a)(1)(i):

■ i. By redesignating footnote 4 as footnote 1; and

■ ii. By removing ''; or'' and adding ''; or'' in its place;

■ b. By revising paragraph (a)(1)(ii);

■ c. In paragraphs (a)(2) and (b)(2) by redesignating footnote 6 as footnote 2; and

■ d. In paragraph (c) by removing the words ''of this subpart'' in the second sentence.

§ 301.87–5 Issuance and cancellation of certificates and limited permits.

(a) * * *

(1) * * *

(ii) Determines based on inspection of the article and the premises of origin that it is free from sugarcane diseases. The term *sugarcane diseases* means leaf scald disease with respect to movement of regulated articles from Hawaii and means gummosis disease and leaf scald disease with respect to movements of regulated articles from Puerto Rico;

* * * * *

§ 301.87–6 [Amended]

■ 77. Section 301.87–6 is amended in paragraph (a) by redesignating footnote 7 as footnote 1.

§ 301.87–7 [Amended]

■ 78. Section 301.87–7 is amended in paragraph (a) by removing the words ''of this subpart'' and redesignating footnote 8 as footnote 1.

■ 79. Sections 301.89–2 and 301.89–3 are revised to read as follows:

§ 301.89–2 Regulated articles.

(a) *List of regulated articles.* The Administrator has determined that certain articles present a risk of spreading Karnal bunt. A list of all such articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/karnal-bunt/ct_karnal_bunt*. Lists of all regulated articles may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*.

(b) *Normal process for designating additional regulated articles.* (1) If the Administrator determines that an article not already listed presents a risk of spreading Karnal bunt, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for Karnal bunt. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for Karnal bunt and listing it.

(c) *Immediate designation of regulated articles.* Any other article, product, or means of conveyance not already listed in accordance with paragraph (a) of this section may be designated a regulated article on an immediate basis if an inspector determines that it presents a risk of spreading Karnal bunt, and notifies the person in possession of the article, product, or means of conveyance that it is now subject to the restrictions of this subpart.

§ 301.89–3 Regulated areas.

(a) *Designation.* Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a regulated area each State or portion of a State if it is determined to be infected with Karnal bunt or if it is in proximity to an infestation or inseparable from the infected locality for regulatory purposes based on the following: Projections of the spread of Karnal bunt along the periphery of the infestation, the availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt, and the necessity of including uninfected acreage within the regulated area in order to establish readily identifiable boundaries. The Administrator will publish a list of all regulated areas (the regulated areas list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/karnal-bunt/ct_karnal_bunt*. The list will include the date that the list was last updated. Lists of all regulated areas may

also be obtained by request from any local PPQ office; local offices are listed in telephone directors and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*. After a change is made to the list of regulated areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to regulated areas.

(b) *Designation of less than an entire State as a regulated area.* Less than an entire State will be designated as a regulated area only if the Administrator:

(1)(i) Determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to the movement restrictions imposed by this subpart; and

(ii) Determines that designating less than the entire State as a regulated area will prevent the spread of Karnal bunt; or

(2) Exercises his or her extraordinary emergency authority under 7 U.S.C. 7715.

(c) *Temporary designation of regulated areas.* The Administrator or an inspector may temporarily designate any nonregulated area as a regulated area in accordance with the criteria specified in paragraph (a) or (b) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonregulated area, or, in the case of publicly owned land, to the person responsible for the management of the nonregulated area. Thereafter, the movement of any regulated article from an area temporarily designated as a regulated area is subject to this subpart. As soon as practicable, this area either will be added to the regulated areas list, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(d) *Regulated fields.* The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(e) *Release from regulation.* A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field has been permanently removed from crop production; or

(2) The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

§ 301.89–7 [Amended]

■ 80. Section 301.89–7 is amended by redesignating footnote 3 as footnote 1.

■ 81. Section 301.89–9 is amended in paragraph (a) as follows:

■ a. By redesignating footnote 4 as footnote 1; and

■ b. By revising newly redesignated footnote 1.

The revision reads as follows:

§ 301.89–9 Assembly and inspection of regulated articles.

* * * * *

[1] See footnote 1 in § 301.89–6.

■ 82. Section 301.91 is amended as follows:

■ a. In the section heading by removing footnote 1; and

■ b. By revising paragraph (a).

The revision reads as follows:

§ 301.91 Quarantine and regulations; restrictions on interstate movement of regulated articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754),[1] the Secretary of Agriculture establishes a quarantine within the United States to prevent the artificial spread of European larch canker (*Lachnellula willkommi* (Dasycypha)). The regulations in this subpart govern the interstate movement from regulated areas of regulated articles.

* * * * *

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

■ 83. Section 301.91–1 is amended by revising the definitions for ''Regulated area'' and ''Regulated article'' to read as follows:

§ 301.91–1 Definitions.

* * * * *

Regulated area. Any State, or any portion thereof, listed in accordance with § 301.91–3.

Regulated article. Any article identified as a regulated article under § 301.91–2 as follows: listed as of January 30, 2023, added in accordance with § 301.91–2(b), or otherwise designated in accordance with § 301.91–2(c).

* * * * *

■ 84. Sections 301.91–2 and 301.91–3 are revised to read as follows:

§ 301.91–2 Regulated articles.

(a) *List of regulated articles.* The Deputy Administrator has determined that certain articles present a risk of spreading European larch canker. A list of all such regulated articles is found on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plant-disease/elc/european-larch-canker*. Lists of all regulated articles may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd*.

(b) *Normal process for designating additional regulated articles.* (1) If the Deputy Administrator determines that an article not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plant-disease/elc/european-larch-canker* presents a risk of spreading European larch canker, APHIS will publish a notice in the **Federal Register** proposing to designate the article as a regulated article for European larch canker. The notice will provide the basis for this determination, and will request public comment.

(2) If no comments are received on the notice, or if the comments do not change the Deputy Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the article as a regulated article for European larch canker and listing it.

(c) *Immediate designation of regulated articles.* An inspector may designate any other product, article, or means of conveyance as a regulated article for European larch canker, if the inspector determines that it presents a risk of spreading European larch canker, and after the inspector provides actual notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

§ 301.91–3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator will list as a regulated area each State, or each portion of a State, in which European larch canker has been found by an inspector, or in which the Deputy Administrator has reason to believe that European larch canker is present, or any portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to a European larch canker infestation or its inseparability for quarantine enforcement purpose from localities in which European larch canker occurs. The Deputy Administrator will publish a list of all regulated areas (the regulated areas list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/plant-disease/elc/european-larch-canker.* The list will include the date that the list was last updated. Lists of all regulated areas may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of regulated areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the regulated areas. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of European larch canker.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section. The Deputy Administrator will give a copy of this subpart along with written notice of the temporary designation to the owner or person in possession of the nonregulated area, or, in the case of publicly owned land, to the person responsible for the management of the nonregulated area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a regulated area will be subject to this subpart. As soon as practicable, the area will be added to the regulated areas list or the designation will be terminated by the Deputy Administrator or an inspector. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which designation is terminated will be given written notice of the termination as soon as practicable.

■ 85. Section 301.91–4 is amended as follows:

■ a. In the section heading by removing footnote 2;

■ b. By revising the introductory text; and

■ c. In paragraph (a) by removing the words ''of this subpart''.

The revision reads as follows:

§ 301.91–4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions: [1]

* * * * *

[1] Requirements under all other applicable Federal domestic plant quarantines must also be met.

§ 301.91–5 [Amended]

■ 86. Section 301.91–5 is amended in paragraphs (a)(2) and (b)(2) by redesignating footnote 3 as footnote 1.

§ 301.91–6 [Amended]

■ 87. Section 301.91–6 is amended in paragraph (a) by redesignating footnote 4 as footnote 1.

§ 301.91–7 [Amended]

■ 88. Section 301.91–7 is amended in paragraph (a) by redesignating footnote 5 as footnote 1.

■ 89. Section 301.92–1 is amended as follows:

■ a. In the definition for ''Non-host nursery stock'' by adding the words ''accordance with'' after the word ''in'';

■ b. In the definition of ''Nursery stock'' by redesignating footnote 2 as footnote 1 and revising newly redesignated footnote 1;

■ c. By revising the definition for ''Quarantined area''; and

■ d. In the definitions for ''Regulated article'' and ''Restricted article'' by removing the words ''of this subpart''.

The revisions read as follows:

§ 301.92–1 Definitions.

* * * * *

Quarantined area. Any State, or any portion of a State, designated as a quarantined area in accordance with § 301.92–3.

* * * * *

[1] Bulbs, tubers, corms, or rhizomes are only considered nursery stock (and therefore, regulated under this subpart) if they are of plant taxa listed in accordance with § 301.92–2 as regulated articles or associated articles.

■ 90. Section 301.92–2 is amended as follows:

■ a. In paragraph (a)(1) by removing footnote 3 and adding the words ''accordance with'' after the words ''listed in'';

■ b. In paragraph (a)(2) by adding the words ''accordance with'' after the words ''listed in'';

■ c. In paragraph (b)(1) by removing footnote 4 and adding the words ''accordance with'' after the words ''listed in'';

■ d. In paragraph (c) by adding the words ''accordance with'' after the words ''listed in''; and

■ e. By revising paragraphs (d) and (e).

The revisions read as follows:

§ 301.92–2 Restricted, regulated, and associated articles; lists of proven hosts and associated plant taxa.

* * * * *

(d) *Proven host plant taxa.* The Administrator has determined that certain taxa of plants are proven hosts of *Phytophthora ramorum.* A list of all such proven host taxa is located on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/sod.* Lists of all proven host taxa may also be obtained by request from any local Plant Protection and Quarantine (PPQ) office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* If the Administrator determines that a taxon not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/sod* is a proven

host of *Phytophthora ramorum,* APHIS will publish a notice in the **Federal Register** proposing to designate the taxon as a proven host of *Phytophthora ramorum.* The notice will provide the basis for this determination, and will request public comment. If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the taxon as a proven host of *Phytophthora ramorum* and listing it.

(e) *Associated plant taxa.* The Administrator has determined that certain plant taxa are associated with *Phytophthora ramorum.* A list of all such taxa is located on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/sod.* Lists of all associated taxa may also be obtained by request from any local PPQ office; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* If the Administrator determines that a taxon not already listed at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/sod* is associated with *Phytophthora ramorum,* APHIS will publish a notice in the **Federal Register** proposing to designate the taxon as associated with *Phytophthora ramorum.* The notice will provide the basis for this determination, and will request public comment. If no comments are received on the notice, or if the comments do not change the Administrator's determination, APHIS will publish a second notice in the **Federal Register** designating the taxon as associated with *Phytophthora ramorum* and listing it.

■ 91. Section 301.92–3 is amended by revising paragraph (a) to read as follows:

§ 301.92–3 Quarantined areas and regulated establishments.

(a) *Quarantined areas.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the Administrator will designate as a quarantined area each State or portion of a State in which *Phytophthora ramorum* has been confirmed by an inspector to be established in the natural environment, in which the Administrator has reason to believe that *Phytophthora ramorum* is present in the natural environment, or that the Administrator considers it necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which *Phytophthora ramorum* has been found in the natural environment. The Administrator will publish a list of all quarantined areas (the quarantine list) on the PPQ website at *www.aphis.usda.gov/aphis/ourfocus/planthealth/plant-pest-and-disease-programs/pests-and-diseases/phytophthora-ramorum/sod.* The list will include the date that the list was last updated. Lists of all quarantined areas may also be obtained by request from any local office of PPQ; local offices are listed in telephone directories and on the internet at *www.aphis.usda.gov/aphis/ourfocus/planthealth/ppq-program-overview/sphd.* After a change is made to the list of quarantined areas, APHIS will publish a notice in the **Federal Register** informing the public that the change has occurred and describing the change to the quarantined areas. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(i) The State has adopted and is enforcing restrictions on the intrastate movement of regulated, restricted, and associated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated, restricted, and associated articles; and

(ii) The designation of less than the entire State as a quarantined area will prevent the interstate spread of *Phytophthora ramorum.*

(2) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria in paragraph (a)(1) of this section. The Administrator or the inspector will give a copy of this subpart along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated, restricted, or associated article from the area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the quarantine list or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

* * * * *

■ 92. Section 301.92–4 is amended as follows:

■ a. In paragraph (a) introductory text by redesignating footnote 5 as footnote 1;

■ b. In paragraph (b) introductory text by removing footnote 6;

■ c. In paragraph (c)(2) introductory text by adding the words ''accordance with'' after the words ''listed in''; and

■ d. By revising paragraph (c)(2)(ii)(B).

The revision reads as follows:

§ 301.92–4 Conditions governing the interstate movement of regulated, restricted, and associated articles, and non-host nursery stock from quarantined and regulated establishments.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The nursery stock is not rooted in soil or growing media. To be eligible for interstate movement, non-host nursery stock that is rooted in soil or growing media requires certification that the soil or growing media meets the requirements of § 301.92–5(a)(1)(iii).

* * * * *

§ 301.92–5 [Amended]

■ 93. Section 301.92–5 is amended as follows:

■ a. In paragraph (a)(1) introductory text by redesignating footnotes 8 and 9 as footnotes 1 and 2, respectively;

■ b. In paragraph (a)(1)(ii) by redesignating footnote 10 as footnote 3 and revising newly redesignated footnote 3; and

■ c. In paragraph (a)(1)(v) by redesignating footnote 11 as footnote 4.

The revision reads as follows:

§ 301.92–5 Issuance and cancellation of certificates.

* * * * *

[3] Firewood, logs, lumber of species listed in accordance with § 301.92–2(d) and marked with an asterisk are not regulated articles, as noted in § 301.92–2(b)(1).

* * * * *

§ 301.92–6 [Amended]

■ 94. Section 301.92–6 is amended in paragraph (a) by redesignating footnote 12 as footnote 1.

■ 95. Section 301.92–7 is amended in paragraph (a) as follows:

■ a. By redesignating footnote 13 as footnote 1; and

■ b. By revising newly redesignated footnote 1.

The revision reads as follows: f

§ 301.92–7 Availability of inspectors; assembly for inspection.

* * * * *

[1] See footnote 2 in § 301.92–4.

Done in Washington, DC, this 12th day of December 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–27280 Filed 12–28–22; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2022–25]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: The final rules are effective on December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the ''Inflation Adjustment Act''),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the ''2015 Act''),[2] requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is ''any penalty, fine, or other sanction'' that (1) ''is for a specific monetary amount'' or ''has a maximum amount'' under federal law; and (2) that a federal agency assesses or enforces ''pursuant to an administrative proceeding or a civil action'' in federal court.[3] Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA''), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.[4] Pursuant to guidance issued by the Office of Management and Budget,[5] the Commission is now adjusting its civil monetary penalties for 2023.[6]

The Commission must adjust for inflation its civil monetary penalties ''notwithstanding Section 553'' of the Administrative Procedures Act (''APA'').[7] Thus, the APA's notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.[8]

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA's notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission ''prescribe[s]'' a ''rule of law'').

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.[9]

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (''COLA'') ratio.[10] The COLA ratio is the percentage that the Consumer Price Index (''CPI'')[11] ''for the month of October preceding the date of the adjustment'' exceeds the CPI for October of the previous year.[12] To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.[13] According to the Office of Management and Budget, the COLA ratio for 2023 is 0.017745, or 1.7745%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.07745.[14]

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11 CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

[1] Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, 1301, 112 Stat. 3280.

[2] Public Law 114–74, 701, 129 Stat. 584, 599.

[3] Inflation Adjustment Act section 3(2).

[4] Inflation Adjustment Act section 4(a).

[5] *See* Inflation Adjustment Act § 7(a) (requiring OMB to ''issue guidance to agencies on implementing the inflation adjustments required under this Act''); *see also* Memorandum from Shalanda D. Young, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M–23–05, Dec. 15, 2022, *https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf* (''OMB Memorandum'').

[6] Inflation Adjustment Act section 5.

[7] Inflation Adjustment Act section 4(b)(2).

[8] *See, e.g., Asiana Airlines* v. *FAA,* 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA ''notice and comment'' requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

[9] Inflation Adjustment Act section 6.

[10] The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, section 4(a); *see also* OMB Memorandum at 2.

[11] The Inflation Adjustment Act, § 3, uses the CPI ''for all-urban consumers published by the Department of Labor.''

[12] Inflation Adjustment Act, section 5(b)(1).

[13] Inflation Adjustment Act, section 5(a), (b)(1).

[14] OMB Memorandum at 1.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	$21,805	1.07745	23,494
11 CFR 111.24(a)(2)(i)	46,517	1.07745	50,120
11 CFR 111.24(a)(2)(ii)	76,280	1.07745	82,188
11 CFR 111.24(b)	6,523	1.07745	7,028
11 CFR 111.24(b)	16,307	1.07745	17,570

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules ''established and published by the Commission.'' 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.[15] Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.[16] In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(a))

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended as follows:

In the table below, for each section indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Section	Remove	Add
111.24(a)(1)	$21,805	$23,494
111.24(a)(2)(i)	46,517	50,120
111.24(a)(2)(ii)	76,280	82,188
111.24(b)	6,523	7,028
111.24(b)	16,307	17,570

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–4,999.99 [a]	[$41 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$402 × [1 + (.25 × Number of previous violations)].
$5,000–9,999.99	[$80 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$483 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$172 + ($6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$806 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$342 + ($32 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,450 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$515 + ($129 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,624 × [1 + (.25 × Number of previous violations)].

[15] Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

[16] A report is considered to be ''not filed'' if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

TABLE 1 TO PARAGRAPH (a)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$75,000–99,999.99	[$684 + ($172 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5,994 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1,026 + ($214 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7,708 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1,373 + ($256 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9,420 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1,712 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,132 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2,570 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,702 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$3,426 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,414 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$4,282 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,271 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$5,137 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,128 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5,994 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,984 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$6,850 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,839 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$7,708 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$ 19,696 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$8,564 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,552 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–$4,999.99 [a]	[$80 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$806 × [1 + (.25 × Number of previous violations)].
$5,000–$9,999.99	[$162 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$966 × [1 + (.25 × Number of previous violations)].
$10,000–24,999.99	[$241 + ($15 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,450 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$515 + ($41 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2,255 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$771 + ($129 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5,137 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$1,026 + ($172 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6,850 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$1,542 + ($214 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8,564 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$2,056 + ($256 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,276 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$2,570 + ($298 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,845 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$3,853 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,414 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$5,137 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,128 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$6,423 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,839 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$7,708 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$20,552 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$8,992 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$22,266 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$10,276 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$23,979 × [1 + (.25 × Number of previous violations)].
$850,000–949,999.99	[$11,560 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$25,690 × [1 + (.25 × Number of previous violations)].

TABLE 2 TO PARAGRAPH (b)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$950,000 or over	[$12,845 + ($342 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$27,404 × [1 + (.25 × Number of previous violations)].

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $9,420.

* * * * *

§ 111.44 [Amended]

■ 4. Amend § 111.44(a)(1) by removing ''$160'' and adding, in its place, ''$172''.

Dated: December 22, 2022.

On behalf of the Commission,

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–28287 Filed 12–28–22; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1209, 1217, and 1250

RIN 2590–AB26

Rules of Practice and Procedure; Civil Money Penalty Inflation Adjustment

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting this final rule amending its Rules of Practice and Procedure and other agency regulations to adjust each civil money penalty within its jurisdiction to account for inflation, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: *Effective* December 29, 2022, and applicable beginning January 15, 2023.

FOR FURTHER INFORMATION CONTACT: Frank R. Wright, Assistant General Counsel, at (202) 649–3087, *Frank.Wright@fhfa.gov* (not a toll-free number); Federal Housing Finance Agency, 400 7th Street SW, Washington, DC 20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is an independent agency of the Federal government, and the financial safety and soundness regulator of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), as well as the Federal Home Loan Banks (collectively, the Banks) and the Office of Finance under authority granted by the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act).[1] FHFA oversees the Enterprises and Banks (collectively, the regulated entities) and the Office of Finance to ensure that they operate in a safe and sound manner and maintain liquidity in the housing finance market in accordance with applicable laws, rules and regulations. To that end, FHFA is vested with broad supervisory discretion and specific civil administrative enforcement powers, similar to such authority granted by Congress to the Federal bank regulatory agencies.[2] Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) empowers FHFA to impose civil money penalties under specific conditions. FHFA's Rules of Practice and Procedure (12 CFR part 1209) (the Enforcement regulations) govern cease and desist proceedings, civil money penalty assessment proceedings, and other administrative adjudications.[3] FHFA's Flood Insurance regulation (12 CFR part 1250) governs flood insurance responsibilities as they pertain to the Enterprises.[4] FHFA's Implementation of the Program Fraud Civil Remedies Act of 1986 regulation (12 CFR part 1217) sets forth procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*) on any person that makes a false claim for property, services or money from FHFA, or makes a false material statement to FHFA in connection with a claim, where the amount involved does not exceed $150,000.[5]

The Adjustment Improvements Act

The Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Adjustment Improvements Act), requires FHFA, as well as other federal agencies with the authority to issue civil money penalties (CMPs), to adjust by regulation the maximum amount of each CMP authorized by law that the agency has jurisdiction to administer.[6] The Adjustment Improvements Act required agencies to make an initial ''catch-up'' adjustment of their CMPs upon the statute's enactment,[7] and further requires agencies to make additional adjustments on an annual basis following the initial adjustment.[8]

The Adjustment Improvements Act sets forth the formula that agencies must apply when making annual adjustments, based on the percent change between the October Consumer Price Index for All Urban Consumers (the CPI–U) preceding the date of the last adjustment and the October CPI–U for the year before that.

II. Description of the Rule

This final rule adjusts the maximum penalty amount within each of the three tiers specified in 12 U.S.C. 4636 by amending the table contained in 12 CFR 1209.80 of the Enforcement regulations to reflect the new adjusted maximum penalty amount that FHFA may impose upon a regulated entity or any entity-affiliated party within each tier. The increases in maximum penalty amounts contained in this final rule may not necessarily affect the amount of any CMP that FHFA may seek for a particular violation, which may not be the maximum that the law allows; FHFA would calculate each CMP on a case-by-case basis in light of a variety of

[1] *See* Safety and Soundness Act, 12 U.S.C. 4513 and 4631–4641.

[2] *Id.*

[3] *See* 12 CFR part 1209.

[4] *See* 12 CFR part 1250.

[5] *See generally,* 31 U.S.C. 3801 *et seq.*

[6] *See* 28 U.S.C. 2461 note.

[7] FHFA promulgated its catch-up adjustment of its CMPs with an interim final rule published July 1, 2016. 81 FR 43028.

[8] FHFA promulgated its most recent annual adjustment of its CMP with a final rule published January 12, 2022. 87 FR 1659.

factors.[9] This rule also adjusts the maximum penalty amounts for violations under the FHFA Flood Insurance regulation by amending the text of 12 CFR 1250.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation. This rule also adjusts the maximum amounts for civil money penalties under the Program Fraud Civil Remedies Act by amending the text of 12 CFR 1217.3 to reflect the new adjusted maximum penalty amount that FHFA may impose for violations under that regulation.

The Adjustment Improvements Act directs federal agencies to calculate each annual CMP adjustment as the percent change between the CPI–U for the previous October and the CPI–U for October of the calendar year before.[10] The maximum CMP amounts for FHFA penalties were last adjusted in 2022.[11] Since FHFA is making this round of adjustments in calendar year 2023, and the maximum CMP amounts were last set in calendar year 2022, the inflation adjustment amount for each maximum CMP amount was calculated by comparing the CPI–U for October 2021 with the CPI–U for October 2022, resulting in an inflation factor of 1.07745. For each maximum CMP calculation, the product of this inflation adjustment and the previous maximum penalty amount was then rounded to the nearest whole dollar as required by the Adjustment Improvements Act, and was then summed with the previous maximum penalty amount to determine the new adjusted maximum penalty amount.[12] The tables below set out these items accordingly.

ENFORCEMENT REGULATIONS

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	12,771	989	13,760
12 U.S.C. 4636(b)(2)	Second Tier	63,855	4,946	68,801
12 U.S.C. 4636(b)(4)	Third Tier (Entity-affiliated party or Regulated entity).	2,554,223	197,825	2,752,048

PROGRAM FRAUD CIVIL REMEDIES REGULATION

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
31 U.S.C. 3802(a)(1)	Maximum penalty per false claim	12,537	971	13,508
31 U.S.C. 3802(a)(2)	Maximum penalty per false statement	12,537	971	13,508

FLOOD INSURANCE REGULATION

U.S. Code citation	Description	Previous maximum penalty amount	Rounded inflation increase	New adjusted maximum penalty amount
42 U.S.C. 4012a(f)(5)	Maximum penalty per violation	621	48	669
42 U.S.C. 4012a(f)(5)	Maximum total penalties assessed against an Enterprise in a calendar year.	179,123	13,873	192,996

III. Differences Between the Federal Home Loan Banks and the Enterprises

When promulgating any regulation that may have future effect relating to the Banks, the Director is required by section 1313(f) of the Safety and Soundness Act to consider the differences between the Banks and the Enterprises with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure, and joint and several liability (12 U.S.C. 4513(f)).[13] The Director considered the differences between the Banks and the Enterprises, as they relate to the above factors, and determined that this final rule is appropriate. The inflation adjustments effected by the final rule are mandated by law, and the special features of the Banks identified in section 1313(f) of the Safety and Soundness Act can be accommodated, if appropriate, along with any other relevant factors, when determining any actual penalties.

IV. Regulatory Impact

Administrative Procedure Act

FHFA finds good cause that notice and an opportunity to comment on this final rule are unnecessary under section 553(b) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b). The Adjustment Improvements Act states that the annual civil money penalty adjustments shall be made notwithstanding the rulemaking provisions of 5 U.S.C. 553.[14] Furthermore, this rulemaking conforms with and is consistent with the statutory directive set forth in the Adjustment Improvements Act. As a result, there are no issues of policy discretion about which to seek public comment. Accordingly, FHFA is adopting these amendments as a final rule.

[9] *See, e.g.,* 12 CFR 1209.7(c); FHFA Enforcement Policy, AB 2013–03 (May 31, 2013).

[10] 28 U.S.C. 2461 note.

[11] *See* 87 FR 1659 (January 12, 2022).

[12] 28 U.S.C. 2461 note.

[13] So in original; no paragraphs (d) and (e) were enacted. *See* 12 U.S.C.A. 4513 n 1.

[14] 28 U.S.C. 2461 note, section 4(b)(2).

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA),[15] an agency must prepare a regulatory flexibility analysis for all proposed and final rules that describes the impact of the rule on small entities, unless the head of an agency certifies that the rule will not have ''a significant economic impact on a substantial number of small entities.'' However, the RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to the APA.[16] As discussed above, FHFA has determined for good cause that the APA does not require a general notice of proposed rulemaking for this rule. Thus, the RFA does not apply to this final rule.

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) An annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies.[17]

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) requires that regulations involving the collection of information receive clearance from the Office of Management and Budget (OMB). This rule contains no such collection of information requiring OMB approval under the Paperwork Reduction Act. Consequently, no information has been submitted to OMB for review.

List of Subjects

12 CFR Part 1209

Administrative practice and procedure, Penalties.

12 CFR Part 1217

Civil remedies, Program fraud.

12 CFR Part 1250

Flood insurance, Government-sponsored enterprises, Penalties, Reporting and record keeping requirements.

Accordingly, for the reasons stated in the preamble and under the authority of 12 U.S.C. 4513b and 12 U.S.C. 4526, the Federal Housing Finance Agency hereby amends subchapters A and C of chapter XII of Title 12 of the Code of Federal Regulations as follows:

Subchapter A—Organization and Operations

PART 1209—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1209 continues to read as follows:

Authority: 5 U.S.C. 554, 556, 557, and 701 *et seq.;* 12 U.S.C. 1430c(d); 12 U.S.C. 4501, 4502, 4503, 4511, 4513, 4513b, 4517, 4526, 4566(c)(1) and (c)(7), 4581–4588, 4631–4641; and 28 U.S.C. 2461 note.

■ 2. Revise § 1209.80 to read as follows:

§ 1209.80 Inflation adjustments.

The maximum amount of each civil money penalty within FHFA's jurisdiction, as set by the Safety and Soundness Act and thereafter adjusted in accordance with the Inflation Adjustment Act, is as follows:

TABLE 1 TO § 1209.80

U.S. Code citation	Description	New adjusted maximum penalty amount
12 U.S.C. 4636(b)(1)	First Tier	$13,760
12 U.S.C. 4636(b)(2)	Second Tier	68,801
12 U.S.C. 4636(b)(4)	Third Tier (Regulated Entity or Entity-Affiliated party)	2,752,048

■ 3. Revise § 1209.81 to read as follows:

§ 1209.81 Applicability.

The inflation adjustments set out in § 1209.80 shall apply to civil money penalties assessed in accordance with the provisions of the Safety and Soundness Act, 12 U.S.C. 4636, and subparts B and C of this part, for violations occurring on or after January 15, 2023.

PART 1217—PROGRAM FRAUD CIVIL REMEDIES ACT

■ 4. The authority citation for part 1217 continues to read as follows:

Authority: 12 U.S.C. 4501; 12 U.S.C. 4526; 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

■ 5. Amend § 1217.3 by revising paragraphs (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 1217.3 Basis for civil penalties and assessments.

(a) * * *

(1) A civil penalty of not more than $13,508 may be imposed upon a person who makes a claim to FHFA for property, services, or money where the person knows or has reason to know that the claim:

* * * * *

(b) * * *

(1) A civil penalty of up to $13,508 may be imposed upon a person who makes a written statement to FHFA with respect to a claim, contract, bid or proposal for a contract, or benefit from FHFA that:

* * * * *

Subchapter C—Enterprises

PART 1250—FLOOD INSURANCE

■ 6. The authority citation for part 1250 continues to read as follows:

Authority: 12 U.S.C. 4521(a)(4) and 4526; 28 U.S.C. 2461 note; 42 U.S.C. 4001 note; 42 U.S.C. 4012a(f)(3), (4), (5), (8), (9), and (10).

■ 7. Amend § 1250.3 by revising paragraph (c) to read as follows:

§ 1250.3 Civil money penalties.

* * * * *

(c) *Amount.* The maximum civil money penalty amount is $621 for each violation that occurs before January 15, 2023, with total penalties not to exceed $179,123. For violations that occur on or after January 15, 2023, the civil money penalty under this section may not exceed $669 for each violation, with total penalties assessed under this

[15] 5 U.S.C. 603.

[16] 5 U.S.C. 603(a), 604(a).

[17] 5 U.S.C. 804(2).

section against an Enterprise during any calendar year not to exceed $192,996.

* * * * *

Sandra L. Thompson,

Director, Federal Housing Finance Agency.

[FR Doc. 2022–28161 Filed 12–28–22; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1248; Project Identifier MCAI–2022–00609–T; Amendment 39–22286; AD 2022–27–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD is prompted by a report that during flight and fatigue testing it was detected that some fasteners installed in the center wing box (CWB) rotated inside their fastener holes. This AD requires replacing affected fasteners and applying additional head nut cap protection at the front and rear spars in the CWB, 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 February 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 2, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–1248; 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 EASA AD 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 at *regulations.gov* under Docket No. FAA–2022–1248.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on October 20, 2022 (87 FR 63709). The NPRM was prompted by AD 2022–0080, dated May 9, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0080) (referred to after this as the MCAI). The MCAI states that during flight and fatigue testing it was detected that some fasteners installed in the CWB rotated inside their fastener holes. Investigation revealed there was insufficient friction for the application.

In the NPRM, the FAA proposed to require replacing affected fasteners and applying additional head nut cap protection at the front and rear spars in the CWB, as specified in EASA AD 2022–0080. The FAA is issuing this AD to address fasteners installed in the CWB rotating inside their fastener holes, which if not corrected, could lead to loss of a fastener clamping and cracking of the nut sealant cover, possibly resulting, in case of lightning strike, in a fuel tank explosion and consequent loss of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1248.

Discussion of Final Airworthiness Directive Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0080 specifies procedures for replacing affected fasteners installed on the left-hand and right-hand CWB at the front and rear spar areas and for adding head nut cap protection at the front and rear spars in the CWB. 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 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
83 work-hours × $85 per hour = $7,055	$7,500	$14,555	$436,650

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:

2022–27–01 Airbus SAS: Amendment 39–22286; Docket No. FAA–2022–1248; Project Identifier MCAI–2022–00609–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 2, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0080, dated May 9, 2022 (EASA AD 2022–0080).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that during flight and fatigue testing it was detected that some fasteners installed in the center wing box (CWB) rotated inside their fastener holes. The FAA is issuing this AD to address fasteners installed in the CWB rotating inside their fastener holes, which if not corrected, could lead to loss of a fastener clamping and cracking of the nut sealant cover, possibly resulting, in case of lightning strike, in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0080.

(h) Exceptions to EASA AD 2022–0080

(1) Where EASA AD 2022–0080 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0080 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *Dat.V.Le@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0080, dated May 9, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0080, 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 December 20, 2022.

Christina Underwood,

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

[FR Doc. 2022–28271 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1657; Project Identifier AD–2022–01475–T; Amendment 39–22292; AD 2022–27–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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 wear-through of the motor impeller inlet adapter of a transfer pump for the horizontal stabilizer fuel tank caused by contact between the pump inlet check valve and the inlet adapter. This AD requires inspecting for wear of the motor impeller inlet check valves and inlet adapters of the transfer pumps for the horizontal stabilizer fuel tank and doing corrective actions, if necessary. This AD also limits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 13, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 13, 2023.

The FAA must receive comments on this AD by February 13, 2023.

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

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

AD Docket: You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022–1657; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

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 referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1657.

FOR FURTHER INFORMATION CONTACT: Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *Samuel.j.dorsey@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include Docket No. FAA–2022–1657 and Project Identifier AD–2022–01475–T at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *Samuel.j.dorsey@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 has received reports indicating wear-through of the motor impeller inlet adapter of the horizontal stabilizer fuel tank transfer pumps (also referred to as a transfer/jettison pump or override/jettison pump). These reports were received following troubleshooting of fuel imbalance issues involving the main wing fuel tanks, which utilize the same pump design as the horizontal stabilizer fuel tank.

Boeing investigations have found two pumps with wear sufficient to allow contact between the motor impeller inlet check valve flapper and the pump inducer. An additional 22 worn pumps have been identified. Investigations have shown that oscillations within the fuel flow around the pumps can cause the inlet check valve to vibrate as it is held spring-loaded against the inlet adapter of the pump. Undetected or unmitigated wear could allow the flapper of the inlet check valve to contact the rotating motor inducer, creating steel-on-steel contact. There is a period of operation during each flight with a fueled horizontal stabilizer fuel tank where the pump will run dry for a short period before the flightcrew is alerted to shut it down, or the pump is automatically shut off. During this dry run period, if the wear on the inlet adapter is severe enough, the steel-on-steel contact can cause a source of heat and/or sparking within the fuel tank. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency has determined the unsafe

condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022. This service information specifies procedures for one-time detailed visual inspections for wear (hinge pin protrusion, gouging, missing material, corrosion, burrs, and raised material) of the motor impeller inlet adapters and inlet check valves of the horizontal stabilizer fuel tank transfer pumps. This service information also specifies replacing certain inlet check valves and inlet adapters with serviceable parts and reporting inspection results to Boeing. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

AD Requirements

This AD requires accomplishing the actions specified in the service information already described. This AD also limits the installation of affected parts.

Interim Action

This AD is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the wear-through, and eventually to develop final action to address the unsafe condition. Further, the main and center wing tanks utilize the same pump design but are currently not subject to the same unsafe condition due to the shutoff logic of the transfer pumps. However, if that should change or once final action has been identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because wear-through of the motor impeller inlet adapter of a transfer pump for the horizontal stabilizer fuel tank may allow the pump's inlet check valve to contact the rotating pump inducer. During the 15-second dry run period experienced every flight with a fueled horizontal stabilizer tank, the steel-on-steel contact can cause a source of heat and/or sparking (an ignition source) within the fuel tank. This contact in combination with flammable fuel vapors, if not addressed, could result in an explosion in the fuel tank and consequent loss of the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 28 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
Inspections of motor impeller inlet adapter and inlet check valve (left and right transfer pumps).	12 work-hours × $85 per hour = $1,020.	$0	$1,020	$28,560
Reporting	1 work-hour × $85 per hour = $85.	0	85	2,380

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace motor impeller inlet adapter	4 work-hours × $85 per hour = $340	$1,000	$1,340
Replace motor impeller inlet check valve	17 work-hours × $85 per hour = $1,445	*20,000	21,445

*Boeing has indicated that the motor impeller inlet check valve is not currently available as a standalone part; this cost is for the pump housing, which contains the motor impeller inlet check valve. Boeing has indicated that it is working with the part supplier to make the motor impeller inlet check valve available as a standalone part.

Paperwork Reduction Act

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–27–07 The Boeing Company: Amendment 39–22292; Docket No. FAA–2022–1657; Project Identifier AD–2022–01475–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 13, 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, equipped with an activated horizontal stabilizer fuel tank.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of wear-through of the motor impeller inlet adapter of the horizontal stabilizer fuel tank transfer pump caused by contact between the motor impeller inlet check valve and the inlet adapter. The FAA is issuing this AD to address the development of an ignition source within the horizontal stabilizer fuel tank resulting from wear to the motor impeller inlet check valves and inlet adapters of the horizontal stabilizer fuel tank transfer pumps. This condition, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Definitions

(1) A ''serviceable'' inlet adapter is an inlet adapter of the motor impeller assembly for which any missing material does not exceed 0.20 inch in the pump axial direction.

(2) A ''serviceable'' inlet check valve is an inlet check valve for which the hinge pin protrudes past the flapper arm on both sides and there is no metal disk gouging, missing material, corrosion, burrs, or raised material. Minor surface scratches, defects, or appearances of surface wear are acceptable.

(3) A horizontal stabilizer tank is considered to be ''activated'' if it is not deactivated by an approved alteration.

(h) Inspection and Corrective Action: Inlet Check Valve

Within 90 days after the effective date of this AD: Do a detailed visual inspection of the inlet check valve in the left and right transfer pump housing for hinge pin protrusion, gouging, missing material, corrosion, burrs, and raised material, in accordance with paragraph C., Work Instructions, Attachment A, Boeing Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022.

(1) Condition 1: If the hinge pin does not protrude past the flapper arm on one side, or if any gouging, missing material, corrosion, burrs, or raised material is found on the inlet check valve, do the actions required by paragraphs (h)(1)(i) and (ii) of this AD.

(i) Report inspection findings in accordance with paragraph (j) of this AD.

(ii) Prior to further flight, replace the inlet check valve or transfer pump housing with a serviceable inlet check valve or transfer pump housing containing a serviceable inlet check valve, in accordance with paragraph C., Work Instructions, Attachment A, Boeing Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022.

(2) Condition 2: If the hinge pin does protrude past the flapper arm on both sides, and no gouging, missing material, corrosion, burrs, or raised material is found, report inspection findings in accordance with paragraph (j) of this AD.

(i) Inspection and Corrective Action: Transfer Pump Motor Impeller Inlet Adapter

Within 90 days after the effective date of this AD: Do a detailed visual inspection of the transfer pump motor impeller inlet adapter for wear (missing material), in accordance with paragraph D., Work Instructions, Attachment A, Boeing Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022.

(1) Condition 1: If any wear is found that is 0.20 inch or less, report inspection findings in accordance with paragraph (j) of this AD.

(2) Condition 2: If any wear is found that is greater than 0.20 inch, do the actions required by paragraphs (i)(2)(i) and (ii) of this AD.

(i) Report inspection findings in accordance with paragraph (j) of this AD.

(ii) Before further flight, replace the transfer pump motor impeller with a transfer pump motor impeller having a serviceable inlet adapter, in accordance with paragraph D., Work Instructions, Attachment A, Boeing

Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022.

(j) Reporting Inspection Results

At the applicable time specified in paragraph (j)(1) or (2) of this AD, submit a report of all findings of the inspections required by paragraphs (h) and (i) of this AD, in accordance with paragraph G. and Appendix A, Attachment A, Boeing Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(k) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, any transfer pump motor impeller inlet adapter or inlet check valve (or assembly containing either) for the horizontal stabilizer fuel tank, unless the affected part has been inspected as specified in paragraph (h) or (i) of this AD, as applicable, and been determined to be a serviceable part as defined in paragraph (g)(1) or (2) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using Boeing Multiple Operator Message MOM–MOM–22–0549–01B, dated November 21, 2022.

(m) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the actions required by this AD can be performed, provided the horizontal stabilizer fuel tank is defueled and both transfer pump circuit breakers are locked in the ''open'' position.

(n) 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 (o)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(o) Related Information

(1) For more information about this AD, contact Samuel Dorsey, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3415; email: *Samuel.j.dorsey@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3) and (4) of this AD.

(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 the AD specifies otherwise.

(i) Boeing Multiple Operator Message MOM–MOM–22–0549–01B(R1), dated November 29, 2022.

(ii) [Reserved]

(3) For Boeing 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, email *fr.inspection@nara.gov,* or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 21, 2022.

Christina Underwood,

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

[FR Doc. 2022–28386 Filed 12–23–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0141; Project Identifier MCAI–2021–01052–T; Amendment 39–22283; AD 2022–26–04]

RIN 2120–AA64

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

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by a report of an oxygen-fed ground fire event potentially caused by electrical arcing from a faulty surround light wire on the third crew member's (observer) oxygen mask. This AD was also prompted by the determination that additional inspections and a bracket trim are needed to address the unsafe condition. This AD requires an inspection for discrepancies of the observer's oxygen mask stowage box and stowage compartment, oxygen hose connections and routing, and the associated electrical harness, and corrective actions if necessary; and modifying the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant. This AD also requires an inspection for correct installation of the flexible lamp assembly; trimming and reidentifying a bracket; and for certain airplanes, an inspection for damage of the wire harness assembly; and applicable corrective actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 2, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0141; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information

(MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0141.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The NPRM published in the **Federal Register** on February 25, 2022 (87 FR 10752). The NPRM was prompted by AD CF–2021–32, dated September 17, 2021, issued by Transport Canada, which is the aviation authority for Canada (Transport Canada AD CF–2021–32). Transport Canada AD CF–2021–32 states that an oxygen-fed ground fire event was potentially caused by electrical arcing from a faulty surround light wire on the third crew member's (observer) oxygen mask. An investigation determined that the oxygen supply hose connecting to the rear of the observer oxygen mask box assembly could be subject to chafing damage.

In the NPRM, the FAA proposed to require an inspection for discrepancies of the observer's oxygen mask stowage box and storage compartment, oxygen hose connections and routing, and the associated electrical harness, and corrective actions if necessary; and modifying the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The SNPRM published in the **Federal Register** on October 21, 2022 (87 FR 63970). The SNPRM was prompted by Transport Canada AD CF–2021–32R1, dated July 25, 2022 (also referred to as the MCAI). The MCAI states that since Transport Canada AD CF–2021–32 was issued, an operator reporting a fouling condition between the power feed wires for the stowage box light strip and an existing aluminum bracket in the entrance monument mask stowage compartment. The SNPRM was also prompted by the determination that additional inspections and a bracket trim are needed to address the unsafe condition. In the SNPRM, the FAA again proposed to require an inspection for discrepancies of the observer's oxygen mask stowage box and storage compartment, oxygen hose connections and routing, and the associated electrical harness, and corrective actions if necessary; and modifying the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant. In the SNPRM, the FAA further proposed to require an inspection for correct installation of the flexible lamp assembly; trimming and reidentifying a bracket; and for certain airplanes, an inspection for damage of the wire harness assembly; and applicable corrective actions. The FAA is issuing this AD to address possible damage to the observer oxygen mask supply hoses and a potential for an oxygen-fed fire in the vicinity of the observer oxygen mask storage compartment.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0141.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from The Air Line Pilots Association, International (ALPA), who supported the SNPRM without change.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022. This service information specifies procedures for doing a general visual inspection for discrepancies, including elbow fitting clocking (rotation), sealing tape installed in a certain location, wire damage (*e.g.,* cuts, nicks, kinks, insulation damage) of the observer's oxygen mask stowage box and storage compartment, the observer's mask oxygen hose connections, the hose routing, and the associated electrical harness, and applicable corrective actions; and modifying the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness and applying protective sealant. Corrective actions include re-positioning the elbow fitting, removing sealing tape, and repairing wiring. This service information also specifies procedures for an inspection for correct installation of the flexible lamp assembly; trimming and reidentifying a bracket; and for certain airplanes, an inspection for damage of the wire harness assembly; and applicable corrective actions. Corrective actions include correcting flexible lamp assembly installations and repair.

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

Costs of Compliance

The FAA estimates that this AD affects 407 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
Up to 9 work-hours × $85 per hour = Up to $765	Up to $115	Up to $880	Up to $358,160.

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:

2022–26–04 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22283; Docket No. FAA–2022–0141; Project Identifier MCAI–2021–01052–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 2, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Unsafe Condition

This AD was prompted by a report of an oxygen-fed ground fire event potentially caused by electrical arcing from a faulty surround light wire on the third crew member's (observer) oxygen mask. An investigation determined that the oxygen supply hose connecting to the rear of the observer oxygen mask box assembly could be subject to chafing damage. This AD was also prompted by the determination that additional inspections and a bracket trim are needed to address the unsafe condition. The FAA is issuing this AD to address possible damage to the observer oxygen mask supply hoses and a potential for an oxygen-fed fire in the vicinity of the observer oxygen mask storage compartment.

(f) Compliance

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

(g) Required Actions

Within 4,000 flight hours or 24 months, whichever occurs first after the effective date of this AD, do the actions in paragraphs (g)(1) and (2) of this AD:

(1) For airplanes on which the actions specified in MHI RJ Service Bulletin 601R–35–022, dated June 1, 2021; or MHI RJ Service Bulletin 601R–35–022, Revision A, dated October 12, 2021; have not been accomplished: Do the actions specified in paragraphs (g)(1)(i) and (ii) of this AD.

(i) Do a general visual inspection for discrepancies of the observer's oxygen mask stowage box and stowage compartment, the observer's mask oxygen hose connections, the hose routing, and the associated electrical harness; reroute the electrical harness and apply protective sealant in accordance with Part A. Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022. If any discrepancies are found, before further flight, do all applicable corrective actions, in accordance with paragraph 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022.

(ii) Modify the oxygen mask flexible lamp harness, mounting plate, and compartment panel, including rerouting the electrical harness; apply protective sealant; inspect the flexible lamp assembly for correct installation; and trim and reidentify the bracket; in accordance with Part A. Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022. Do all applicable flexible lamp assembly installation corrections before further flight in accordance with Part A. Section 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022.

(2) For airplanes on which the actions specified in MHI RJ Service Bulletin 601R–35–022, dated June 1, 2021; or MHI RJ Service Bulletin 601R–35–022, Revision A, dated October 12, 2021; have been accomplished: Inspect the flexible lamp assembly for correct installation; inspect the wire harness assembly for damage; and trim and reidentify the bracket in accordance with Part B. Section 2.E. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022. Do all applicable flexible lamp assembly installation corrections and damage repair before further flight in accordance with Part B. Section 2.E. of the Accomplishment Instructions of MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(i) Additional Information

(1) Refer to Transport Canada AD CF–2021–32R1, dated July 25, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0141.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Avionics and Electrical Systems 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.*

(j) Material Incorporated by Reference

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

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

(i) MHI RJ Service Bulletin 601R–35–022, Revision B, dated April 21, 2022.

(ii) [Reserved]

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

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

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

Issued on December 15, 2022.

Christina Underwood,

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

[FR Doc. 2022–28279 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0981; Project Identifier MCAI–2022–00032–T; Amendment 39–22285; AD 2022–26–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. This AD was prompted by reports of flight control (horizontal stabilizer, rudder, and elevator) decals degrading and peeling (damage), reports of operators painting over these decals, and reports that procedures to replace these decals were inaccurate, potentially causing incorrect positioning of replacement decals. This AD requires inspecting the left and right horizontal stabilizer decals for visibility and damage; and for certain airplanes, inspecting the rudder and left and right elevator decals for visibility and damage; and doing applicable corrective actions; as specified in a Transport Canada 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 February 2, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of February 2, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA–2022–0981; 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 Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* website *tc.canada.ca/en/aviation.*
- 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–2022–0981.

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 *gabriel.d.kim@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Canada Limited Partnership Model BD–500–1A10 and BD–500–1A11 airplanes. The NPRM published in the **Federal Register** on July 29, 2022 (87 FR 45709). The NPRM was prompted by AD CF–2022–01, dated January 7, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that flight control decals have been degrading and peeling, operators have been painting over these decals, and procedures to replace these decals were inaccurate, potentially causing incorrect positioning of replacement decals. An investigation determined that the degradation and peeling of the flight control decals were caused by an incorrect clear protective coating being applied during production, and that flight control decals were being painted over because of unclear in-service procedures. The in-service procedures were revised to clearly state that the flight control decals are to be masked prior to painting, and to ensure the flight control decals are properly placed. Flight control decals that are damaged or incorrectly positioned could introduce rigging offset of flight control surfaces, which, when combined with other failures or severe maneuvers, could result in loss of flight control surface effectiveness or structural loading that exceeds the airframe's capability. See the MCAI for additional background information.

In the NPRM, the FAA proposed to require inspecting the left and right horizontal stabilizer decals for visibility and damage; inspecting the rudder and left and right elevator decals for visibility and damage for certain airplanes; and doing applicable corrective actions.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2022–0981.

Discussion of Final Airworthiness Directive

Comments

The FAA received two comments from one commenter, Delta Air Lines (Delta). The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Definition Clarification

Delta requested the final rule include a statement that clearly defines ''refer to'' and ''in accordance with'' to give operators a concise understanding of what steps must be complied with and what steps are recommended, done as part of other actions, or done with accepted methods different from those given in the listed instructions.

The FAA agrees to clarify the actions that are required for compliance in the service information referenced in the MCAI. In Parts A, B, C, and D of the service information referenced in the MCAI, some steps are required for compliance—or ''RC''—and must be done following the instructions in the service information; other steps may be done using other approved methods chosen by the operator. The service information states that the Procedure section of the Accomplishment Instructions is RC and must be done to comply with the MCAI (and this AD), but the job set-up and job close-up sections, with the exception of the return-to-service tests, are recommended only. Therefore, the actions in the Procedure section are RC, but the job set-up and close-up sections are not. The FAA has not changed this AD as a result of this comment.

Request for Change in Sequence of Required Actions

Delta requested that the proposed AD be revised to include a statement that allows operators to perform the maintenance review tasks prior to accomplishing the inspection and replacement of the decals. The service information specified in the MCAI has the operator perform an inspection of the decals and then a maintenance record review to determine which actions to perform.

The FAA agrees with the request, provided all required corrective actions based on the results of the records review are accomplished as specified in the service information referenced in the MCAI. Operators may not need to repeat the inspections if the tasks in the maintenance record review accomplished the same task. The FAA has added paragraph (h)(3) of this AD to define this exception to the service information specified in the MCAI.

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. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

Transport Canada CF–2022–01 specifies procedures for inspecting the left and right horizontal stabilizer decals for visibility and damage, and corrective actions. For certain airplanes, Transport Canada CF–2022–01 specifies procedures for inspecting the rudder and left and right elevator decals for visibility and damage. The corrective actions include replacing, restoring, and preserving the condition and placement of the flight control decals, and re-rigging the rudder and elevator control surfaces. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 56 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
10 work-hours × $85 per hour = $850	$0	$850	$47,600

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 airplanes that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
4 work-hours × $85 per hour = $340	$220	$560

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

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:

2022–26–06 Airbus Canada Limited Partnership (Type Certificate Previously Held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.): Amendment 39–22285; Docket No. FAA–2022–0981; Project Identifier MCAI–2022–00032–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 2, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Canada Limited Partnership (Type certificate previously held by C Series Aircraft Limited Partnership (CSALP); Bombardier, Inc.) Model BD–500–1A10 and BD–500–1A11 airplanes, certificated in any category, as identified in Transport Canada AD CF–2022–01, dated January 7, 2022 (Transport Canada AD CF–2022–01).

(d) Subject

Air Transport Association (ATA) of America Code: 11, Placards and markings.

(e) Unsafe Condition

This AD was prompted by reports of flight control (horizontal stabilizer, rudder, and elevator) decals degrading and peeling (damage), reports of operators painting over these decals, and reports that procedures to replace these decals were inaccurate, potentially causing incorrect positioning of replacement decals. The FAA is issuing this AD to address flight control decals that are damaged or incorrectly positioned, which could introduce rigging offset of flight control surfaces, and when combined with other failures or severe maneuvers, could result in loss of flight control surface effectiveness or structural loading that exceeds the airframe's capability.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, Transport Canada AD CF–2022–01.

(h) Exceptions to Transport Canada AD CF–2022–01

(1) Where Transport Canada AD CF–2022–01 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where Transport Canada AD CF–2022–01 refers to ''hours air time,'' this AD requires using ''flight hours.''

(3) Where the service information referenced in Transport Canada AD CF–2022–01 specifies to inspect the decals and then perform a maintenance record review to determine the course of action, this AD allows the maintenance records review to be done first, and conditional actions, if any, are subsequently required, depending on the results of that records review.

(i) Additional FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(j) Additional Information

For more information about this AD, contact 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 *gabriel.d.kim@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Transport Canada AD CF–2022–01, dated January 7, 2022.

(ii) [Reserved]

(3) For Transport Canada AD CF–2022–01, contact Transport Canada, Transport Canada National Aircraft Certification, 159 Cleopatra Drive, Nepean, Ontario K1A 0N5, Canada; telephone 888–663–3639; email *AD-CN@tc.gc.ca;* website *tc.canada.ca/en/aviation.*

(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 December 19, 2022.

Christina Underwood,

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

[FR Doc. 2022–28270 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0906; Airspace Docket No. 21–ASO–27]

RIN 2120–AA66

Amendment and Establishment of Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on December 12, 2022 that amends three area navigation (RNAV) routes (T-routes), and establishes five T-routes. In the final rule, the HITMN, TN, waypoint (WP), the TMPSN, TN, WP, and the TROPP, SC, WP were misspelled, and the PENCE, TN, point was misidentified as a WP instead of a Fix. The action makes editorial corrections to the above points to match the FAA National Airspace System Resource (NASR) database information.

DATES: Effective date 0901 UTC, February 23, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the *Federal* Register (87 FR 75925; December 12, 2022) amending three RNAV T-routes and establishing five T-routes. Subsequent to publication, the FAA determined that the HITMN, TN, WP was misspelled in the discussion of route T–439. In addition, the TMPSN, TN, WP was misspelled, and the PENCE, TN point was misidentified as a WP instead of a Fix in the regulatory text description of T–424. Also, the TROPP, SC, WP was misspelled in the regulatory text description of T–441. Similarly, the PENCE, TN point in the regulatory text of route T–441 was misidentified as a WP instead of a Fix. This rule corrects the above errors.

These are editorial changes only to match the information in the FAA NASR database and do not alter the alignment of the affected T-routes.

United States RNAV T-routes are published in paragraph 6011 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 RNAV routes listed in this document will be subsequently published in FAA Order JO 7400.11.

Correction to Final Rule

The references to RNAV routes T–439, T–424, and T–441 published in the **Federal Register** of December 12, 2022 (87 FR 75925), FR Doc. 2022–26735, are corrected as follows:

■ 1. On page 75926, in column 2, under the heading ''The Rule'' in the text for ''T–439,'' revise ''T–439 is a new route that extends from the PIGON, AL, Fix, to the HITMAN, TN, WP.'' to read ''T–439 is a new route that extends from the PIGON, AL, Fix, to the HITMN, TN, WP.'' to match FAA NASR database information.

■ 2. On page 75927, correct the table for T–424 SMRRF, TN to DBRAH, VA [New] to read:

T–424 SMRRF, TN to DBRAH, VA [New]

SMRRF, TN	WP	(Lat. 35°33′43.23″ N, long. 086°26′20.24″ W)
TMPSN, TN	WP	(Lat. 35°46′51.54″ N, long. 084°58′43.15″ W)
EDDDY, TN	WP	(Lat. 35°54′17.33″ N, long. 083°53′41.72″ W)
CRECY, TN	WP	(Lat. 35°58′52.61″ N, long. 083°38′24.36″ W)
PENCE, TN	FIX	(Lat. 36°01′09.80″ N, long. 083°31′26.31″ W)
HORAL, TN	WP	(Lat. 36°26′13.99″ N, long. 082°07′46.48″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
DBRAH, VA	WP	(Lat. 37°20′34.14″ N, long. 080°04′10.75″ W)

■ 3. On page 75928 correct the table for T–441 TROPP, SC to PENCE, TN [New] to read:

T–441 TROPP, SC to PENCE, TN [New]

TROPP, SC	WP	(Lat. 32°53′40.00″ N., long. 080°02′16.59″ W)
CAYCE, SC	WP	(Lat. 33°51′26.13″ N., long. 081°03′14.76″ W)
BURGG, SC	WP	(Lat. 35°02′00.55″ N., long. 081°55′36.86″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N., long. 082°16′07.01″ W)
MUMMI, NC	FIX	(Lat. 35°39′48.60″ N., long. 082°47′30.15″ W)
PUPDG, NC	WP	(Lat. 35°46′30.08″ N., long. 083°03′40.16″ W)
PENCE, TN	FIX	(Lat. 36°01′09.80″ N., long. 083°31′26.31″ W)

* * * * *

Issued in Washington, DC, on December 23, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–28361 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2022–N–3186]

Medical Devices; Cardiovascular Devices; Classification of the Extracorporeal System for Carbon Dioxide Removal

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the extracorporeal system for carbon dioxide removal into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the extracorporeal system for carbon dioxide removal's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective December 29, 2022. The classification was applicable on November 13, 2021.

FOR FURTHER INFORMATION CONTACT: Alejandra Cambonchi, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2253, Silver Spring, MD 20993–0002, 301–796–0552, *Alejandra.Cambonchi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the extracorporeal system for carbon dioxide removal as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On August 30, 2021, FDA received ALung Technologies, Inc.'s request for De Novo classification of the Hemolung Respiratory Assist System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device

Therefore, on November 13, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 870.4150.[1] We have named the generic type of device extracorporeal system for carbon dioxide removal, and

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

it is identified as a system of devices and accessories that provides assisted extracorporeal carbon dioxide removal from the patient's blood in patients with acute respiratory failure, where other available treatment options have failed, and continued clinical deterioration is expected or the risk of death is imminent. The main devices and accessories of the system include, but are not limited to, the console (hardware), software, and disposables, including, but not limited to, a gas exchanger, blood pump, cannulae, tubing, filters, and other accessories (*e.g.,* monitors, detectors, sensors, connectors).

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—EXTRACORPOREAL SYSTEM FOR CARBON DIOXIDE REMOVAL RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Bleeding, Thrombocytopenia, Hemolysis, Thrombosis.	In Vivo Evaluation, Non-clinical performance testing, and Labeling.
Infection	In Vivo Evaluation, Sterility, Shelf-life testing, and Labeling.
Adverse Tissue and/or Hematologic Reaction	In Vivo Evaluation, Biocompatibility, and Labeling.
Mechanical Failure	In Vivo Evaluation, Non-clinical performance testing, Labeling, and Software Validation, verification, and hazard analysis.
Hemodynamic Instability	In Vivo Evaluation, Non-clinical performance testing, and Labeling.
Hypothermia	In Vivo Evaluation, Non-clinical performance testing, and Labeling.
Mechanical Injury to Access Vessels	In Vivo Evaluation, Non-clinical performance testing, and Labeling.
Inadequate gas exchange	In Vivo Evaluation, Non-clinical performance testing, and Labeling.
Hemodilution	In Vivo Evaluation, Non-clinical performance testing, and Labeling.
Gas embolism	In Vivo Evaluation, Non-clinical performance testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 870 is amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 870.4150 to subpart E to read as follows:

§ 870.4150 Extracorporeal system for carbon dioxide removal.

(a) *Identification.* An extracorporeal system for carbon dioxide removal is a system of devices and accessories that provides assisted extracorporeal carbon dioxide removal from the patient's blood in patients with acute respiratory failure, where other available treatment options have failed, and continued clinical deterioration is expected or the risk of death is imminent. The main devices and accessories of the system include, but are not limited to, the console (hardware), software, and disposables, including, but not limited to, a gas exchanger, blood pump, cannulae, tubing, filters, and other accessories (*e.g.,* monitors, detectors, sensors, connectors).

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) In vivo evaluation, which may include animal testing and clinical data, of the devices and accessories in the circuit must demonstrate their performance over the intended duration of use, including a detailed summary of the in vivo evaluation pertinent to the use of the devices and accessories to demonstrate their effectiveness.

(2) The technological characteristics of the device must ensure that the geometry and design parameters are consistent with the intended use, and that the devices and accessories in the circuit are compatible.

(3) Non-clinical performance testing of the devices and accessories in the circuit must demonstrate that the device performs as intended under anticipated conditions of use. The following performance characteristics must be tested:

(i) Mechanical integrity;

(ii) Durability; and

(iii) Reliability.

(4) All patient contacting components of the device must be demonstrated to be biocompatible.

(5) Performance testing must demonstrate the electrical safety and electromagnetic compatibility (EMC) of any electrical components.

(6) Software validation, verification, and hazard analysis must be performed.

(7) Performance testing must demonstrate the sterility of all patient-contacting components.

(8) Performance testing must support the shelf life of the device by demonstrating continued sterility and device functionality over the identified shelf life.

(9) Labeling must include the following:

(i) A detailed summary of the non-clinical and in vivo evaluations pertinent to use of the device and accessories in the circuit;

(ii) Adequate instructions with respect to circuit setup, performance characteristics with respect to compatibility among different devices and accessories in the circuit, and maintenance during a procedure; and

(iii) A shelf life.

Dated: December 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28168 Filed 12–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. FDA–2022–N–3144]

Medical Devices; Orthopedic Devices; Classification of the Resorbable Implant for Anterior Cruciate Ligament (ACL) Repair

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the resorbable implant for anterior cruciate ligament (ACL) repair into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the resorbable implant for ACL repair's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective December 29, 2022. The classification was applicable on December 16, 2020.

FOR FURTHER INFORMATION CONTACT: Pooja Panigrahi, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4572, Silver Spring, MD 20993–0002, 240–402–1090, *Pooja.Panigrahi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the resorbable implant for ACL injuries as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act (21 U.S.C. 360c(f)(2)). Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On June 4, 2020, FDA received Miach Orthopaedics, Inc.'s request for De Novo classification of the BEAR® (Bridge-Enhanced ACL Repair) Implant. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C.

360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 16, 2020, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 888.3044.[1] We have named the generic type of device resorbable implant for ACL repair, and it is identified as a degradable material that allows for healing of a torn ACL that is biomechanically stabilized by traditional suturing procedures. The device is intended to protect the biological healing process from the surrounding intraarticular environment and not intended to replace biomechanical fixation via suturing. This classification includes devices that bridge or surround the torn ends of a ruptured ACL.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—RESORBABLE IMPLANT FOR ANTERIOR CRUCIATE LIGAMENT (ACL) REPAIR RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Repaired ACL has inadequate durability, leading to re-tear	Animal testing, Clinical performance testing, and Labeling.
Repaired ACL is loose or functionally limited, leading to joint instability	Clinical performance testing.
ACL does not heal due to inadequate resorption or migration of implant	Non-clinical performance testing and Animal testing.
Adverse tissue reaction	Biocompatibility evaluation and Labeling.
Infection	Sterilization validation, Shelf-life testing, and Labeling.
Febrile response due to endotoxins	Pyrogenicity testing.
Implant is incompatible with other ACL repair instrumentation and sutures, leading to inability to complete surgery.	Non-clinical performance testing and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 888.3044 to subpart D to read as follows:

§ 888.3044 Resorbable implant for anterior cruciate ligament (ACL) repair.

(a) *Identification.* A resorbable implant for anterior cruciate ligament (ACL) repair is a degradable material that allows for healing of a torn ACL that is biomechanically stabilized by traditional suturing procedures. The device is intended to protect the biological healing process from the surrounding intraarticular environment and not intended to replace biomechanical fixation via suturing. This classification includes devices that bridge or surround the torn ends of a ruptured ACL.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use and include the following:

(i) Post-operative evaluation of knee pain and function; and

(ii) Durability as assessed by re-tear or re-operation rate.

(2) Animal performance testing must demonstrate that the device performs as intended under anticipated conditions of use and include the following:

(i) Device performance characteristics, including resorption and ligament healing at repair site; and

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

(ii) Adverse effects as assessed by gross necropsy and histopathology.

(3) Non-clinical testing must demonstrate that the device performs as intended under anticipated conditions of use and include the following:

(i) Characterization of materials, including chemical composition, resorption profile, and mechanical properties; and

(ii) Simulated use testing, including device preparation, device handling, compatibility with other ACL repair instrumentation, and user interface.

(4) The device must be demonstrated to be biocompatible.

(5) Performance data must demonstrate the device to be sterile and non-pyrogenic.

(6) Performance data must support the shelf life of the device by demonstrating continued sterility, package integrity, and device functionality over the identified shelf life.

(7) Labeling must include the following:

(i) Identification of device materials and specifications;

(ii) A summary of the clinical performance testing conducted with the device;

(iii) Instructions for use, including compatibility with other ACL repair instrumentation or devices;

(iv) Warnings regarding post-operative rehabilitation requirements; and

(v) A shelf life.

Dated: December 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28166 Filed 12–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9971]

RIN 1545–BN89

Exception for Interests Held by Foreign Pension Funds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding gain or loss of a qualified foreign pension fund attributable to certain interests in United States real property. The final regulations also include rules for certifying that a qualified foreign pension fund is not subject to withholding on certain dispositions of, and distributions with respect to, certain interests in United States real property. The final regulations affect certain holders of interests in United States real property and withholding agents that are required to withhold tax on dispositions of, and distributions with respect to, such property.

DATES: Effective Date: These regulations are effective on December 29, 2022.

Applicability dates: For dates of applicability, see §§ 1.897(l)–1(g), 1.1441–3(c)(4)(iii), 1.1445–2(e), 1.1445–5(h), 1.1445–8(j), 1.1446–7.

FOR FURTHER INFORMATION CONTACT: Arielle M. Borsos or Milton Cahn at (202) 317–6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 897(l) was added to the Internal Revenue Code (the ''Code'') by section 323(a) of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div. Q (the ''PATH Act''), and amended by section 101(q) of the Tax Technical Corrections Act of 2018, Pub. L. 115–141, div. U. In the preamble to the updated section 1445 regulations that were published in the **Federal Register** (81 FR 8398–01, as corrected at 81 FR 24484–01) on February 19, 2016, the Department of the Treasury (the ''Treasury Department'') and the IRS requested comments regarding what regulations, if any, should be issued pursuant to section 897(l)(3). The Treasury Department and the IRS considered all of the comments received in response to this request and, on June 7, 2019, published proposed regulations under sections 897(l), 1441, 1445 and 1446 in the **Federal Register** (84 FR 26605) (the ''proposed regulations''). The proposed regulations contained rules relating to the qualification for the exemption under section 897(l), as well as rules relating to withholding requirements under sections 1441, 1445 and 1446, for dispositions of United States real property interests (''USRPIs'') by foreign pension funds and their subsidiaries and distributions described in section 897(h).

This Treasury decision finalizes the proposed regulations, after taking into account and addressing comments received by the Treasury Department and the IRS with respect to the proposed regulations. Terms used but not defined in this preamble have the meaning provided in the final regulations.

Comments outside the scope of this rulemaking are generally not addressed but may be considered in connection with future regulations. All written comments received in response to the proposed regulations are available at *www.regulations.gov* or upon request.

Summary of Comments and Explanation of Revisions

The final regulations retain the general approach and structure of the proposed regulations, with certain revisions. This Summary of Comments and Explanation of Revisions section discusses the revisions as well as comments received in response to the solicitation of comments in the proposed regulations.

I. Comments and Revisions Related to the Scope of the Exception

A. Qualified Controlled Entities

Under the proposed regulations, and consistent with section 897(l), gain or loss of a qualified foreign pension fund (''QFPF'') or a qualified controlled entity (''QCE'') (under the proposed regulations, each generally a ''qualified holder'') from the disposition of a USRPI is not subject to section 897(a). Prop. § 1.897(l)–1(b)(1). The proposed regulations defined a QCE as a trust or corporation organized under the laws of a foreign country,[1] all of the interests of which are held directly by one or more QFPFs or indirectly through one or more QCEs or partnerships. Prop. § 1.897(l)–1(d)(9).

1. Ownership by Non-QFPFs

Several comments received in response to the proposed regulations addressed the ownership requirement with respect to QCEs. The proposed regulations did not permit ownership of a QCE by a person other than a QFPF or another QCE, declining to adopt a comment received before the publication of the proposed regulations requesting that de minimis ownership of a QCE by other persons be disregarded under certain circumstances, such as when de minimis ownership by managers or directors is required by corporate law in certain jurisdictions. The Treasury Department and the IRS determined that permitting a person other than a QFPF or another QCE to own an interest in a QCE would impermissibly expand the scope of the exception in section 897(l) by allowing investors other than QFPFs to avoid tax under section 897(a). However, under the proposed regulations, a QFPF could

[1] For consistency with other guidance, the final regulations adopt the term ''foreign jurisdiction'' instead of ''foreign country.'' See § 1.897(l)–1(e)(4). See also Part II.C. of this Summary of Comments and Explanation of Revisions for a description of how the final regulations treat subnational tax regimes.

invest in USRPIs with non-QFPFs through a partnership and still qualify for the exemption under section 897(l).

Comments received in response to the proposed regulations similarly requested that the final regulations allow a de minimis exception for the ownership of a QCE by other persons. One comment reiterated that de minimis ownership, including by managers or directors, may be required by corporate law in certain jurisdictions and suggested that the final regulations include a rule that would permit an entity to be treated as a QCE if a small amount (for example, five percent) of the entity is held by a non-QFPF. The comment also suggested that, in order to prevent non-QFPF entities from inappropriately accessing the exemption under section 897(l), a non-QFPF de minimis owner of a QCE could be required to recognize gain or loss on any disposition of a USRPI held through the QCE under section 897(a). The comment asserted that there is no policy reason to differentiate between entities with QFPF and non-QFPF owners/beneficiaries because the entity is a corporation or trust rather than a partnership, and that permitting de minimis non-QFPF ownership of a QCE would allow QFPFs flexibility with regard to the form of entity chosen for investment purposes.

Another comment asserted that a de minimis exception should be allowed because certain jurisdictions may require or otherwise allow investment arrangements in which foreign pension funds pool investments with non-QFPFs. The comment argued that such investment arrangements should not be precluded from qualifying for the exception under section 897(l), especially if those arrangements are allowed or required by local law and are consistent with generally accepted investment practice. The comment suggested that the final regulations permit a non-QFPF to have a de minimis level of ownership (for example, five percent) in a QCE. If a de minimis exception were not adopted, the comment suggested several alternatives to prevent minority investors from tainting the QFPF status for the majority QFPF investors, including that the final regulations allow QFPFs to qualify for the exception under section 897(l) on their share of income or gains distributed by an investment vehicle, provided the investment vehicle is majority owned by QFPFs. The comment also suggested that the QCE ownership requirement be modified to permit an eligible fund that is a non-QFPF solely because it has a single qualified recipient with a right to more than five percent of the assets or income of the eligible fund to be an owner of a QCE. The comment requested that, in that circumstance, the final regulations look through to the owners of the non-QFPF and apply the prohibition on a single five-percent beneficiary or participant by reference to the would-be QCE rather than the non-QFPF.

An additional comment suggested that a QFPF should be able to claim the section 897(l) exemption with respect to gains derived by an entity in which the QFPF is an investor where the entity is not a partnership and also is not a QCE because it is not wholly owned by QFPFs. The comment noted that, in certain foreign government facilitated arrangements involving a partnership formed under local law through which multiple foreign government entities jointly invest, the investment entity may be a per se corporation under § 301.7701–2(b)(6) that would not qualify as a QCE if not all of the government investors were QFPFs. The comment asserted that, in such circumstance, investors would be forced to include a non-government partner so that the investment entity could be treated as a partnership for U.S. federal tax purposes. To address this concern, the comment recommended that the final regulations provide that, if an entity is treated as a partnership under the law of the country in which the QFPF is formed, the QFPF should be able to treat its distributive share of partnership Foreign Investment in Real Property Tax Act (''FIRPTA'') gains as exempt under section 897(l).

The Treasury Department and the IRS continue to believe that allowing any exception with respect to the ownership of a QCE would impermissibly expand the scope of the exception in section 897(l) by allowing investors other than QFPFs to avoid tax under section 897. Section 897(l)(1) expressly provides that an entity must be wholly owned by a QFPF to constitute a QCE and qualify for the exception under section 897(l). Accordingly, the final regulations do not provide a de minimis exception to the ownership of a QCE. For the same reasons, the final regulations do not adopt other suggested approaches that would permit an entity to be a QCE despite limited non-QFPF ownership, such as a tracing approach that would require non-QFPF owners of an entity to be subject to section 897(a) and allow only QFPF owners to benefit from the section 897(l) exemption, or a look-through approach that would allow a non-QFPF that cannot qualify as a QFPF because it violates the rule against having a single five-percent beneficiary or participant to own an interest in a QCE.

The final regulations also do not adopt the recommendation to permit a QFPF to benefit from the section 897(l) exemption with respect to interests in an entity that is classified as a corporation for U.S. federal tax purposes but that does not qualify as a QCE due to ownership by non-QFPFs by treating the entity as a partnership in accordance with its treatment under applicable foreign law. In addition to expanding the definition of a QCE to permit ownership by non-QFPFs, such a rule would contradict the classification of the entity for U.S. federal tax purposes.

2. Investment Arrangements With QFPFs

The proposed regulations permitted multiple QFPFs to wholly own a QCE, either directly or indirectly through one or more other QCEs, in recognition that it is common for QFPFs to pool their investments.

One comment discussed the interaction between the requirement that QCEs must be wholly owned by QFPFs and the various requirements that an eligible fund must meet to maintain its status as a QFPF. The comment stated that a QFPF that invests with other QFPFs in a QCE might fail to qualify for the section 897(l) exemption solely because one of its co-investors fails to qualify as a QFPF in any given year. The comment noted that QFPFs would be required to negotiate complex protections to shield against another co-investor from tainting the QCE's status. The comment further noted that investing through a partnership (which would allow the QFPF to invest with other non-QFPFs) may not be feasible because a foreign jurisdiction may have regulatory restrictions regarding the types of legal entities in which pension funds may invest or the entity may be wholly owned by QFPFs that form part of a single government (and thus may be a per se corporation under § 301.7701–2(b)(6)). The comment therefore recommended that the final regulations provide a rule that a QCE that inadvertently fails to constitute a qualified holder because one of its owners ceases to be treated as a QFPF be permitted, for a limited time, to partially benefit from section 897(l) to the extent that it continues to be owned by QFPFs.

The final regulations do not provide an exception to the requirement that a QCE be wholly owned by a QFPF to insulate QFPF investors from the risk of losing QCE status in investment arrangements with other QFPFs. As with a de minimis exception to the

ownership of a QCE, the Treasury Department and the IRS believe that any such rule would impermissibly expand the scope of the section 897(l) exception to allow investors other than QFPFs to avoid tax under section 897. The Treasury Department and the IRS also believe that the changes to the final regulations described in Parts II.A.2 and II.A.3 of this Summary of Comments and Explanation of Revisions will appropriately alleviate concerns with respect to the risk that a QFPF may inadvertently fail to satisfy the requirements to constitute a QFPF.

3. Non-Economic Ownership

As referenced in the preamble to the proposed regulations, given the absence of an express provision to the contrary, the definition of an ''interest'' for purposes of determining whether an entity is a QCE is determined in accordance with § 1.897–1(d)(5), which provides that an interest in an entity means an interest in such entity other than an interest solely as a creditor. Section 1.897–1(d)(3) provides that an interest in an entity other than solely as a creditor is: (A) stock of a corporation; (B) an interest in a partnership as a partner within the meaning of section 761(b) and the regulations thereunder; (C) an interest in a trust or estate as a beneficiary within the meaning of section 643(c) and the regulations thereunder or an ownership interest in any portion of a trust as provided in sections 671 through 679 and the regulations thereunder; (D) an interest which is, in whole or in part, a direct or indirect right to share in the appreciation in value of an interest in an entity described in subdivision (A), (B), or (C) of § 1.897–1(d)(3)(i) or a direct or indirect right to share in the appreciation in value of assets of, or gross or net proceeds or profits derived by, the entity; or (E) a right (whether or not presently exercisable) directly or indirectly to acquire, by purchase, conversion, exchange, or in any other manner, an interest described in subdivision (A), (B), (C), or (D) of § 1.897–1(d)(3)(i).

One comment requested that the final regulations clarify that non-economic interests in an entity are not taken into account in determining whether an entity is a QCE. The comment noted that such a situation might arise when a foreign partnership that elects to be treated as a corporation for U.S. federal income tax purposes has a general partner that holds no economic interest in the entity. The comment recommended that the final regulations provide that interests in a QCE that do not entitle the holders to share in the income or assets of the QCE should be ignored in determining whether the QCE is a qualified holder, noting that such fully non-economic interests do not present potential for abuse and that disregarding those interests would be consistent with congressional intent to accommodate a variety of foreign pension fund structures under section 897(l).

The Treasury Department and the IRS do not believe that additional guidance is necessary regarding the ownership interests taken into account in determining whether an entity constitutes a QCE. Thus, an ''interest'' for purposes of determining whether an entity is a QCE is determined under § 1.897–1(d)(3). Whether an interest in an entity constitutes one of the interests listed under § 1.897–1(d)(3) or is instead disregarded is determined based on the facts, taking into account general tax principles.

B. Qualified Holder Rule

The proposed regulations provided that a qualified holder does not include any entity or governmental unit that, at any time during the testing period, determined without regard to this limitation, was not a QFPF, a part of a QFPF, or a QCE (the ''qualified holder rule''). See Prop. § 1.897(l)–1(d)(11)(ii). For this purpose, the proposed regulations provided that the testing period is the shortest of (i) the period beginning on the date that section 897(l) became effective (December 18, 2015), and ending on the date of a disposition described in section 897(a) or a distribution described in section 897(h); (ii) the ten-year period ending on the date of the disposition or the distribution; or (iii) the period during which the entity (or its predecessor) was in existence. See Prop. § 1.897(l)–1(d)(14). Under the proposed regulations, the qualified holder rule does not apply to an entity or governmental unit that did not own a USRPI as of the date it became a QCE, a QFPF, or part of a QFPF. The preamble to the proposed regulations explained that the qualified holder rule is necessary to prevent the inappropriate avoidance of section 897(a) through QFPFs indirectly acquiring USRPIs held by foreign corporations that would not have otherwise qualified for the exception under section 897(l).

Comments recommended that the final regulations either modify the qualified holder rule or implement one of several alternatives. Comments agreed that the QFPF exception should not apply to exempt gain that would otherwise have been subject to tax under section 897. However, the comments argued that the qualified holder rule in the proposed regulations was overbroad because it could apply to any failure to qualify as a QFPF or QCE in the testing period, even if the failure was unintentional or had no potential for abuse.

One comment requested that the final regulations provide a tolling period if there is an inadvertent failure to qualify as a QFPF and that failure is remedied in the following year. Another comment requested that the final regulations provide an exception to the qualified holder rule to exclude the situation in which a QFPF does not qualify solely because it fails to meet the requirements in proposed § 1.897(l)–1(c)(2) (relating to the requirements an eligible fund must satisfy to be treated as a QFPF). The comment further recommended allowing a mark-to-market approach, whereby an election to recognize any net built-in gain at the time a QFPF acquires a non-QFPF that owns a USRPI could be made so that the non-QFPF could then be treated as a QCE with respect to any future disposition of its USRPI (similar to § 1.337(d)–7(a) for the conversion of certain corporations to regulated investment companies (''RIC'') or real estate investment trusts (''REIT'')). In addition, the comment requested that the qualified holder rule be limited to apply only to USRPIs held by non-QFPFs when such non-QFPFs are acquired by a QFPF, resulting in a tracing approach that would prevent section 897(l) from applying only to a disposition of those specific USRPIs. The comment also recommended that the final regulations shorten the maximum testing period from ten to five years, which is consistent with the five-year maximum testing period for a RIC or REIT to be a domestically controlled qualified investment entity under section 897(h)(4).

As alternatives to the qualified holder rule, one comment requested that the Treasury Department and the IRS either allow a mark-to-market approach at the taxpayer's election (similar to that suggested by other comments), under which the entity acquired by the QFPF would account for the gain when the entity is acquired by the QFPF, or require tracing the unrealized gain when the entity is acquired by a QFPF or QCE so that section 897(a) can apply to the pre-acquisition gain upon a subsequent sale or exchange.

Under the final regulations, the substance of the qualified holder rule is the same as it was in the proposed regulations; however, for greater clarity, the final regulations identify the qualified holder rule as a separate

requirement to qualify for the section 897(l) exemption rather than as part of the definitions. § 1.897(l)–1(d). To be a qualified holder, a QFPF or a QCE must satisfy one of two alternative tests at the time of the disposition of the USRPI or the distribution described in section 897(h). § 1.897(l)–1(d)(1). Under the first test, a QFPF or a QCE is a qualified holder if it owned no USRPIs as of the earliest date during an uninterrupted period ending on the date of the disposition or distribution during which it qualified as a QFPF or a QCE. § 1.897(l)–1(d)(2). Alternatively, if a QFPF or a QCE held USRPIs as of the earliest date during the period described in the preceding sentence, it can be a qualified holder only if it satisfies the applicable testing period requirement, which is unchanged from the proposed regulations. § 1.897(l)–1(d)(3).

The final regulations also include two transition rules. First, with respect to any period from December 18, 2015, to the date when the requirements of section 1.897(l)–1(c)(2) or (e)(9) first apply to a QFPF or QCE, as applicable (but in any event no later than December 29, 2022, in the case of section 1.897(l)–1(c)(2), and no later than June 6, 2019, in the case of section 1.897(l)–1(e)(9)), the QFPF or QCE is deemed to satisfy the requirements of section 1.897(l)–1(c)(2) and (e)(9), as applicable, for purposes of section 1.897(l)–1(d)(2) and (3) if the QFPF or QCE satisfies the requirements of section 897(l)(2) based on a reasonable interpretation of those requirements (including determining any applicable valuations using a consistent method). Second, in determining whether a QCE is a qualified holder, solely with respect to the two tests in section 1.897(l)–1(d)(2) and (3), the final regulations allow the QCE to disregard a de minimis interest owned by any person that provides services to the QCE from December 18, 2015 to February 27, 2023 (the ''transition period''). § 1.897(l)–1(d)(4)(ii). This second transition rule does not apply for purposes of determining QCE status under section 1.897(l)–1(e)(9) at the time of any disposition or distribution involving a USRPI. Thus, its application is limited to cases in which a trust or corporation failed to qualify as a QCE (and, therefore, as a qualified holder) during the transition period solely because of a de minimis interest owned by any person that provides services to the QCE (such as a manager or director). In that case, the transition rule allows the trust or corporation to eliminate the service provider's ownership within the transition period and thereby avoid having to apply the tests for qualified holder status under section 1.897(l)–1(d)(2) or (3) by reference to the date that the service provider's interest is eliminated. This may, for example, prevent the restarting of a ten-year testing period on the date that the service provider's interest is eliminated. Any disposition of USRPIs during the period when the trust or corporation had the service provider as an interest holder still would not qualify for the section 897(l) exemption.

The Treasury Department and the IRS agree that the application of the qualified holder rule to an inadvertent failure to qualify as a QFPF could produce inappropriate results, particularly in the case where an eligible fund fails to meet the requirements in § 1.897(l)–1(c)(2)(ii)(B)(*2*) because it unexpectedly projects that it will provide less than 85 percent retirement and pension benefits. Although the final regulations ultimately adopt the qualified holder rule without the changes recommended by the comments, the final regulations provide relief in the following ways:

- adding an alternative calculation to the requirements in § 1.897(l)–1(c)(2)(ii)(B)(*2*) and (*3*) based on the average of the present values of the future benefits expected to be provided, as determined in the 48 months preceding (and including) the most recent valuation (the ''48-month alternative calculation,'' described further in Part II.A.2 of this Summary of Comments and Explanation of Revisions);
- adding a definition of retirement and pension benefits;
- clarifying the scope of ancillary benefits; and
- allowing an eligible fund to provide a de minimis amount of non-ancillary benefits (described further in Part II.A.3 of this Summary of Comments and Explanation of Revisions).

Together, these changes provide relief to eligible funds that would otherwise unexpectedly fail to qualify as a QFPF in any given year and alleviate the underlying concerns regarding the breadth of the qualified holder rule.

In light of the changes described in the preceding paragraph, the final regulations do not adopt the recommendation to allow a tolling period to remedy the loss of QFPF status. For the same reasons, the final regulations also do not adopt the recommendation to provide an exception to the qualified holder rule for any failure to meet the requirements in § 1.897(l)–1(c)(2) or to have the qualified holder rule apply only to USRPIs owned by non-QFPFs when such non-QFPFs are acquired by a QFPF. The section 897(l) exception provides a substantial benefit to investors, and it is appropriate to require an eligible fund to meet the requirements in the final regulations for a ten-year maximum testing period before obtaining tax-free treatment to ensure the exception is not claimed inappropriately. Cf. section 877 (requiring taxpayer to be subject to potential additional U.S. taxation for ten years after relinquishing U.S. citizenship); §§ 1400Z–2 (allowing taxpayer to receive a step-up in basis of property equal to its fair market value if held for ten years); 1.937–2(f) (requiring individual to be bona fide resident of a territory for 10 years before sale of property is sourced to territory and receives beneficial tax rate). Accordingly, the final regulations also do not adopt a maximum testing period that is shorter than ten years.

With respect to the suggested alternatives to the qualified holder rule, the preamble to the proposed regulations explained that the mark-to-market and tracing approaches both imposed greater compliance and administrative costs relative to the testing-period approach without providing any accompanying general economic benefit. Even if the investor is given the option to elect a mark-to-market approach, it would still present compliance and administrative barriers because fair market valuations of real property are not readily available. The tracing approach would similarly impose compliance and administrative burdens, as such an approach would require obtaining a fair market valuation of real property when an entity became a QCE, as well as tracking the USRPIs that were acquired before the entity became a QCE so that the pre-acquisition built-in gain could be recognized upon a later disposition. Accordingly, the final regulations do not adopt the mark-to-market or tracing alternatives.

C. Qualified Segregated Accounts

The proposed regulations provided that a qualified holder is exempt from section 897(a) only with respect to gain or loss that is attributable to one or more qualified segregated accounts maintained by the qualified holder. Prop. § 1.897(l)–1(b)(2). The proposed regulations defined a qualified segregated account as an identifiable pool of assets maintained for the sole purpose of funding qualified benefits (that is, retirement, pension, or ancillary benefits) to qualified recipients (generally, plan participants and beneficiaries). See Prop. § 1.897(l)–

1(d)(13)(i). The proposed regulations provided separate standards for determining whether an identifiable pool of assets is maintained for the sole purpose of funding qualified benefits depending on whether the pool of assets is maintained by an eligible fund (including an eligible fund that satisfies the requirements to be treated as a QFPF) or a QCE. See Prop. § 1.897(l)–1(d)(13)(ii); Prop. § 1.897(l)–1(d)(13)(iii).

Comments requested that the final regulations clarify the standards that apply for determining whether an identifiable pool of assets is maintained for the sole purpose of funding qualified benefits, and one comment recommended removing the standards altogether. Specifically, comments identified several situations in which qualified segregated accounts are maintained for the sole purpose of funding qualified benefits to qualified recipients, but where the funds could nevertheless be disbursed for other purposes or to non-qualified recipients. For example, one comment noted that an eligible fund could rebate an overfunded amount by a foreign defined benefit pension fund to an employer. Another comment noted that assets might not be disbursed to qualified recipients or used to pay reasonable plan expenses if a potential change in foreign law impacts how fund assets can be used. One comment highlighted that assets might revert to sponsoring employers if employees cease participating in the plan before their benefits have vested. Another comment cited the possibility that upon a dissolution of the eligible fund, assets could revert to the employer after satisfying its obligations to qualified recipients and creditors. In each such situation, the comments recommended that the final regulations clarify that a pool of assets would not fail to qualify as a qualified segregated account. One comment further recommended that the final regulations eliminate the requirement that all income and assets maintained in a qualified segregated account of an eligible fund be used to fund the provision of qualified benefits to qualified recipients because such a provision is unnecessary to ensure that income and assets of an eligible fund do not inure to inappropriate recipients.

The Treasury Department and the IRS agree that in certain situations the reversion of funds to a governmental unit or an employer, after satisfaction of liabilities to creditors and qualified recipients, should not disqualify the account from being treated as maintained for the sole purpose of funding qualified benefits to be provided to qualified recipients. Accordingly, the final regulations clarify that a qualified segregated account that is held by an eligible fund is treated as maintained for the sole purpose of funding qualified benefits to be provided to qualified recipients notwithstanding that funds may revert (such as upon dissolution or the benefits failing to vest) to the governmental unit or employer in accordance with applicable foreign law so long as contributions to the plan are not more than what is reasonably necessary to fund the qualified benefits to be provided to qualified recipients. § 1.897(l)–1(e)(13)(i). This requirement ensures that a governmental unit or employer does not qualify for benefits under section 897(l) to the extent it inappropriately overfunds the plan.

One comment further recommended that the final regulations treat an eligible fund's interest in a corporation as a qualified segregated account. This recommendation was made to resolve the issue, described in Part I.A.1 of this Summary of Comments and Explanation of Revisions, that arises when multiple foreign government entities, some of which are QFPFs and some of which are not, jointly invest in USRPIs through a foreign partnership that is treated as a per se corporation for U.S. federal tax purposes (pursuant to § 301.7701–2(b)(6)), but cannot qualify as a QCE because not all of the investors are QFPFs.

The final regulations do not adopt this recommendation for several reasons. First, the suggestion contemplates a situation that is contrary to the requirement in section 897(l)(1) that requires an entity to be wholly owned by a QFPF in order to qualify for the exception under section 897(l). Thus, the recommendation potentially allows the exemption from taxation under section 897(a) to inure to non-QFPFs. Second, the issue described in the comment ultimately arises because of the rule under § 301.7701–2(b)(6) rather than the final regulations, and therefore a modification to the final regulations is not the appropriate resolution. Third, the recommendation does not ensure that the assets or income of the corporation are used only for the purpose of providing benefits to qualified recipients, a key purpose of the qualified segregated account rules.

II. Comments and Revisions Relating to Requirements Applicable to a QFPF

A. Established To Provide Retirement And Pension Benefits

The proposed regulations allowed pension funds established by one or more employers and government-sponsored public pension funds to be considered QFPFs. Specifically, the proposed regulations provided that an eligible fund must be established by either (i) the foreign country in which it is created or organized to provide retirement or pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees as a result of services rendered by such employees to their employers (''government-established fund''), or (ii) one or more employers to provide retirement or pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees in consideration for services rendered by such employees to such employers (''employer fund''). Prop. § 1.897(l)–1(c)(2)(ii)(A). The language in proposed § 1.897(l)–1(c)(2)(ii)(A) generally reflected the statutory language in section 897(l)(2)(B).

1. Pension Funds Eligible for Section 897(l)(2)(B)

a. ''Established by'' Requirement

One comment requested that the final regulations clarify the requirement that an eligible fund be ''established by'' a foreign government in the case of a government-established fund. The comment expressed concern that the ''established by'' requirement in the proposed regulations could exclude the national pension systems of certain countries under which accounts in the names of individual participants are maintained by private entities. The comment explained that some foreign countries have pension systems in which all employees (or employees working in a certain sector of the economy) are required by law to establish a pension account held and managed by a private pension administrator. Although the arrangement is created by government mandate and subject to government regulation, the private pension administrators form the investment vehicles, select the investment advisors, and receive, invest, and disburse the funds. The extent of additional government involvement varies, but could include the government being the conduit through which contributions by employers and employees are funneled into the plans or benefits are disbursed. The comment asserted that such an arrangement should be treated as ''established by'' the foreign government for purposes of qualifying as a government-established fund and that each private pension administrator, the investment vehicles that it establishes,

and any government office that is within the flow of funds should be treated as part of an ''arrangement'' that maintains qualified segregated accounts. According to the comment, if participation in the pension system is mandatory, a foreign government should meet the ''established by'' requirement for a government-established fund even if the government does not actually receive contributions and disburse benefits or hold or invest the funds. The comment recommended that the final regulations clarify that an arrangement created pursuant to a foreign government mandate, but in which private investment managers hold and invest contributions, should be treated as ''established by'' the foreign government.

The Treasury Department and the IRS recognize that eligible funds in foreign countries may be established and administered in numerous ways. The Treasury Department and the IRS also continue to believe that the purpose of section 897(l) is best served by permitting a broad range of structures to be treated as a QFPF. Accordingly, the final regulations clarify that an eligible fund may be established by, or at the direction of, a foreign jurisdiction for purposes of qualifying as a government-established fund. § 1.897(l)–1(c)(2)(ii)(A)(*1*)(*i*). If an eligible fund is established at the direction of a foreign jurisdiction to provide benefits to the establishing entity's employees in consideration for services rendered to the establishing entity, the final regulations clarify that the fund will be considered an employer fund only. § 1.897(l)–1(c)(2)(ii)(A)(*2*). Finally, the final regulations clarify that an eligible fund is treated as being established by a foreign jurisdiction or an employer notwithstanding that one or more persons that are not the foreign jurisdiction or employer administers the eligible fund. § 1.897(l)–1(c)(2)(ii)(A)(*3*). Thus, an arrangement created pursuant to a foreign government mandate in which private investment managers hold and invest contributions is treated as ''established by'' the foreign government.

b. Employer Fund Established by Foreign Government

One comment indicated that, under the proposed regulations, it was not clear that a QFPF could include pension arrangements established by governmental units in their function as employers, while also noting that such funds could potentially qualify as both a government-established fund and an employer fund. The comment recommended clarifying that an otherwise qualifying pension fund can be established by government employers.

The final regulations clarify that an eligible fund can be established by a governmental unit acting in its capacity as an employer, and specify that such a fund constitutes an employer fund. § 1.897(l)–1(c)(2)(ii)(A).

2. Purpose of Eligible Fund

Proposed § 1.897(l)–1(c)(2)(ii)(B) required that all of the benefits that an eligible fund provides are qualified benefits to qualified recipients (the ''100 percent threshold''), and that at least 85 percent of the present value of the qualified benefits that the eligible fund reasonably expects to provide in the future are retirement or pension benefits (the ''85 percent threshold''). For this purpose, qualified benefits were defined as retirement, pension, or ancillary benefits. Prop. § 1.897(l)–1(d)(8). As discussed in the preamble to the proposed regulations, the Treasury Department and the IRS adopted the 85 percent threshold because it was more administrable and provided more certainty to taxpayers than a subjective standard. The preamble to the proposed regulations indicated that the calculation of the 85 percent threshold would be made on an annual basis, but the proposed regulations did not explicitly identify a period for making this determination.

a. Comments Received

Several comments stated that a strict numerical threshold created a cliff effect and caused uncertainty as to whether an eligible fund would qualify as a QFPF on a consistent basis over several years. Particular concern was expressed by one comment that an annual test may cause disqualification as a QFPF for reasons not entirely within the eligible fund's control, such as when the population of qualified recipients changes. Other comments stated that the present value calculation in the proposed regulations was vague, and one comment stated that the proposed regulations did not clearly identify the frequency with which the reasonable expectation of present value should be calculated.

Based on these observations, several comments suggested that the objective 85 percent threshold should be replaced with a subjective test assessing the fund's purpose. These comments suggested that instead of the 85 percent threshold, a fund's purpose should be determined, considering all the facts and circumstances, by assessing whether the fund was established to provide retirement and pension benefits. Comments also suggested that the 85 percent threshold could be used as a safe harbor; a fund that does not meet that requirement would then have to show that it was established to provide retirement and pension benefits given all the facts and circumstances. One comment suggested another safe harbor whereby any fund that did not meet the 85 percent threshold could still qualify as a QFPF on a proportionate basis by comparing the present value of the retirement and pension benefits the fund reasonably expects to pay to the present value of all benefits it reasonably expects to pay.

Several comments stated that if the 85 percent threshold were retained, the final regulations should provide guidance on the assumptions that may be made in making the present value calculation, including the frequency of the calculation. One comment suggested that forecasts of anticipated future benefits that are already prepared by the eligible fund should be considered reasonable if they are based on data that the fund prepares for general business purposes in accordance with internal procedures. Another comment suggested that reasonable actuarial standards applied in good faith could be a basis for this calculation.

In addition, several comments requested that the final regulations provide relief if a fund does not qualify as a QFPF in a particular year. These comments suggested that a look-back rule allow eligible funds to calculate compliance with the 85 percent threshold over a multi-year period, such as three years, rather than on an annual basis. One comment suggested other alternatives, such as providing a grace period during which a fund could regain compliance as a QFPF without losing its exempt status or the granting of proportionate eligibility as a QFPF.

b. 85 Percent Threshold

The Treasury Department and the IRS continue to believe that the 85 percent threshold is more administrable and provides more certainty than a subjective standard for determining whether an eligible fund is established to provide retirement and pension benefits. The Treasury Department and the IRS also continue to believe that this threshold allows an appropriate margin for nonconforming benefits. Accordingly, the final regulations retain the 100 percent threshold and 85 percent threshold, and do not adopt a subjective standard. § 1.897(l)–1(c)(2)(ii)(B). However, several other comments suggesting further clarity or relief with respect to the 85 percent threshold are incorporated in the final regulations, as described in paragraphs

II.A.2.c. and II.A.2.d. of this Summary of Comments and Explanation of Revisions.

c. Clarifications Regarding Present Valuation

The Treasury Department and the IRS believe that further guidance with respect to determining the present value of benefits that an eligible fund reasonably expects to provide is appropriate. To clarify what this calculation is intended to value, the final regulations state that the eligible fund must measure the present value of benefits to be provided during the entire period during which the fund is expected to be in existence. § 1.897(l)–1(c)(2)(ii)(C)(*1*). Comments articulated different, though potentially overlapping, benchmarks for determining what valuation methods would be considered reasonable—for example, making the determination based on data prepared for general business purposes in accordance with internal procedures or based on actuarial standards applied in good faith. As a result, the Treasury Department and the IRS have decided to use a broad standard that would accommodate all such suggestions by providing that an eligible fund may utilize any reasonable method for determining present value. Id. Although the final regulations are intended to provide flexibility as to the method used for determining present value, the Commissioner may determine that the present valuation requirement is not satisfied if the relevant facts and circumstances indicate that the method used was unreasonable (for example, it may be relevant that the method used results in a percentage calculation of retirement and pension benefits that differs materially from the actual percentage of the retirement and pension benefits provided before the most recent present valuation date). See also § 1.897(l)–1(c)(3)(iii) for the requirement that an eligible fund maintain records to show it meets the requirements of § 1.897(l)–1(c)(2), which is discussed in Part III.B. of this Summary of Comments and Explanation of Revisions.

The Treasury Department and the IRS believe that further guidance is also appropriate with respect to the frequency with which the valuation needs to be made. The final regulations state that such a determination must be made on at least an annual basis. § 1.897(l)–1(c)(2)(ii)(C)(*1*). Thus, for example, if an eligible fund changes its taxable year and has a short taxable year, the eligible fund may make its present value determination for the short taxable year provided that it makes another present value determination within one year. Consistent with the above, the final regulations clarify that an eligible fund must use its most recent present value determination (or its most recent 48-month alternative calculation, described in Part II. A.2.d. of this Summary of Comments and Explanation of Revisions) with respect to dispositions of USRPIs or distributions described in section 897(h) that occur during the twelve months that succeed such present value determination (or 48-month alternative calculation), or until a new present value determination is made, whichever occurs first. § 1.897(l)–1(c)(2)(ii)(C)(*3*).

d. 48-Month Average Alternative

Finally, the Treasury Department and the IRS agree that because unanticipated events may cause a fund to fail the 85 percent threshold in any one year, the fund should still qualify as a QFPF if it shows that is has consistently qualified as such over an extended period. The final regulations therefore adopt a 48-month alternative calculation test as another means to satisfy the 85 percent threshold. § 1.897(l)–1(c)(2)(ii)(C)(*2*). The 48-month alternative calculation test is satisfied if the average of the present values of the retirement and pension benefits the eligible fund reasonably expected to provide over its life, as determined by the valuations performed over the 48 months preceding (and including) the most recent present valuation, satisfies the 85 percent threshold.[2] The determination of such average is based on the values (not percentages) of the qualified benefits the eligible fund reasonably expected to provide. In addition, the 48-month alternative calculation must be determined using a weighted average whereby values are adjusted, if necessary, when the length of valuation periods differs.[3] If an eligible fund has been in existence for less than 48 months, the 48-month alternative calculation is applied to the period the eligible fund has been in existence. The 48-month alternative calculation may be satisfied based on any reasonable determination of the present valuation for any period that starts before the date that the valuation requirements first apply to an organization or arrangement and ends on or before December 29, 2022.

While the comments and related changes to the final regulations described above apply to the 85 percent threshold, similar rules have also been added for consistency with respect to the new category of non-ancillary benefits added to the final regulations and further described in Part II.A.3.b of this Summary of Comments and Explanation of Revisions.

3. Qualified Benefits

a. Retirement and Pension Benefits

The proposed regulations did not provide a definition of retirement and pension benefits. Rather, in the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on whether the regulations should define retirement and pension benefits (for example, with reference to whether there are penalties for early withdrawals).

Although one comment suggested that the term retirement and pension benefits was clear and did not require a definition, most comments requested that the final regulations provide a definition of retirement and pension benefits. Comments recommended several sources that the final regulations might refer to in defining retirement and pension benefits, including the Employee Retirement Income Security Act of 1974 (''ERISA''), U.S. federal income tax law principles (for example, Chapter 1, Subchapter D of the Code and corresponding Treasury Regulations), and income tax treaties. One comment suggested that the final regulations provide separate definitions of retirement and pension benefits based in part on these sources of U.S. tax law. This comment generally proposed defining retirement benefits as those benefits that are paid after reaching a predetermined retirement age that are provided in return for services rendered or contributions made. The comment generally proposed defining pension benefits as those benefits paid after the participant retires due to a proven disability before having reached a predetermined retirement age or paid to surviving beneficiaries if the participant dies before reaching the predetermined retirement age and that are provided in return for services rendered or contributions made.

In response to these comments and to provide greater clarity, the final regulations provide a definition of retirement and pension benefits. Furthermore, the final regulations adopt

[2] The Commissioner may determine that the 48-month alternative calculation is not satisfied if, as discussed in Part II.A.2.c of this Summary of Comments and Explanation of Revisions, the relevant facts and circumstances indicate that the method used to determine present value was unreasonable.

[3] The length of the valuation periods may differ if the eligible fund performs valuations more than once a year.

a broad definition of retirement and pension benefits to ensure that a wide variety of pension funds and foreign laws are accommodated. Thus, the final regulations provide that retirement and pension benefits mean benefits payable to qualified recipients after reaching retirement age under the terms of the eligible fund, or after an event in which the eligible fund recognizes that a qualified recipient is permanently unable to work, and including any such distribution made to a surviving beneficiary of the qualified recipient. § 1.897(l)–1(e)(14). The inclusion of payments of accrued benefits after a specified event that results in a permanent disability (such that the qualified recipient is unable to work) or survivor benefits in the definition of retirement and pension benefits is intended to resolve concerns expressed in comments regarding the potential overlap of such benefits with the benefits listed in the definition of ancillary benefits in proposed § 1.897(l)–1(d)(1) (for example, the proposed definition of ancillary benefits included death and disability benefits). To provide additional clarity regarding the factors that would indicate whether a benefit is a retirement and pension benefit, as well as the distinction between retirement and pension benefits and ancillary benefits, the final regulations also provide that retirement and pension benefits are generally based on contributions and investment performance, as well as factors such as years of service with an employer and compensation received by the qualified recipient. Id. The final regulations do not require retirement and pension benefits to be paid in a particular manner (that is, an annuity versus a lump-sum).

b. Ancillary and Non-Ancillary Benefits

The proposed regulations defined ancillary benefits to mean benefits payable upon the diagnosis of a terminal illness, death benefits, disability benefits, medical benefits, unemployment benefits, or similar benefits. Prop. § 1.897(l)–1(d)(1).

As discussed in Part II.A.2 of this Summary of Comments and Explanation of Revisions, numerous comments requested that the final regulations provide clarifications and incorporate flexibility into the definition of ancillary benefits in light of the cliff effect caused by the use of the 100 percent and 85 percent thresholds to determine whether an eligible fund qualifies as a QFPF. Comments highlighted that the funds may be allowed, or required, to provide certain benefits to its participants or beneficiaries that are not enumerated in the definition of ancillary benefits, such as limited withdrawals to fund a first home. Comments expressed concern that the provision of such a benefit would disqualify the plan from the exemption under section 897(l) because such a benefit is not listed in the definition of ancillary benefits, it is not certain whether such benefit is a ''similar benefit,'' and the numerical thresholds do not allow for the provision of any benefits other than retirement and pension or ancillary benefits. The comments argued that the provision of such benefits should not disqualify the plan from the exemption under section 897(l) because, generally, the provision of such benefits is not the main purpose of the plan and represents only a small portion of the benefits paid out by the plan.

Comments suggested clarifying the scope of the term ''similar benefits'' in the definition of ancillary benefits and expanding the definition of ancillary benefits to include any benefits that are allowed or required to be paid under the laws of the foreign jurisdiction in which the fund is created or organized. Comments also argued that a broad category of ancillary or other benefits tied to the benefits allowed under foreign law is needed to accommodate potential changes to the type of benefits allowed under foreign pension regimes. One comment recommended that such a rule also apply where pension plans and non-qualifying plans providing for other types of benefits are required by foreign law to be pooled into one fund or arrangement, which might otherwise preclude an eligible entity from being a QFPF even though it is predominantly a pension fund.

Several comments recommended that the final regulations allow for a fund to provide a de minimis amount of benefits that are neither retirement and pension benefits nor any of the benefits listed under the definition of ancillary benefits in the proposed regulations. One comment recommended permitting a de minimis percentage of the total benefits provided by a fund (for example, up to five percent) to be any benefits that are not retirement and pension benefits or specifically listed in the definition of ancillary benefits, provided the benefits are required or allowed to be paid under the laws of the foreign jurisdiction where the fund is created or organized. Another comment, citing the broad range of foreign pension arrangements and the lack of clear guidance in certain jurisdictions regarding the potential benefits that can be provided by pension arrangements, suggested a de minimis amount (for example, three percent) of total benefits be allowed for non-ordinary benefits that fall outside the scope of the definition of ancillary benefits.

Several comments also noted that certain of the benefits enumerated in the definition of ancillary benefits in the proposed regulations may be more closely related to the payment of retirement and pension benefits. For example, one comment noted that a participant or beneficiary may be eligible to make withdrawals of their retirement and pension benefits before reaching retirement age upon permanent disability or diagnosis of a terminal illness. These and other types of similar benefits, such as survivor benefits (that is, payments of the beneficiary or participant's retirement and pension benefits to a surviving designee upon the death of the beneficiary or participant), are paid in recognition of past service or because the plan participant is unable to continue working or care for their dependents. In such cases, the benefit is effectively being paid as a retirement and pension benefit, but such benefit could improperly be considered an ancillary benefit under the definition in proposed § 1.897(l)–1(d)(1). Another comment similarly noted that ancillary benefits should not refer to annuities payable to surviving beneficiaries or on early retirement because of a disability and suggested that the definition of ancillary benefits be modified to refer only to certain one-time payments made in connection with disability, terminal illness, or death. One comment noted that many benefits that otherwise might be ancillary benefits, such as medical and disability benefits, are often available principally to retirees. Thus, comments recommended that the definition of ancillary benefits be clarified such that benefits that are more appropriately characterized as retirement and pension benefits are not inappropriately treated as ancillary benefits.

In response to the comments, the final regulations provide additional clarity with respect to the types of benefits permitted to be provided by a QFPF.

First, as discussed in Part II.A.3.a of this Summary of Comments and Explanation of Revisions, the final regulations provide a definition of retirement and pension benefits, which is intended to clarify that certain benefits that may have potentially been categorized as ancillary benefits under the proposed regulations are retirement and pension benefits. This definition should assist in distinguishing retirement and pension benefits from ancillary benefits and, because more

benefits should be characterized as retirement and pension benefits, should lessen the concern that the provision of ancillary benefits will jeopardize qualification as a QFPF.

Second, the final regulations modify the definition of ancillary benefits by providing a more detailed list of specific types of benefits that meet the ancillary benefits definition. § 1.897(l)–1(e)(1). The revised definition clarifies that, in addition to benefits payable upon the diagnosis of a terminal illness, medical benefits, or unemployment benefits, ancillary benefits also include incidental death benefits (for example, funeral expenses), short-term disability benefits, life insurance benefits, and shutdown or layoff benefits. To distinguish between unemployment, shutdown, or layoff benefits that might also be considered retirement and pension benefits, the final regulations state that those types of benefits will be considered ancillary benefits only if they do not continue past retirement age and do not affect the payment of accrued retirement and pension benefits. § 1.897(l)–1(e)(1)(i)(B). In addition, the final regulations clarify what benefits are considered similar to the specifically identified ancillary benefits by indicating that such similar benefits should also be either health-related or unemployment benefits. § 1.897(l)–1(e)(1)(i)(C). Lastly, for the avoidance of doubt, the final regulations resolve any potential overlap between the definitions of retirement and pension benefits and ancillary benefits by providing that if any benefits fall within both definitions, they are only considered to be retirement and pension benefits. § 1.897(l)–1(e)(1)(ii). The Treasury Department and the IRS intend for this rule to have limited application given the definitions of retirement and pension benefits and ancillary benefits provided in the final regulations.

Third, the Treasury Department and the IRS have determined that it is appropriate to permit a limited amount of benefits that are outside the scope of retirement and pension benefits and ancillary benefits. The final regulations therefore allow an eligible fund to provide a limited amount of non-ancillary benefits, which the final regulations define as any benefits provided by the eligible fund as permitted or required under the laws of the foreign jurisdiction in which the fund is established or operates that do not otherwise fall within the definition of retirement and pension benefits or ancillary benefits. § 1.897(l)–1(e)(6). The final regulations provide that no more than five percent of the present value of the qualified benefits the eligible fund reasonably expects to provide to qualified recipients during the entire period during which the eligible fund is expected to be in existence can be non-ancillary benefits. § 1.897(l)–1(c)(2)(ii)(B)(*3*). This measurement of non-ancillary benefits is determined under the same rules that apply to the present valuation of retirement and pension benefits for purposes of the 85 percent threshold, which are described in Part II.A.2 of this Summary of Comments and Explanation of Revisions.

The final regulations incorporate the allowance for non-ancillary benefits into the 100 percent threshold by revising the definition of ''qualified benefits'' in the proposed regulations. Specifically, non-ancillary benefits and ancillary benefits, together with the new definition of retirement and pension benefits, comprise the ''qualified benefits'' that an eligible fund must provide to meet the 100 percent threshold. § 1.897(l)–1(e)(8).

c. Other Distributions and Early Withdrawals

The proposed regulations did not explicitly address how early withdrawals from a QFPF should be treated for purposes of determining the amount of retirement or other benefits paid by the QFPF. Specifically, the proposed regulations did not discuss how to treat withdrawals made from one retirement plan and rolled over into a different retirement plan, early withdrawals that certain plans may permit in accordance with country-specific laws, or loans made by an eligible fund. One comment suggested that rollover distributions should not be considered as benefits paid by a plan and thus should be excluded when determining an eligible fund's eligibility as a QFPF. The comment also recommended that in-service plan withdrawals or loans should not be taken into account in calculating the benefits paid by an eligible fund provided that in-service withdrawals before retirement age are permissible under the plan terms or relevant law.

The Treasury Department and the IRS have considered these recommendations and generally agree that the types of withdrawals described above should not be taken into account when calculating the 100 percent threshold, the 85 percent threshold, or the limitation on non-ancillary benefits. As a result, the final regulations add three categories of distributions that are excluded when making these determinations. § 1.897(l)–1(c)(2)(ii)(D).

The first category is a loan to a qualified recipient pursuant to terms set by the eligible fund. Because there is an expectation of repayment, these types of loans should not be included when making threshold benefit determinations. This category, however, excludes a loan that a qualified recipient is not required to repay, in full or in part, upon default (which would generally constitute the provision of a non-ancillary benefit), unless such a default is subject to tax and penalty in a foreign jurisdiction.

The second category is a distribution permitted under the laws of the foreign jurisdiction in which the eligible fund is established or operates and made before the participant or beneficiary reaches the retirement age as determined under relevant foreign laws, but only if the distribution is to a qualified holder or other retirement or pension arrangement subject to similar distribution or tax rules under the laws of the foreign jurisdiction. Such rollover distributions are simply shifting funds between one eligible fund and another similar fund (even if such fund does not qualify as a QFPF) and thus should also be excluded when making the 100 percent and 85 percent threshold determinations.

The third category is a withdrawal of funds before the participant or beneficiary reaches retirement age to satisfy a financial need under principles similar to the U.S. hardship distribution rules permitted under the laws of the foreign jurisdiction in which the eligible fund is established or operates, provided the distribution (or at least the portion of the distribution exceeding basis) is subject to tax and penalty in such foreign jurisdiction. Because the qualified recipient bears some or all of the financial burden with regard to such hardship withdrawals, they are excluded when making threshold benefit determinations.

4. Qualified Recipient

Proposed § 1.897(l)–1(c)(2)(ii)(B)(*1*) required that all the benefits that an eligible fund provides be qualified benefits to qualified recipients. With respect to a government-established fund, proposed § 1.897(l)–1(d)(12)(i)(A) defined a qualified recipient as any person eligible to be treated as a participant or beneficiary of such eligible fund and any person designated by such person to receive qualified benefits. Thus, the determination of whether a person was a qualified recipient of a government-established fund was made without regard to an individual's status as a current or former employee. With respect to an employer fund, proposed § 1.897(l)–1(d)(12)(i)(B) defined a qualified recipient as a current

or former employee or any person designated by such current or former employee to receive qualified benefits.

Several comments stated that the proposed regulations were too restrictive because they did not allow for the possible participation of individuals in an employer fund if they were neither current nor former employees, as allowed in some countries. The comments noted, however, that individuals who have never been employees represent only a minority of members in any fund. One comment suggested that the definition of qualified recipient be expanded accordingly to include any individual allowed to participate in an eligible fund under the laws of the foreign jurisdiction in which the fund is created or organized. Another comment requested that the definition of qualified recipient include a de minimis threshold for members of an eligible fund that are neither current nor former employees. For example, an eligible fund could qualify for the section 897(l) exemption (assuming all other requirements were met) if more than 70 percent of its members were current or former employees measured annually. The comment also recommended that spouses of eligible participants or beneficiaries should be explicitly identified as qualified recipients as defined in proposed § 1.897(l)–1(d)(12).

Another comment stated that, as to government-established funds, the term qualified recipient could potentially be read as encompassing a broad group of participants in other types of government programs beyond just pension funds. The comment requested that the final regulations make explicit that a recipient (or person designating the recipient) must both have been employed and be receiving benefits by reason of his or her employment. Finally, one comment noted that the proposed regulations appropriately treated a self-employed individual as both an employer and an employee. Prop. § 1.897(l)–1(c)(2)(ii)(C). The comment requested that proposed § 1.897(l)–1(e), example 1, be altered to clarify that the retirement benefits provided under the facts of the example were provided as a result of citizens' services as employed or self-employed individuals.

The Treasury Department and the IRS agree that the proposed regulations may unnecessarily restrict arrangements, permitted in certain countries, that allow for the participation of individuals who were never employees in an employer fund. Further, the Treasury Department and the IRS understand that such individuals represent only a minority of members in any fund. The Treasury Department and the IRS believe that unlimited or significant participation by individuals who were never employees or their designees would be inappropriate. The final regulations therefore allow individuals who were never employees to constitute up to five percent of participants in plans established by employers (and therefore to be treated as qualified recipients). § 1.897(l)–1(e)(12)(i)(C). The final regulations also include spouses of current or former employees in the definition of qualified recipients. § 1.897(l)–1(e)(12)(i)(B).

The Treasury Department and the IRS do not believe that further changes are necessary to (1) make explicit that a qualified recipient (or person designating the recipient) with respect to a government-established fund must both have been employed and be receiving benefits by reason of his or her employment, or (2) to modify proposed § 1.897(l)–1(e), example 1, to state that the retirement and pension benefits provided by the government-established fund were provided as a result of citizens' services as employed or self-employed individuals. As provided in the proposed regulations, a government-established fund must be established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees as a result of services rendered by such employees to their employers, but may include participants on a basis broader than an employee relationship. The comments seeking to narrow the scope of qualified recipients for government-established funds are inconsistent with the request to broaden the definition of a qualified recipient with respect to an employer fund to include (within limits) individuals who were never employees. At the same time, the Treasury Department and the IRS believe that an explicit connection between the work of an employee and the qualified benefits provided by an eligible fund is reflected in the final regulations through the definition of a government-established fund, as well as the requirement that all eligible funds must reasonably expect to provide 85 percent retirement and pension benefits, which are defined in the final regulations at § 1.897(l)–1(e)(14). These requirements provide an appropriate safeguard to ensure that government programs other than retirement and pension programs do not form the basis for exemption from tax under section 897(l). Finally, the Treasury Department and the IRS believe that the rule reflected in § 1.897(l)–1(c)(2)(ii)(E)(*1*) (previously at proposed § 1.897(l)–1(c)(2)(ii)(C)(*1*)), which explicitly states that a self-employed individual is considered both an employer and employee, makes adding a reference to self-employed individuals in proposed § 1.897(l)–1(e), example 1, unnecessary.

B. Regulation and Information Reporting

The proposed regulations provided that an eligible fund satisfies the information reporting requirement in section 897(l)(2)(D) only if the eligible fund annually provides to the relevant tax authorities in the foreign country in which the fund is established or operates the amount of qualified benefits provided to each qualified recipient by the eligible fund (if any), or such information is otherwise available to those authorities. Prop. § 1.897(l)–1(c)(iv)(B). An eligible fund is not treated as failing to satisfy such requirement if the eligible fund is not required to provide information to the relevant tax authorities in a year in which no qualified benefits are provided to qualified recipients. Id. An eligible fund is also treated as satisfying the information reporting requirement in section 897(l)(2)(D) only if the eligible fund is required to provide the information required by proposed § 1.897(l)–1(c)(iv)(B), or such information is otherwise available, to one or more governmental units. Prop. § 1.897(l)–1(c)(iv)(C).

One comment highlighted that the rules in the proposed regulations are inadvertently inconsistent when an eligible fund is required by foreign law to provide information to a governmental unit (satisfying proposed § 1.897(l)–1(c)(iv)(C)), but does not actually provide such information (not fulfilling proposed § 1.897(l)–1(c)(iv)(B)), and requested that the final regulations clarify how these provisions are intended to work.

Proposed § 1.897(l)–1(c)(iv)(B) and proposed § 1.897(l)–1(c)(iv)(C) were not intended to function as two separate conditions that were required to be met. Rather, the provisions were intended to provide flexibility to eligible funds that provided the relevant information to tax authorities or other governmental units. To clarify this intent, the final regulations combine the two separate provisions into a single provision (§ 1.897(l)–1(c)(iv)(A)). Thus, the information reporting requirement in section 897(l)(2)(D) is satisfied if a fund annually provides information about the amount of qualified benefits provided to qualified recipients to the relevant tax authorities or other relevant governmental units, or such information

is otherwise available to the relevant tax authorities or other relevant governmental units. § 1.897(l)–1(c)(iv)(A). A fund will not fail to satisfy such requirement if it is not required to provide information to the relevant tax authorities or other relevant governmental units in a year in which no qualified benefits are provided to qualified recipients. Id.

C. Subnational Tax Regime

For purposes of the requirement that a QFPF be subject to preferential tax treatment, the proposed regulations provided that, for purposes of section 897(l)(2)(E), references to a foreign country do not include references to a state, province, or political subdivision of a foreign country. The preamble to the proposed regulations explained that subnational taxes generally constitute a minor component of an entity's overall tax burden in a foreign jurisdiction and therefore should not satisfy the requirement of section 897(l)(2)(E) when such preference had only a minimal impact on reducing the fund's overall tax burden.

Upon further consideration, the Treasury Department and the IRS have determined that, to the extent the subnational tax law is covered under an income tax treaty with the United States, it should constitute a sufficient component of the foreign jurisdiction's taxation regime to be able to satisfy the requirement of section 897(l)(2)(E). Accordingly, the final regulations maintain the approach that subnational taxes generally do not satisfy the requirement of section 897(l)(2)(E), but provide that those taxes can satisfy the requirement of section 897(l)(2)(E) if they are covered taxes under an income tax treaty between that foreign jurisdiction and the United States. See § 1.897(l)–1(c)(2)(v)(E).

III. Other Comments and Revisions

A. Withholding Rules

1. Withholding on Foreign Partnerships

Comments requested that the final regulations allow QFPFs that hold interests in USRPIs through foreign partnerships, which are not qualified holders under proposed § 1.897(l)–1(d)(11) because they cannot be QCEs, to avoid withholding by providing a certification of non-foreign status (including on a Form W–8EXP). The comments highlighted the difference in withholding when a QFPF invests through a foreign partnership, which would result in withholding (even if the foreign partnership was wholly owned by QFPFs), as opposed to through a foreign corporation that constitutes a QCE or a domestic partnership, neither of which would result in withholding under section 1445. One comment recommended that, for purposes of withholding under section 1445, the final regulations should implement rules similar to the regulations that implement the withholding regime under section 1446(f), which includes a form of look-through rule. Another comment recommended that the final regulations provide that a foreign partnership that is wholly owned by QFPFs either be treated as a QCE, and therefore a qualified holder, or otherwise be excluded from the definition of a foreign person under section 1445 such that a foreign partnership could certify its non-foreign status to a transferee.

The Treasury Department and the IRS agree that a foreign partnership that is held entirely by qualified holders should not be subject to withholding under section 1445 because the ultimate owners should qualify in full for the exemption under section 897(l). Accordingly, the final regulations provide that a qualified holder (under § 1.897(l)–1(d)) and a foreign partnership all of the interests of which are held by qualified holders, including through one or more partnerships, may certify its status as a withholding qualified holder that is not treated as a foreign person for purposes of withholding under section 1445 (and section 1446, as relevant). § 1.1445–1(g)(11). To the extent any non-qualified holders hold interests in a foreign partnership, such foreign partnership does not qualify as a withholding qualified holder. However, qualified holders who hold interests in USRPIs through a foreign partnership that is not a withholding qualified holder would still be eligible for the section 897(l) exemption on their distributive share of FIRPTA gains. Under the existing regulations in § 1.1445–3, a transferor may, in appropriate cases, reduce withholding by obtaining a withholding certificate from the IRS.

2. Documentation Requirements

The proposed regulations permitted a qualified holder to certify that it is exempt from withholding under section 1445 by providing a certification of non-foreign status. The proposed regulations also stated that the IRS intended to revise Form W–8EXP, ''Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding or Reporting,'' to permit qualified holders to be exempt from withholding under section 1445 by establishing their status under section 897(l). Prop. §§ 1.1445–2(b)(2), 1.1445–2(b)(v), 1.1445–5(b)(3)(ii), and 1.1445–8(e).

Under the final regulations, a withholding qualified holder may submit a certification of non-foreign status to establish withholding qualified holder status for purposes of section 1445(a) pursuant to § 1.1445–2(b)(2)(i), with certain modifications. Specifically, the requirements under § 1.1445–2(b)(2)(i) are modified to require the transferor to state that it is not treated as a foreign person because it is a withholding qualified holder, and to permit the transferor to provide its foreign taxpayer identification number if it does not have a U.S. taxpayer identification number. The final regulations also clarify that a Form W–8EXP is a type of certification of non-foreign status within the meaning of § 1.1445–2(b)(2)(i). Accordingly, the Form W–8EXP is subject to the general rules pertaining to certifications of non-foreign status, such as the period for retaining the certification in § 1.1445–2(b)(3) and the rules pertaining to liability of agents in § 1.1445–4. Because the final regulations require a transferor to represent its status as a withholding qualified holder on the certification of non-foreign status, the final regulations do not permit a transferor to submit a Form W–9, ''Request for Taxpayer Identification Number and Certification,'' to establish its status as a withholding qualified holder. See § 1.1445–2(b)(2)(vi). Before the release of revised Form W–8EXP, a certification of non-foreign status described in § 1.1445–2(b)(2)(i) (but not a Form W–9) should be used by a transferor to establish its status as a withholding qualified holder for purposes of section 1445. Once revised, a withholding qualified holder may certify its non-foreign status with either a certification of non-foreign status described in § 1.1445–2(b)(2)(i) (but not a Form W–9) or a Form W–8EXP.

The final regulations provide similar rules for certifications of non-foreign status that establish withholding qualified holder status for purposes of section 1445(e) withholding. See §§ 1.1445–5(b)(3)(ii) and 1.1445–8(e).

3. Coordination With 1441 and 1442

The proposed regulations provided that distributions made by a United States real property holding company (''USRPHC'') or qualified investment entity (''QIE'') to a qualified holder are not subject to the coordination rules under § 1.1441–3(c)(4) and are instead subject only to the requirements of section 1441. Prop. § 1.1441–3(c)(4)(iii). Because a qualified holder is treated as a foreign person for purposes of section

1441, but not for purposes of 1445, the proposed rule was intended to subject a distribution to a qualified holder exclusively to the rules in section 1441 to determine if withholding applies.

The Treasury Department and the IRS have determined that, for greater clarity, certain changes should be made to proposed § 1.1441–3(c)(4) to reach the result intended by the proposed regulations. Rather than provide that the coordination rules under § 1.1441–3(c)(4) do not apply to qualified holders, the final regulations amend the coordination rules to provide that withholding qualified holders are not subject to section 1445 on distributions from USRPHCs that are not treated as dividends (for example, a distribution that is treated as gain from the sale or exchange of property under section 301(c)(3)) and on distributions from REITs or other QIEs that are capital gain dividends that are treated as gain attributable to the sale or exchange of USRPIs. § 1.1441–3(c)(4)(i)(B)(*2*), § 1.1441–3(c)(4)(i)(C). Dividends from USRPHCs and dividends from REITs or other QIEs that are not capital gain dividends continue to be subject to withholding under section 1441. § 1.1441–3(c)(4)(i)(A), § 1.1441–3(c)(4)(i)(C). Section 1.1441–3(c)(4)(i) is also clarified to provide that a USRPHC (other than a REIT or other QIE) satisfies its obligations under sections 1441 and 1445 by following either § 1.1441–3(c)(4)(i)(A) or § 1.1441–3(c)(4)(i)(B), but a USRPHC that is a REIT or other QIE must follow the coordination provision in § 1.1441–3(c)(4)(i)(C). The final regulations also clarify that, to the extent a capital gain dividend from a REIT or other QIE is excluded from withholding under section 1445 because it is made with respect to stock that is regularly traded on an established securities market in the United States to an individual or corporation that did not own more than 5 percent of the stock (see the second sentence of section 897(h)(1)), withholding will apply under section 1441. See sections 852(b)(3)(E) and 857(b)(3)(E); § 1.1441–3(c)(4)(i)(C).

B. Additional Requests Regarding Qualification Under Section 897(l) and Recordkeeping

Comments recommended that the Treasury Department and the IRS allow foreign entities that believe they are QFPFs or QCEs to apply for letter rulings on their qualifications under section 897(l). While the comment acknowledged the need for administrable standards, it noted that, in light of the wide range of possible arrangements under foreign law, certain funds that a ''reasonable observer'' would consider a QFPF could be excluded. Another comment recommended that the Treasury Department and the IRS adopt a ''white list'' regime (similar to the United Kingdom's Qualifying Recognized Overseas Pension Scheme) whereby pension plan regimes regulated in a list of countries could automatically be treated as QFPFs or be subject to a reduced set of qualifying requirements.

The final regulations do not adopt either of these recommendations. The Treasury Department and the IRS do not believe that a private letter ruling program specific to QFPF qualification or a ''white list'' regime is necessary, as the final regulations provide flexible standards such that a wide variety of funds can constitute eligible funds.

Another comment requested that the final regulations provide that, to the extent life insurance companies or other investment companies hold and invest assets of one or more QFPFs, those life insurance companies or investment companies themselves should qualify as QFPFs. To qualify as a QFPF, an eligible fund must satisfy all of the requirements in § 1.897(l)–1(c)(2), and the final regulations do not adopt any special rule for life insurance companies or investment companies, including whether such assets are held as part of an arrangement comprising a QFPF.

In addition, the final regulations require an eligible fund to maintain records consistent with section 6001 to show that it is eligible for the exemption under section 897(l) and which the Commissioner may request upon examination. The recordkeeping requirement is consistent with general recordkeeping requirements for U.S. taxpayers and is appropriate in light of the flexible standards provided in the final regulations.

C. Clarification With Respect to the Applicability of the Section 897(l) Regulations

These regulations reflect the particular policies and objectives underlying section 897(l) (as opposed to other areas of tax law that relate to pension funds). To clarify this, § 1.897(l)–1(a) provides that the definitions and requirements in § 1.897(l)–1 apply only for purposes of the regulations themselves, including applicable cross-references from other sections, and that no inference is to be drawn with respect to the definitions and requirements in § 1.897(l)–1, including with respect to the meaning of a pension fund, for any other purpose.

IV. Applicability Dates

The final regulations apply with respect to dispositions of USRPIs and distributions described in section 897(h) occurring on or after December 29, 2022. However, in accordance with the applicability date incorporated in § 1.897(l)–1(g)(2), the rule in § 1.897(l)–1(b)(1), the qualified holder rule in § 1.897(l)–1(d) (previously proposed § 1.897(l)–1(d)(11)), as well as the definitions of governmental unit (§ 1.897(l)–1(e)(5)) and QCE (§ 1.897(l)–1(e)(9)) apply with respect to dispositions of USRPIs and distributions described in section 897(h) occurring on or after June 6, 2019, the date the proposed regulations were filed with the **Federal Register**. See section 7805(b)(1)(B). An eligible fund may choose to apply the final regulations with respect to dispositions and distributions occurring on or after December 18, 2015, and before the applicability date of the final regulations, if the eligible fund, and all persons bearing a relationship to the eligible fund described in section 267(b) or 707(b), consistently apply the rules in the final regulations in their entirety for all relevant years. An eligible fund that chooses to apply the final regulations before their applicability date must apply the principles of § 1.897(l)–1(d)(4)(i) to any valuation requirements with respect to dates preceding December 18, 2015.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (''PRA''), information collection requirements contained in these final regulations are in §§ 1.1441–3, 1.1445–2, 1.1445–5, 1.1445–8, and 1.1446–1. These collections of information retain the collections of information in the proposed regulations, with a refinement to § 1.1441–3(c)(4) to clarify that the portions of distributions made by a USRPHC or QIE to a withholding qualified holder (as defined in § 1.1445–1(g)(11)) that are attributable to the disposition of USRPIs are not subject to section 1445 and that the portions of distributions made by a USRPHC or QIE

to a withholding qualified holder that are not attributable to the disposition of a USRPI are subject to section 1441. No written comments regarding the information collection requirements were received in response to the solicitation of comments in the proposed regulations.

A. Information Collections Contained in § 1.1441–3(c)(4)(iii)

The final regulations provide that dividends from a USRPHC and dividends from REITs and other QIEs that are not capital gain dividends to a withholding qualified holder are subject only to the requirements of section 1441. § 1.1441–3(c)(4)(i), § 1.1441–3(c)(4)(i)(B)(*2*), § 1.1441–3(c)(4)(i)(C). The final regulations further provide that withholding qualified holders are not subject to section 1445 on distributions from USRPHCs that are not treated as dividends (for example, a distribution that is treated as gain from the sale or exchange of property under section 301(c)(3)) and on distributions from REITs or QIEs that are capital gain dividends that are treated as gain attributable to the sale or exchange of USRPIs. § 1.1441–3(c)(4)(i)(B)(*2*), § 1.1441–3(c)(4)(i)(C).

A USRPHC or QIE making a distribution to a qualified holder would be required to report the distribution on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' and file Form 1042, ''Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.'' For purposes of reporting the portion of the distributions that are exempt from section 1445 withholding, the IRS revised Form 1042–S to include an exemption code designating payments that are exempt under section 897(l). No revisions are being made to Form 1042 in connection with payments that are exempt under section 897(l).

For purposes of the PRA, the reporting burden associated with § 1.1441–3(c)(4) will be reflected in the PRA submissions for Form 1042 (OMB control numbers 1545–0123 for business filers and 1545–0096 for all other Form 1042 filers) and Form 1042–S (OMB control number 1545–0096).

B. Information Collections in §§ 1.1445–2, 1.1445–5, 1.1445–8, and 1.1446–1

Sections 1.1445–2, 1.1445–5, 1.1445–8, and 1.1446–1 would require a qualified holder wishing to claim an exemption under section 897(l) to provide a withholding agent with either a Form W–8EXP or a certificate of non-foreign status containing similar information to the Form W–8EXP. The IRS plans to revise Form W–8EXP for use by qualified holders. For purposes of the PRA, the reporting burden associated with §§ 1.1445–2, 1.1445–5, 1.1445–8, and 1.1446–1, will be reflected in the PRA submission for Form W–8EXP (OMB control number 1545–1621).

The reporting burdens associated with the information collections in the final regulations are included in the aggregate burden estimates for OMB control numbers 1545–0096 (which represents a total estimated burden time for all forms and schedules of 6.46 million hours) and 1545–1621 (which represents a total estimated burden time, including all other related forms and schedules for other filers, of 30.5 million hours). The overall burden estimates for the OMB control numbers are aggregate amounts that relate to the entire package of forms associated with the applicable OMB control number and will in the future include, but not isolate, the estimated burden of the tax forms that will be or have been revised as a result of the information collections in the final regulations. These numbers are therefore unrelated to the future calculations needed to assess the burden imposed by the final regulations. These burdens have been reported for other regulations related to the taxation of cross-border income, and the Treasury Department and the IRS urge readers to recognize that these numbers are duplicates and to guard against overcounting the burden that international tax provisions impose.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. This certification is based on the fact that the final regulations affect foreign pension funds, including sovereign funds, which are entities that are created or organized outside of the United States, with no place of business in the United States, and which operate primarily outside of the United States. Accordingly, the entities affected by the final regulations are not considered small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations (REG–109826–17) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small businesses and no comments were received.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The final regulations do not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The final regulations do not have federalism implications, do not impose substantial direct compliance costs on state and local governments, and do not preempt state law within the meaning of the Executive order.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Drafting Information

The principal authors of these final regulations are Arielle Borsos and Milton Cahn, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.897(l)–1 also issued under 26 U.S.C. 897(l).

* * * * *

■ **Par. 2.** Section 1.897(l)–1 is added to read as follows:

§ 1.897(l)–1 Exception for interests held by foreign pension funds.

(a) *Scope and overview.* This section provides rules regarding the exception from section 897 for qualified holders. The definitions and requirements in this section apply only for purposes of this section (including as applicable by cross-reference from other sections), and no inference is to be drawn with respect to the definitions and requirements in this section, including with respect to the meaning of a pension fund, for any other purpose. Paragraph (b) of this section provides the general rule excepting qualified holders from section 897. Paragraph (c) of this section provides the requirements that an eligible fund must satisfy to be treated as a qualified foreign pension fund. Paragraph (d) of this section provides the requirements that a qualified foreign pension fund or a qualified controlled entity must satisfy to be treated as a qualified holder. Paragraph (e) of this section provides definitions. Paragraph (f) of this section provides examples illustrating the application of the rules of this section. Paragraph (g) of this section provides applicability dates. For rules applicable to a qualified foreign pension fund or qualified controlled entity claiming an exemption from withholding under chapter 3, see generally §§ 1.1441–3, 1.1445–2, 1.1445–5, 1.1445–8, 1.1446–1, and 1.1446–2.

(b) *Exception from section 897*—(1) *In general.* Gain or loss of a qualified holder from the disposition of a United States real property interest, including gain from a distribution described in section 897(h), is not subject to section 897(a).

(2) *Limitation.* Paragraph (b)(1) of this section applies solely with respect to gain or loss that is attributable to one or more qualified segregated accounts maintained by a qualified holder.

(c) *Qualified foreign pension fund requirements*—(1) *In general.* An eligible fund is a qualified foreign pension fund if it satisfies the requirements of this paragraph (c). Paragraph (c)(2) of this section provides rules regarding the application of the requirements of section 897(l)(2) to an eligible fund. Paragraph (c)(3) of this section provides rules on the application of the requirements in paragraph (c)(2) of this section, including rules regarding the application of those requirements to an eligible fund that is an organization or arrangement and rules regarding recordkeeping.

(2) *Applicable requirements*—(i) *Created or organized.* An eligible fund must be created, organized, or established under the laws of a foreign jurisdiction. For purposes of this paragraph (c)(2)(i), a governmental unit is treated as created or organized in the foreign jurisdiction with respect to which it is, or is a part of, the foreign government.

(ii) *Establishment of eligible fund*—(A) *General requirement*—(*1*) *Purpose of and parties establishing eligible fund.* An eligible fund must be established —

(*i*) By, or at the direction of, the foreign jurisdiction in which it is created or organized to provide retirement and pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees as a result of services rendered by such employees to their employers; or

(*ii*) By one or more employers (including a governmental unit in its capacity as an employer) to provide retirement and pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees in consideration for services rendered by such employees to such employers.

(*2*) *Identification of type of eligible fund.* An eligible fund that is described in both paragraphs (c)(2)(ii)(A)(*1*)(*i*) and (*ii*) of this section shall be treated solely as described in the latter paragraph.

(*3*) *Role of parties other than the foreign jurisdiction or employer.* For purposes of paragraph (c)(2)(ii)(A)(*1*) of this section, the determination of whether an eligible fund is established by, or at the direction of, a foreign jurisdiction or established by an employer is made without regard to whether one or more persons that are not the foreign jurisdiction or employer administer or otherwise provide services with regard to the eligible fund (including holding assets in a qualified segregated account as part of or on behalf of the eligible fund).

(B) *Established to provide retirement or pension benefits.* An eligible fund is established to provide retirement or pension benefits for purposes of the general requirement in paragraph (c)(2)(ii)(A) of this section if—

(*1*) All of the benefits that an eligible fund provides are qualified benefits provided to qualified recipients;

(*2*) At least 85 percent of the present value of the qualified benefits that the eligible fund reasonably expects to provide to qualified recipients in the future are retirement and pension benefits; and

(*3*) No more than five percent of the present value of the qualified benefits the eligible fund reasonably expects to provide to qualified recipients in the future are non-ancillary benefits.

(C) *Present valuation.*—(*1*) *In general.* For purposes of satisfying the requirements in paragraphs (c)(2)(ii)(B)(*2*) and (*3*) of this section, an eligible fund must determine, on at least an annual basis, the present value of the qualified benefits that the eligible fund reasonably expects to provide to qualified recipients during the entire period during which the eligible fund is expected to be in existence. An eligible fund may utilize any reasonable method for performing the present valuation.

(*2*) *48-month average alternative calculation.* An eligible fund that does not satisfy the requirements of paragraph (c)(2)(ii)(B)(*2*) or (*3*) of this section based on the present value determination under paragraph (c)(2)(ii)(C)(*1*) of this section may satisfy the requirements of paragraph (c)(2)(ii)(B)(*2*) or (*3*) of this section based on the alternative calculation in this paragraph (c)(2)(ii)(C)(*2*). The alternative calculation in this paragraph is satisfied if the average of the present values of the future qualified benefits that the eligible fund reasonably expected to provide, as determined during the 48-month period preceding (and including) the most recent present valuation determination, satisfies the requirements of paragraph (c)(2)(ii)(B)(*2*) or (*3*) of this section, respectively. The determination of such average must be based on the valuations described in paragraph (c)(2)(ii)(C)(*1*) of this section that were carried out during the 48-month period preceding (and including) the most recent present value determination, and must use the values (not percentages) of the qualified benefits the eligible fund reasonably expected to provide. The determination described in this paragraph must be calculated using a weighted average

whereby values are adjusted if the relevant valuations are applicable for different periods (as described in paragraph (c)(2)(ii)(C)(*3*) of this section) because an eligible fund performs valulations more frequently than on an annual basis. If an eligible fund has been in existence for less than 48 months, this paragraph (c)(2)(ii)(C)(*2*) is applied to the period that the eligible fund has been in existence. The alternative calculation in this paragraph (c)(2)(ii)(C)(*2*) may be satisfied based on any reasonable determination of the present valuation described in paragraph (c)(2)(ii)(C)(*1*) of this section for any period that starts before the date that the requirements of paragraph (c)(2)(ii)(C) of this section first apply to an organization or arrangement and ends on or before December 29, 2022.

(*3*) *Application of present valuation.* An eligible fund must use the present value determination made as of the most recent valuation under paragraph (c)(2)(ii)(C)(*1*) of this section or the alternative calculation provided in paragraph (c)(2)(ii)(C)(*2*) of this section (to the extent the eligible fund did not satisfy the requirements of paragraphs (c)(2)(ii)(B)(*2*) and (*3*) of this section in the most recent valuation) for purposes of meeting the requirements in paragraphs (c)(2)(ii)(B)(*2*) and (*3*) of this section with respect to dispositions of United States real property interests or distributions described in section 897(h) occurring in the twelve months succeeding the most recent valuation, or until a new present value determination is made, whichever occurs first.

(D) *Certain distributions from eligible funds.* The following distributions are not taken into account for purposes of determining whether an eligible fund satisfies the requirements of paragraph (c)(2)(ii)(B) of this section—

(*1*) A loan to a qualified recipient pursuant to terms set by the eligible fund (other than a loan with respect to which a qualified recipient defaults and is not required to repay in whole or part, unless the default is subject to tax and penalty in such foreign jurisdiction);

(*2*) A distribution (as permitted by the laws of the foreign jurisdiction in which the eligible fund is established or operates) made before the participant or beneficiary reaches the retirement age (as determined under the relevant foreign laws), provided that the distribution is to a designee that is a qualified holder or to another arrangement subject to similar distribution or tax rules under the laws of the foreign jurisdiction; and

(*3*) A withdrawal of funds before the participant or beneficiary reaches the retirement age (as determined under the relevant foreign laws) to satisfy a financial need (under principles similar to the U.S. hardship distribution rules, see § 1.401(k)–1(d)(3)) as permitted under the laws of the foreign jurisdiction in which the eligible fund is established or operates, provided the distribution (or at least the portion of the distribution exceeding basis) is subject to tax and penalty in such foreign jurisdiction.

(E) *Certain employers and employees.* For purposes of this section, the following rules apply—

(*1*) A self-employed individual is treated as both an employer and an employee;

(*2*) Employees of an individual, trust, corporation, or partnership that is a member of an employer group are treated as employees of each member of the employer group that includes the individual, trust, corporation, or partnership; and

(*3*) An eligible fund established by a trade union, professional association, or similar group, either alone or in combination with the employer or group of employers, is treated as established by any employer that funds, in whole or in part, the eligible fund.

(iii) *Single participant or beneficiary*—(A) *In general.* An eligible fund may not have a single qualified recipient that has a right to more than five percent of the assets or income of the eligible fund.

(B) *Constructive ownership.* For purposes of paragraph (c)(2)(iii)(A) of this section, an individual is considered to have a right to the assets or income of an eligible fund to which any person who bears a relationship to the individual described in section 267(b) or 707(b) has a right.

(iv) *Regulation and information reporting*—(A) *In general.* The eligible fund must be subject to government regulation and annually provide to the relevant tax authorities (or other relevant governmental units) in the foreign jurisdiction in which the eligible fund is established or operates information about the amount of qualified benefits (if any) provided to each qualified recipient by the eligible fund, or such information must otherwise be available to the relevant tax authorities (or other relevant governmental units). An eligible fund is not treated as failing to satisfy the requirement of this paragraph (c)(2)(iv)(A) as a result of the eligible fund not being required to provide information to the relevant tax authorities (or other relevant governmental units) in a year in which no qualified benefits are provided to qualified recipients.

(B) *Treatment of certain eligible funds established by foreign jurisdictions.* An eligible fund that is described in paragraph (c)(2)(ii)(A)(*1*)(*i*) of this section is deemed to satisfy the requirements of paragraph (c)(2)(iv)(A) of this section.

(v) *Tax treatment*—(A) *In general.* The tax laws of the foreign jurisdiction in which the eligible fund is established or operates must provide that, due to the status of the eligible fund as a retirement or pension fund, either—

(*1*) Contributions to the eligible fund that would otherwise be subject to tax under such laws are deductible or excluded from the gross income of the eligible fund or taxed at a reduced rate; or

(*2*) Taxation of any investment income of the eligible fund is deferred or excluded from the gross income of the eligible fund or such income is taxed at a reduced rate.

(B) *Income subject to preferential tax treatment.* An eligible fund is treated as satisfying the requirement of paragraph (c)(2)(v)(A) of this section in a taxable year if, under the tax laws of the foreign jurisdiction in which the eligible fund is established or operates—

(*1*) At least 85 percent of the contributions to the eligible fund are subject to the tax treatment described in paragraph (c)(2)(v)(A)(*1*) of this section, or

(*2*) At least 85 percent of the investment income of the eligible fund is subject to the tax treatment described in paragraph (c)(2)(v)(A)(*2*) of this section.

(C) *Income not subject to tax.* An eligible fund is treated as satisfying the requirement of paragraph (c)(2)(v)(A) of this section if the eligible fund is exempt from the income tax of the foreign jurisdiction in which it is established or operates or the foreign jurisdiction in which it is established or operates has no income tax.

(D) *Other preferential tax regimes.* An eligible fund that does not receive the tax treatment described in either paragraph (c)(2)(v)(A)(*1*) or (*2*) of this section is nonetheless treated as satisfying the requirement of paragraph (c)(2)(v)(A) of this section if the eligible fund establishes that each of the conditions described in paragraphs (c)(2)(v)(D)(*1*) and (*2*) of this section is satisfied:

(*1*) Under the tax laws of the foreign jurisdiction in which the eligible fund is established or operates, the eligible fund is subject to a preferential tax regime due to its status as a retirement or pension fund; and

(*2*) The preferential tax regime described in paragraph (c)(2)(v)(D)(*1*) of

this section has a substantially similar effect as the tax treatment described in paragraphs (c)(2)(v)(A)(*1*) or (*2*) of this section.

(E) *Tax law of subnational jurisdictions.* Solely for purposes of this paragraph (c)(2)(v), a reference to the tax law of a foreign jurisdiction includes the tax law of a political subdivision or other local authority of a foreign jurisdiction, provided that income taxes imposed under the subnational tax law are treated as covered taxes under an income tax treaty between that foreign jurisdiction and the United States.

(3) *Operating rules*—(i) *Rules on the application of the requirements in paragraph (c)(2) of this section*—(A) *Organizations or arrangements.* An organization or arrangement is treated as a single entity for purposes of determining whether the requirements of paragraph (c)(2) of this section are satisfied, except that each person or governmental unit that is part of or party to an organization or arrangement must satisfy the requirement of paragraph (c)(2)(i) of this section.

(B) *Relevant income, assets, and functions.* The determination of whether an eligible fund satisfies the requirements of paragraph (c)(2) of this section is made solely with respect to the assets and income of the eligible fund held in one or more qualified segregated accounts, the qualified benefits funded by the qualified segregated accounts, the information reporting and regulation related to the qualified segregated accounts, and the qualified recipients whose benefits are funded by the qualified segregated accounts. For this purpose, all assets held by an eligible fund in qualified segregated accounts (within the meaning of paragraph (e)(13)(ii) of this section) are treated as a single qualified segregated account.

(ii) *Aggregate approach to partnerships.* For purposes of this section, assets held by a partnership shall be treated as held proportionately by its partners, and activities conducted by a partnership shall be treated as conducted by its partners.

(iii) *Recordkeeping.* An eligible fund that claims the exemption under section 897(l) must have records sufficient to establish that it satisfies the requirements of paragraph (c)(2) of this section. See section 6001 and § 1.6001–1, requiring records to be maintained.

(d) *Qualified holder requirements*—(1) *In general.* With respect to a disposition described in section 897(a) or a distribution described in section 897(h), a qualified foreign pension fund (including a part of a qualified foreign pension fund) or a qualified controlled entity is a qualified holder only if it satisfies the requirement of paragraph (d)(2) or (3) of this section.

(2) *Qualified holders that did not hold U.S. real property interests.* The requirement of this paragraph (d)(2) is satisfied if the qualified foreign pension fund or qualified controlled entity owned no United States real property interests as of the earliest date during an uninterrupted period, ending on the date of the disposition or distribution, in which the qualified foreign pension fund or qualified controlled entity satisfied the requirements of paragraph (c)(2) of this section or paragraph (e)(9) of this section, as applicable.

(3) *Qualified holders that satisfy the testing period*—(i) *In general.* The requirement of this paragraph (d)(3) is satisfied if the qualified foreign pension fund or qualified controlled entity continuously satisfies the requirements of paragraph (c)(2) of this section or paragraph (e)(9) of this section, as applicable, for the duration of the testing period.

(ii) *Testing Period.* The term testing period means whichever of the following periods is the shortest:

(A) The period beginning on December 18, 2015, and ending on the date of the disposition or the distribution;

(B) The ten-year period ending on the date of the disposition or the distribution; and,

(C) The period beginning on the date the entity (or its predecessor) was created or organized and ending on the date of the disposition or the distribution.

(4) *Transition Rules*—(i) *Qualified foreign pension fund or qualified controlled entity requirements.* With respect to any period from December 18, 2015, to the date when the requirements of paragraph (c)(2) or (e)(9) of this section first apply to a qualified foreign pension fund or qualified controlled entity under paragraph (g) of this section, as applicable (but in any event no later than December 29, 2022, in the case of paragraph (c)(2) of this section, and no later than June 6, 2019, in the case of paragraph (e)(9) of this section), the qualified foreign pension fund or qualified controlled entity is deemed to satisfy the requirements of paragraphs (c)(2) and (e)(9) of this section, as applicable, for purposes of paragraphs (d)(2) and (3) of this section if the qualified foreign pension fund or qualified controlled entity satisfies the requirements of section 897(l)(2) based on a reasonable interpretation of those requirements (including determining any applicable valuations using a consistent method).

(ii) *Ownership of qualified controlled entity by service providers.* Solely for purposes of paragraphs (d)(2) and (3) of this section, the determination of whether a corporation or trust is a qualified controlled entity will not include stock or interests held directly or indirectly by any person that provides services to such corporation or trust, provided that such stock or interests are, in the aggregate, no more than five percent (by vote or value) of the stock or interests of such corporation or trust. This paragraph (d)(4)(ii) applies to interests held from December 18, 2015 until February 27, 2023.

(e) *Definitions.* The following definitions apply for purposes of this section.

(1) *Ancillary benefits*—(i) I*n general.* The term *ancillary benefits* means—

(A) Benefits payable upon the diagnosis of a terminal illness, incidental death benefits (for example, funeral expenses), short-term disability benefits, life insurance benefits, and medical benefits;

(B) Unemployment, shutdown, or layoff benefits that do not continue past retirement age and do not affect the payment of accrued retirement and pension benefits; and

(C) Other health-related or unemployment benefits that are similar to the benefits described in paragraphs (e)(1)(i) and (ii) of this section.

(ii) *Overlap with retirement and pension benefits.* Ancillary benefits do not include any benefits that could also be defined as retirement and pension benefits within the meaning of paragraph (e)(14) of this section.

(2) *Eligible fund.* The term *eligible fund* means a trust, corporation, or other organization or arrangement that maintains one or more qualified segregated accounts.

(3) *Employer group.* The term *employer group* means all individuals, trusts, partnerships, and corporations with a relationship to each other specified in section 267(b) or section 707(b).

(4) *Foreign jurisdiction.* The term *foreign jurisdiction* means a jurisdiction other than the United States, including a country, a state, province, or political subdivision of a foreign country, and a territory of the United States.

(5) *Governmental unit.* The term *governmental unit* means any foreign government or part thereof, including any person, body, group of persons, organization, agency, bureau, fund, or instrumentality, however designated, of a foreign government.

(6) *Non-ancillary benefits.* The term *non-ancillary benefits* means benefits

that are neither ancillary benefits (within the meaning of paragraph (e)(1) of this section) nor retirement and pension benefits (within the meaning of paragraph (e)(14) of this section), and are provided by the eligible fund as permitted or required under the laws of the foreign jurisdiction in which the eligible fund is established or operates.

(7) *Organization or arrangement.* The term *organization or arrangement* means one or more trusts, corporations, governmental units, or employers.

(8) *Qualified benefits.* The term *qualified benefits* means retirement and pension benefits, ancillary benefits and non-ancillary benefits. However, the portions of qualified benefits consisting of ancillary benefits and non-ancillary benefits provided by a qualified foreign pension fund are limited as provided in paragraph (c)(2)(ii)(B) of this section.

(9) *Qualified controlled entity.* The term *qualified controlled entity* means a trust or corporation created or organized under the laws of a foreign jurisdiction all of the interests of which are held by one or more qualified foreign pension funds directly or indirectly through one or more qualified controlled entities.

(10) *Qualified foreign pension fund.* The term *qualified foreign pension fund* means an eligible fund that satisfies the requirements of paragraph (c) of this section.

(11) *Qualified holder.* The term *qualified holder* means a qualified foreign pension fund or qualified controlled entity that satisfies the requirements of paragraph (d) of this section.

(12) *Qualified recipient*—(i) *In general.* The term *qualified recipient* means—

(A) With respect to an eligible fund described in paragraph (c)(2)(ii)(A)(*1*)(*i*) of this section, any person eligible to be treated as a participant or beneficiary of such eligible fund and any person designated by such participant or beneficiary to receive qualified benefits, and

(B) With respect to an eligible fund described in paragraph (c)(2)(ii)(A)(*1*)(*ii*) of this section, a current or former employee, a spouse of a current or former employee, and any person designated by such participants or beneficiaries to receive qualified benefits.

(C) To the extent not already described in paragraph (e)(12)(i)(B) of this section, with respect to an eligible fund described in paragraph (c)(2)(ii)(A)(*1*)(*ii*) of this section, any person eligible to be treated as a participant or beneficiary of such fund and any person designated by such participant or beneficiary to receive qualified benefits, so long as such recipients do not exceed five percent of the eligible fund's total qualified recipients or have a right to more than five percent of the assets or income of the eligible fund. An eligible fund must make a determination for purposes of this paragraph (e)(12)(i)(C) on at least an annual basis and may utilize any reasonable method in doing so. An eligible fund must use its most recent determination under this paragraph with respect to dispositions of United States real property interests or distributions described in section 897(h) occurring in the twelve months succeeding such determination, or until a new determination is made, whichever occurs first.

(ii) *Special rule regarding automatic designation.* For purposes of paragraph (e)(12)(i) of this section, a person is treated as designating another person to receive qualified benefits if the other person is, by reason of such person's relationship or other status with respect to the first person, entitled to receive benefits pursuant to the terms applicable to the eligible fund or pursuant to the laws of the foreign jurisdiction in which the eligible fund is created or organized, whether or not the first person expressly designated such person as a beneficiary.

(13) *Qualified segregated account*—(i) *In general.* The term *qualified segregated account* means an identifiable pool of assets maintained by an eligible fund or a qualified controlled entity for the sole purpose of funding and providing qualified benefits to qualified recipients.

(ii) *Assets held by eligible funds.* For purposes of paragraph (e)(13)(i) of this section, an identifiable pool of assets of an eligible fund is treated as maintained for the sole purpose of funding qualified benefits to qualified recipients, and hence as a qualified segregated account, only if the terms applicable to the eligible fund or the laws of the foreign jurisdiction in which the eligible fund is established or operates require that all the assets in the pool, and all the income earned with respect to such assets, be used exclusively to fund the provision of qualified benefits to qualified recipients or to satisfy necessary reasonable expenses of the eligible fund, and that such assets or income may not inure to the benefit of a person other than a qualified recipient. For purposes of this paragraph (e)(13)(ii), the fact that assets or income may inure to the benefit of a governmental unit by operation of escheat or similar laws, or may revert (such as upon plan termination or dissolution (after all obligations to qualified recipients and creditors have been satisfied) or the qualified recipients' benefits failing to vest) to the governmental unit or employer in accordance with applicable foreign law is ignored, so long as contributions to the plan are not more than reasonably necessary to fund the qualified benefits to be provided to qualified recipients.

(iii) *Assets held by qualified controlled entities.* For purposes of paragraph (e)(13)(i) of this section, the assets of a qualified controlled entity are treated as an identifiable pool of assets maintained for the sole purpose of funding qualified benefits to qualified recipients only if both of the following requirements are satisfied:

(A) All of the net earnings of the qualified controlled entity are credited to its own account or to the qualified segregated account of a qualified foreign pension fund or another qualified controlled entity, with no portion of the net earnings of the qualified controlled entity inuring to the benefit of a person other than a qualified recipient; and

(B) Upon dissolution, all of the assets of the qualified controlled entity, after satisfaction of liabilities to persons having interests in the entity solely as creditors, vest in a qualified segregated account of a qualified foreign pension fund or another qualified controlled entity.

(14) *Retirement and pension benefits.* The term *retirement and pension benefits* means distributions to qualified recipients that are made after the qualified recipient reaches retirement age as determined under or in accordance with the laws in the foreign jurisdiction in which the eligible fund is established or operates (including a benefit paid to a qualified recipient who retires on or after a stated early retirement age), or after a specified event that results in a qualified recipient being permanently unable to work, and includes any such distribution made to a surviving beneficiary of the qualifying recipient. Retirement and pension benefits may be based on one or more of the following factors: contributions, investment performance, years of service with an employer, or compensation received by the qualified recipient.

(f) *Examples.* This paragraph (f) provides examples that illustrate the rules of this section. The examples do not illustrate the application of the applicable withholding rules, including sections 1445 and 1446 and the regulations thereunder. It is assumed that no person is entitled to more than five percent of any eligible fund's assets or income, taking into account the constructive ownership rules in

paragraph (c)(2)(iii)(B) of this section, and that the eligible fund owns no United States real property interests other than as described.

(1) *Example 1: No legal entity*—(i) *Facts.* On January 1, 2023, Country A establishes Retirement Plan for the sole purpose of providing retirement and pension benefits to citizens of Country A aged 65 or older. Retirement Plan is composed of Asset Pool and Agency. Asset Pool is a group of accounts maintained on the balance sheet of the government of Country A. Pursuant to the laws of Country A, income and gain earned by Asset Pool is used solely to support the provision of retirement and pension benefits by Retirement Plan. Agency is a Country A agency that administers the provision of benefits by Retirement Plan and manages Asset Pool's investments. Under the laws of Country A, investment income earned by Retirement Plan is not subject to Country A's income tax. At the end of each calendar year, Retirement Plan performs a present valuation of the retirement and pension benefits it reasonably expects to provide in the future, and all of the benefits that Retirement Plan reasonably expects to provide are retirement and pension benefits. On January 1, 2024, Agency purchases Property, which is an interest in real property located in the United States owned by Asset Pool. On June 1, 2026, Agency sells Property, realizing $100x of gain with respect to Property that would be subject to tax under section 897(a) unless paragraph (b) of this section applies with respect to the gain.

(ii) *Analysis.* (A) Retirement Plan, which is composed of Asset Pool and Agency, includes one or more governmental units described in paragraph (e)(5) of this section. Accordingly, Retirement Plan is an organization or arrangement described in paragraph (e)(7) of this section. Furthermore, Retirement Plan maintains a qualified segregated account in the form of Asset Pool, an identifiable pool of assets maintained for the sole purpose of funding retirement and pension benefits to beneficiaries of the Retirement Fund (qualified recipients as defined in paragraph (e)(12)(i)(A) of this section). Therefore, Retirement Plan is an eligible fund within the meaning of paragraph (e)(2) of this section.

(B) Paragraph (c)(3)(i) of this section applies for purposes of determining whether Retirement Plan is an eligible fund that satisfies the requirements of paragraph (c)(2) of this section and would therefore be treated as a qualified foreign pension fund. Accordingly, the activities of Asset Pool and Agency are integrated and treated as undertaken by a single entity to determine whether the requirements of paragraph (c)(2) of this section are met. However, Asset Pool and Agency must independently satisfy the requirement of paragraph (c)(2)(i) of this section.

(C) Retirement Plan is composed of Asset Pool and Agency, each of which is a governmental unit and treated as created or organized under the laws of Country A for purposes of paragraph (c)(2)(i) of this section. Accordingly, Retirement Plan satisfies the requirement of paragraph (c)(2)(i) of this section.

(D) Retirement Plan is established by Country A as an eligible fund described in paragraph (c)(2)(ii)(A)(*1*)(*i*) of this section to provide retirement and pension benefits, which are qualified benefits described in paragraph (e)(8) of this section, to citizens of Country A, who are qualified recipients described in paragraph (e)(12)(i)(A) of this section because they are eligible to be participants or beneficiaries of Retirement Plan. Accordingly, all of the benefits that Retirement Plan provides are qualified benefits provided to qualified recipients. In addition, Retirement Plan satisfies the requirements of the present valuation test as described in paragraphs (c)(2)(ii)(B) and (C) of this section. Accordingly, Retirement Plan satisfies the requirement of paragraph (c)(2)(ii) of this section.

(E) Retirement Plan provides retirement and pension benefits to citizens of Country A aged 65 or older, with no citizen entitled to more than five percent of Retirement Fund's assets or to more than five percent of the income of the eligible fund. Accordingly, Retirement Plan satisfies the requirement of paragraph (c)(2)(iii) of this section.

(F) Retirement Plan is composed solely of governmental units within the meaning of paragraph (e)(5) of this section. Accordingly, under paragraph (c)(2)(iv)(B) of this section, Retirement Plan is treated as satisfying the requirements of paragraph (c)(2)(iv)(A) of this section.

(G) Investment income earned by Retirement Plan is not subject to income tax in Country A. Accordingly, Retirement Plan satisfies the requirement of paragraph (c)(2)(v) of this section.

(H) Because Retirement Plan satisfies the requirements of paragraph (c)(2) of this section, Retirement Plan is a qualified foreign pension fund. Because Retirement Plan held no United States real property interests as of January 1, 2023, the earliest date during an uninterrupted period ending on June 1, 2026, the date of the disposition, in which it satisfied the requirements of paragraph (c)(2) of this section, Retirement Plan is a qualified holder under paragraph (d)(2) of this section. Retirement Plan's gain with respect to Property is attributable solely to Asset Pool, a qualified segregated account maintained by Retirement Plan. Accordingly, under paragraph (b) of this section, the $100x gain realized by Retirement Plan attributable to the disposition of Property is not subject to section 897(a).

(2) *Example 2: Fund established by an employer*—(i) *Facts.* Employer, a corporation organized in Country B, establishes Fund to provide retirement and pension benefits to current and former employees of Employer and S1, a Country B corporation that is wholly owned by Employer. On January 1, 2023, Fund is established as a trust under the laws of Country B, and Employer retains discretion to invest assets and to administer benefits on Fund's behalf. Fund receives contributions from Employer and S1 and contributions from employees of Employer and S1 who are beneficiaries of Fund. All contributions to Fund and all of Fund's earnings are separately accounted for on Fund's books and records and are required by Fund's organizational documents to exclusively fund the provision of benefits to Fund's beneficiaries, except as necessary to satisfy reasonable expenses of Fund. Fund currently has over 100 beneficiaries, a number that is reasonably expected to grow as Employer expands. Fund will pay benefits to employees upon retirement based on years of service and employee contributions, but, if a beneficiary dies before retirement, Fund will pay an incidental death benefit in addition to payment of any accrued retirement and pension benefits to the beneficiary's designee (or deemed designee under local laws if the beneficiary fails to identify a designee). Fund annually performs a present valuation of the benefits it reasonably expects to provide to Fund's beneficiaries, and the valuation concludes that more than 85 percent of the present value of the total benefits it reasonably expects to pay to its beneficiaries in the future are retirement and pension benefits. In addition, it is reasonably expected that the incidental death benefits paid by Fund will account for less than fifteen percent of the present value of the total benefits that Fund expects to provide in the future, and Fund does not reasonably expect to pay any other types

of benefits to its beneficiaries in the future. Fund annually provides to the tax authorities of Country B the amount of benefits distributed to each participant (or designee). Country B's tax authorities prescribe rules and regulations governing Fund's operations. Under the laws of Country B, Fund is not taxed on its investment income. On January 1, 2024, Fund purchases Property, which is an interest in real property located in the United States. On June 1, 2026, Fund sells Property, realizing $100x of gain with respect to Property that would be subject to tax under section 897(a) unless paragraph (b) of this section applies with respect to the gain.

(ii) *Analysis.* (A) Fund is a trust that maintains an identifiable pool of assets for the sole purpose of funding retirement and pension benefits and ancillary benefits to current and former employees of the employer group (within the meaning of paragraph (e)(3) of this section) that includes Employer and S1 (current and former employees of Employer and S1 constitute qualified recipients, as defined in paragraph (e)(12)(i)(B) of this section). All assets held by Fund and all income earned by Fund are used to provide such benefits. Therefore, Fund is a trust that maintains a qualified segregated account within the meaning of paragraph (e)(13) of this section. Accordingly, Fund is an eligible fund within the meaning of paragraph (e)(2) of this section.

(B) Because Fund is created or organized under the laws of Country B, Fund satisfies the requirement of paragraph (c)(2)(i) of this section.

(C) The only benefits that Fund provides are retirement and pension benefits described in paragraph (e)(14) of this section and ancillary benefits (that is, the incidental death benefits) described in paragraph (e)(1) of this section, both of which constitute qualified benefits described in paragraph (e)(8) of this section, to qualified recipients, described in paragraph (e)(12)(i)(B) of this section. Furthermore, Fund satisfies the requirements of the present valuation test as described in paragraphs (c)(2)(ii)(B) and (C) of this section. Accordingly, Fund is established by Employer to provide retirement and pension benefits to qualified recipients in consideration for services rendered by such qualified recipients to Employer and S1, and Fund satisfies the requirement of paragraph (c)(2)(ii) of this section.

(D) No single qualified recipient has a right to more than five percent of the assets or income of the eligible fund. Accordingly, Fund satisfies the requirement of paragraph (c)(2)(iii) of this section.

(E) Fund is regulated and annually provides to the relevant tax authorities in the foreign jurisdiction in which it is established or operates the amount of qualified benefits provided to each qualified recipient by the eligible fund. Accordingly, Fund satisfies the requirements of paragraph (c)(2)(iv) of this section.

(F) Fund is not subject to income tax on its investment income. Accordingly, Fund satisfies the requirement of paragraph (c)(2)(v) of this section.

(G) Because Fund meets the requirements of paragraph (c)(2) of this section, Fund is treated as a qualified foreign pension fund. Furthermore, because Fund held no United States real property interests as of January 1, 2023, the earliest date during an uninterrupted period ending on June 1, 2026, the date of the disposition, in which it satisfied the requirements of paragraph (c)(2) of this section, Fund is a qualified holder under paragraph (d)(2) of this section. All of Fund's assets are held in a qualified segregated account within the meaning of paragraph (e)(13) of this section. Accordingly, under paragraph (b) of this section, the $100x gain attributable to the disposition of Property is not subject to section 897(a).

(3) *Example 3: Fund established by an employer at the direction of a foreign jurisdiction*—(i) *Facts.* The facts are the same as in paragraph (f)(2) of this section (*Example 2*), except that Fund was established by Employer at the direction of Country B and, in addition to being established to provide retirement and pension benefits to current and former employees of Employer and S1, Fund was also established to provide retirement and pension benefits to other employees. All employees that are beneficiaries provide contributions to Fund. Fund makes a determination on at least an annual basis using a reasonable method to measure the number of participants in the Fund who are not current and former employees of Employer and S1. Each time such a determination is made, Fund finds that such employees constitute less than five percent of Fund's total qualified recipients and do not have a right to more than five percent of the assets or income of Fund.

(ii) *Analysis.* Fund satisfies the requirements of paragraph (c)(2)(ii)(A)(*1*)(*i*) of this section because it was established by, or at the direction of, Country B to provide retirement and pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees as a result of services rendered by such employees to their employers. Fund also satisfies the requirements of paragraph (c)(2)(ii)(A)(*1*)(*ii*) of this section because it was established by Employer to provide retirement and pension benefits to participants or beneficiaries that are current or former employees or persons designated by such employees in consideration for services rendered by such employees to Employer and S1. Because it satisfies the requirements of both such provisions, under paragraph (c)(2)(ii)(A)(*2*) of this section, Fund will be treated solely as an eligible fund under paragraph (c)(2)(ii)(A)(*1*)(*ii*) of this section. As a result, Fund must meet the reporting requirements described in paragraph (c)(2)(iv)(A) of this section and must apply the definition of qualified recipient described in paragraphs (e)(12)(i)(B) and (C) of this section. Because Fund makes a determination on at least an annual basis using a reasonable method to measure the number of participants in the Fund who are not current and former employees of Employer and S1, finding that such employees constitute less than five percent of Fund's total qualified recipients and do not have a right to more than five percent of the assets or income of Fund, the requirement of paragraph (c)(2)(ii)(B)(*1*) of this section, requiring that all of the benefits that an eligible fund provides are provided to qualified recipients, is considered satisfied. Because Fund meets the requirements of paragraph (c)(2) of this section, Fund is treated as a qualified foreign pension fund under paragraph (b) of this section. Accordingly, the $100x gain attributable to the disposition of Property is not subject to section 897(a).

(4) *Example 4: Employer controlled organization or arrangement*—(i) *Facts.* The facts are the same as in paragraph (f)(2) of this section (*Example 2*), except that S2, a Country B corporation that is wholly owned by Employer, performs all tax compliance functions for Employer, S1, and S2, including information reporting with respect to Fund participants.

(ii) *Analysis.* For purposes of the requirements of paragraph (c)(2) of this section, Fund and S2 are an organization or arrangement that is treated as a single entity under paragraph (c)(3)(i)(A) of this section and an eligible fund under paragraph (e)(2) of this section with respect to the qualified segregated account held by Fund. Because the eligible fund composed of Fund and S2 satisfies the requirements of paragraph (c)(2) of this section (including the rule under

paragraph (c)(3)(i)(A) of this section that each entity satisfy the foreign organization requirement of paragraph (c)(2)(i) of this section) with respect to the qualified benefits provided to the qualified recipients out of the eligible fund's qualified segregated account (determined in accordance with paragraph (c)(3)(i)(B) of this section), the eligible fund that is composed of Fund and S2 constitutes a qualified foreign pension fund. Furthermore, the requirements for qualified holder status are satisfied, as described in paragraph (f)(2) of this section. Thus, under paragraph (b) of this section, the $100x gain attributable to the disposition of Property is not subject to section 897(a).

(5) *Example 5: Third-party assumption of pension liabilities*—(i) *Facts.* The facts are the same as in paragraph (f)(2) of this section (*Example 2*), except that Fund does not purchase Property on January 1, 2024. In addition, Fund anticipates $100x of qualified benefits will be paid each year beginning on January 1, 2028. Fund enters into an agreement with Guarantor, a privately held Country B corporation, which provides that Fund will, on January 30, 2023, cede a portion of its assets to Guarantor in exchange for annual payments of $100x beginning on January 1, 2028 and continuing until one or more previously identified participants (and their designees) ceases to be eligible to receive benefits. Guarantor has discretion to invest the ceded assets as it chooses, subject to certain agreed upon investment restrictions. Pursuant to its agreement with Fund, Guarantor must maintain Segregated Pool, a pool of assets securing its obligations under its agreement with Fund. The value of Segregated Pool must exceed a specified amount (determined based on an agreed upon formula) until Guarantor's payment obligations are completed, and any remaining assets in Segregated Pool (that is, assets exceeding the required payments to Fund) are retained by Guarantor. Guarantor bears all investment risk with respect to Segregated Pool. Accordingly, Guarantor is required to make annual payments of $100x to Fund regardless of the performance of Segregated Pool. On January 1, 2024, Guarantor purchases stock in Company A, a United States real property holding company that is a United States real property interest, and holds the Company A stock in Segregated Pool. On June 1, 2027, Guarantor sells the stock in Company A, realizing a gain of $100x.

(ii) *Analysis.* The Segregated Pool is not a qualified segregated account, because it is not maintained for the sole purpose of funding qualified benefits to qualified recipients, and because income attributable to assets in the Segregated Pool (including the Company A stock) may inure to Guarantor, which is not a qualified recipient. Accordingly, Fund and Guarantor do not qualify as an organization or arrangement that is an eligible fund with respect to the Company A stock. Therefore, Guarantor is not exempt under paragraph (b) of this section with respect to the $100x of gain realized in connection with the sale of its shares in Company A.

(6) *Example 6: Asset manager*—(i) *Facts.* The facts are the same as in paragraph (f)(5) of this section (*Example 5*) except that instead of ceding legal ownership of a portion of its assets to Guarantor, Fund transfers the assets into Trust with respect to which Fund is the sole beneficiary on January 30, 2023, and Trust purchases stock in Company A on January 1, 2024. Guarantor has exclusive management authority over the Trust assets and is entitled to a reasonable fixed management fee which it withdraws annually from Trust's assets. On June 1, 2027, Trust sells the stock in Company A, realizing a gain of $100x.

(ii) *Analysis.* For purposes of testing the requirements of paragraph (c)(2) of this section, Fund and Trust are an organization or arrangement that is treated as a single entity under paragraph (c)(3)(i)(A) of this section and an eligible fund under paragraph (e)(2) of this section. Assets held by Trust are held in a qualified segregated account, and those assets are the assets that are relevant for purposes of determining whether the eligible fund composed of Fund and Trust meets the requirements of paragraph (c)(2) of this section. The eligible fund that is composed of Fund and Trust is treated as established by Employer notwithstanding that Guarantor provides management services. See paragraph (c)(2)(ii)(A)(*3*) of this section. Paragraph (e)(13)(ii) of this section provides that the assets held by an eligible fund in a qualified segregated account may be used to satisfy reasonable expenses of the eligible fund, such that the reasonable fixed management fee paid to Guarantor does not cause the assets held in Trust to fail to be treated as held in a qualified segregated account. All of the other requirements for qualified foreign pension fund status are satisfied by the eligible fund that is composed of Fund and Trust, as described in paragraph (f)(2) of this section. The eligible fund that is composed of Fund and Trust is a qualified holder under paragraph (d)(2) of this section because it held no United States real property interests on January 1, 2023, the earliest date during an uninterrupted period ending on June 1, 2027, the date of the disposition of Company A stock, in which it satisfied the requirements of paragraph (c)(2) of this section. The eligible fund that is composed of Fund and Trust is therefore exempt under paragraph (b) of this section with respect to the $100x of gain realized in connection with the sale by Trust of the shares in Company A.

(7) *Example 7: Partnership*—(i) *Facts.* The facts are the same as in paragraph (f)(5) of this section (*Example 5*) except that instead of ceding legal ownership of the assets to Guarantor, Fund contributes the assets to a partnership (PRS) formed with Guarantor and PRS purchases stock in Company A on January 30, 2023. Guarantor receives a profits interest in the partnership that is reasonable in light of Guarantor's management activity. Guarantor has no direct or indirect ownership in PRS assets, and the partnership agreement provides that upon dissolution, PRS assets would be distributed to Fund. Guarantor serves as the general partner of PRS and has discretionary authority to buy and sell PRS assets without approval from Fund. On June 1, 2027, PRS sells the stock in Company A, realizing a gain of $100x.

(ii) *Analysis.* All of Fund's assets, including the assets held by PRS that are treated as held proportionately by Fund under paragraph (c)(3)(ii) of this section, are held in a qualified segregated account within the meaning of paragraph (e)(13) of this section. See paragraph (f)(2)(ii)(A) of this section (*Example 2*). The eligible fund that is composed of Fund is treated as established by Employer notwithstanding that Guarantor provides management services to PRS. See paragraphs (c)(2)(ii)(A)(*3*) and (c)(3)(ii) of this section. All of the other requirements for qualified foreign pension fund status are satisfied by Fund as described in paragraphs (f)(2)(ii)(B) through (F) of this section, and Fund is a qualified holder as described in paragraph (f)(2)(ii)(G) of this section. Accordingly, Fund is exempt under paragraph (b) of this section with respect to its allocable share of the $100x of gain realized in connection with the sale by PRS of the shares in Company A. Guarantor is not exempt under paragraph (b) of this section with respect to its allocable share of the $100x of gain realized in connection with the sale by PRS of the shares in Company A because Guarantor is neither part of the organization or arrangement that forms Fund nor a qualified holder under paragraph (d) of

this section that maintains qualified segregated accounts.

(8) *Example 8: Not a qualified holder*—(i) *Facts.* Fund is a qualified foreign pension fund organized in Country C that meets the requirements of paragraph (c)(2) of this section. Fund owns all the outstanding stock of OpCo, a manufacturing corporation organized in Country C, in a qualified segregated account maintained by Fund. OpCo was originally formed by a person other than Fund on January 1, 2023. Fund purchased all of the stock of OpCo on November 1, 2023 for the purpose of conducting the manufacturing business and utilizing the business profits to fund pension liabilities. During the period from January 1, 2023, through October 31, 2023, OpCo was not a qualified foreign pension fund, a part of a qualified foreign pension fund, or a qualified controlled entity. On January 30, 2023, OpCo purchased Property A, a United States real property interest, from a third party. For all periods after Fund acquired OpCo, OpCo must either retain or distribute to Fund all of its net earnings, and upon dissolution, must distribute all of its assets to its stockholder (that is, Fund) after satisfaction of liabilities to its creditors. On June 1, 2024, OpCo realizes $100x of gain on the disposition of Property A.

(ii) *Analysis.* (A) A qualified controlled entity described in paragraph (e)(9) of this section includes any corporation organized under the laws of a foreign jurisdiction all the interests of which are owned by one or more qualified foreign pension funds directly or indirectly through one or more qualified controlled entities. Fund is a qualified foreign pension fund that wholly owns OpCo. Accordingly, OpCo is a qualified controlled entity for the period when it is owned by Fund beginning on November 1, 2023.

(B) Under paragraph (d)(1) of this section, a qualified controlled entity is a qualified holder only if either, under paragraph (d)(2) of this section, the qualified controlled entity owned no United States real property interests as of the earliest date during an uninterrupted period ending on the date of the disposition or distribution in which the qualified controlled entity satisfied the requirements of paragraph (e)(9) of this section, or, under paragraph (d)(3) of this section, the qualified controlled entity satisfies the requirements of paragraph (e)(9) of this section throughout the entire testing period. Because OpCo owned a United States real property interest as of November 1, 2023, the earliest date during an uninterrupted period ending on the date of the disposition during which it satisfied the requirements of paragraph (e)(9) of this section, OpCo cannot satisfy the requirements of paragraph (d)(2) of this section and must instead satisfy the requirements of paragraph (d)(3) of this section to be a qualified holder. Under paragraph (d)(3) of this section, a qualified holder does not include any entity that was not a qualified foreign pension fund, a part of a qualified foreign pension fund, or a qualified controlled entity at any time during the testing period. The testing period with respect to OpCo is the period from January 1, 2023 (the date of OpCo's formation), to June 1, 2024 (the date of the disposition). Because OpCo was not a qualified foreign pension fund, a part of a qualified foreign pension fund, or a qualified controlled entity from January 1, 2023, to October 31, 2023, OpCo was not a qualified foreign pension fund, a part of a qualified foreign pension fund, or a qualified controlled entity at all times during the testing period. Accordingly, OpCo is not a qualified holder with respect to the disposition of Property A, and the $100x of gain recognized by OpCo is not exempt from tax under section 897(l), regardless of the amount of unrealized gain in Property A as of November 1, 2023.

(9) *Example 9: 48-month alternative test*—(i) *Facts.* Fund is a qualified foreign pension fund organized in Country C that, except as otherwise noted, meets the requirements of paragraph (c)(2) of this section. Fund owns all the outstanding stock of OpCo, a manufacturing corporation organized in Country C and formed by Fund on January 1, 2023, in a qualified segregated account maintained by Fund. On January 30, 2023, OpCo purchased Property A, a United States real property interest, from a third party. OpCo either retains or distributes to Fund all of its net earnings, and upon dissolution, must distribute all of its assets to its stockholder (that is, Fund) after satisfaction of liabilities to its creditors. On June 1, 2027, OpCo realizes $100x of gain on the disposition of Property A. Fund reasonably expected to provide $90x of retirement and pension benefits and $100x of qualified benefits for the valuations that it performed pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section on December 31, 2023, December 31, 2024, and December 31, 2025. Fund reasonably expected to provide $160x of retirement and pension benefits and $200x of qualified benefits for the valuation that it performed pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section on December 31, 2026.

(ii) *Analysis.* In each of the years ending on December 31, 2023, December 31, 2024, and December 31, 2025, the valuation performed pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section demonstrates that that the requirements of paragraph (c)(2)(ii)(B)(*2*) of this section have been met because $90x of retirement and pension benefits constitutes 90 percent of the total $100x of qualified benefits. For the year ending on December 31, 2026, the valuation performed pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section does not demonstrate that that the requirements of paragraph (c)(2)(ii)(B)(*2*) of this section have been met because $160x of retirement and pension benefits constitutes only 80 percent of the total $200x of qualified benefits. Thus, Fund does not meet the requirements of paragraph (c)(2)(ii)(C)(*1*) of this section for the year ending on December 31, 2026. However, under the 48-month alternative calculation in paragraph (c)(2)(ii)(C)(*2*) of this section, Fund satisfies the requirement that it reasonably expects to provide 85 percent retirement and pension benefits to qualified recipients as of December 31, 2026. This is because when averaging the values (not percentages) of the qualified benefits and retirement and pension benefits that Fund reasonably expected to provide from the valuations performed over the preceding 48 months (including the most recent valuation), Fund divides the total retirement and pension benefits of $430x ($90x + $90x + $90x + $160x) by the total qualified benefits that it reasonably expected to provide of $500x ($100x + $100x + $100x + $200x) for an average of 86 percent. Under paragraph (c)(2)(ii)(C)(*3*) of this section, Fund may rely on either the most recent present valuation described in paragraph (c)(2)(ii)(C)(*1*) of this section or the alternative calculation in paragraph (c)(2)(ii)(C)(*2*) of this section, both of which are determined as of December 31, 2026. Because Fund satisfies the requirements of paragraph (c)(2)(ii)(B)(*2*) of this section under the test in paragraph (c)(2)(ii)(C)(*2*) of this section, even though it does not do so under the test in paragraph (c)(2)(ii)(C)(*1*) of this section, Fund is a qualified foreign pension fund with respect to the disposition on June 1, 2027. Because OpCo is held by a qualified foreign pension fund as of the date of the disposition, OpCo is a qualified controlled entity within the meaning of paragraph (e)(9) of this section. Accordingly, the $100x of gain realized by OpCo is exempt from tax under section 897(l).

(10) *Example 10: 48-month alternative test with multiple valuations in the same year*—(i) *Facts.* The facts are the same as in paragraph (f)(9) of this section (Example 9), except that in the year ending December 31, 2023, Fund carried out two valuations pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section, one on June 30, 2023 and the second on December 31, 2023. For each valuation, Fund reasonably expected to provide $90x of retirement and pension benefits and $100x of qualified benefits. In addition, in the year ending on December 31, 2026, pursuant to a valuation carried out under paragraph (c)(2)(ii)(C)(*1*) of this section, Fund reasonably expected to provide $150x retirement and pension benefits and $200x of qualified benefits.

(ii) *Analysis.* In each of the years ending on December 31, 2023, December 31, 2024, and December 31, 2025 (including the two valuations performed in 2023), the valuation performed pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section demonstrates that the requirements of paragraph (c)(2)(ii)(B)(*2*) of this section have been met because $90x of retirement and pension benefits constitutes 90 percent of the total $100x of qualified benefits. For the year ending on December 31, 2026, the valuation performed pursuant to paragraph (c)(2)(ii)(C)(*1*) of this section does not demonstrate that the requirements of paragraph (c)(2)(ii)(B)(*2*) of this section have been met because $150x of retirement and pension benefits constitutes 75 percent of the total $200x of qualified benefits. Thus, Fund does not meet the requirements of paragraph (c)(2)(ii)(C)(*1*) of this section for the year ending on December 31, 2026. Under the 48-month alternative calculation in paragraph (c)(2)(ii)(C)(*2*) of this section, Fund also does not satisfy the requirement that it reasonably expects to provide 85 percent retirement and pension benefits to qualified recipients as of December 31, 2026. This is because when averaging the values (not percentages) of the qualified benefits and retirement and pension benefits that Fund reasonably expected to provide from the valuations performed over the preceding 48 months (including the most recent valuation), Fund must use a weighted average whereby values are adjusted when the length of valuation periods differs. In this case, each of the two valuations in 2023 must be divided by two for a total weighted average for each valuation of $45x retirement and pension benefits and $50x of qualified benefits. When Fund then divides the total retirement and pension benefits that it reasonably expected to provide of $420x ($45x + $45x + $90x + $90x + $150x) by the total qualified benefits that it reasonably expected to provide of $500x ($50x + $50x + $100x + $100x + $200x), the average is 84 percent. Because Fund does not satisfy the requirements of paragraph (c)(2)(ii)(B)(*2*) of this section under the test in paragraph (c)(2)(ii)(C)(*2*) of this section or the test in paragraph (c)(2)(ii)(C)(*1*) of this section, Fund is not a qualified foreign pension fund with respect to the disposition on June 1, 2027. Because OpCo is not held by a qualified foreign pension fund as of the date of the disposition, OpCo is not a qualified controlled entity within the meaning of paragraph (e)(9) of this section. Accordingly, the $100x of gain realized by OpCo is not exempt from tax under section 897(l).

(11) *Example 11: Qualified foreign pension fund as qualified holder*—(i) *Facts.* The facts are the same as in paragraph (f)(10) of this section (Example 10), except that OpCo does not dispose of Property A on June 1, 2027 and Fund reasonably expects to provide 85 percent of retirement and pension benefits to qualified recipients in the future in each of the annual present valuations it performs as of December 31, 2027 through December 31, 2033. Fund also satisfies the other requirements of paragraph (c)(2) of this section during this period. On April 1, 2029, Fund purchases Property B, a United States real property interest, and holds it in a qualified segregated account. On June 1, 2034, Fund realizes $100x of gain on the disposition of Property B and OpCo realizes $100x of gain on the disposition of Property A. At least 85 percent and no more than five percent of the actual value of the aggregate benefits provided by Fund before December 31, 2033, the most recent present value determination, were retirement and pension benefits and non-ancillary benefits, respectively.

(ii) *Analysis.* (A) Because Fund reasonably expected to provide 85 percent of retirement and pension benefits to qualified recipients as of the valuation performed on December 31, 2033, and it met the other requirements of paragraph (c)(2) of this section, Fund is a qualified foreign pension fund under paragraph (c)(2)(ii)(C)(*3*) of this section for the twelve months succeeding the most recent valuation, which includes June 1, 2034, the date of the disposition of Property A and Property B.

(B) Fund is a qualified holder under paragraph (d)(2) of this section because Fund did not own any United States real property interests as of December 31, 2027, the earliest date during the uninterrupted period ending on the date of the disposition, June 1, 2034, during which it satisfied the requirements of paragraph (c)(2) of this section and therefore qualified as a qualified foreign pension fund. Fund is eligible for the exemption under section 897(l) with respect to the disposition of Property B because it held Property B in a qualified segregated account. Thus, the $100x of gain realized by Fund on the disposition of Property B is exempt from tax under section 897(l).

(C) Because OpCo owned Property A, a United States real property interest, as of December 31, 2027, the earliest date during an uninterrupted period ending on the date of the disposition, June 1, 2034, during which it was a qualified controlled entity, OpCo cannot satisfy the requirements of paragraph (d)(2) of this section and must instead satisfy the requirements of paragraph (d)(3) of this section to be a qualified holder. The testing period with respect to OpCo, determined under paragraph (d)(3)(ii) of this section, ends on June 1, 2034 (the date of the disposition) and begins on June 1, 2024 (the date that is ten years before the disposition date). Because Fund failed to qualify as a qualified foreign pension fund as of December 31, 2026, OpCo was not continuously owned by a qualified foreign pension fund for the duration of the testing period, and thus did not qualify as a qualified foreign pension fund, part of a qualified foreign pension fund, or a qualified controlled entity for the duration of the testing period. As a result, OpCo is not a qualified holder under paragraph (d)(3) of this section. Accordingly, the $100x of gain recognized by OpCo on the disposition of Property A is not exempt from tax under section 897(l).

(12) *Example 12: Qualified controlled entity as qualified holder*—(i) *Facts.* Fund is a qualified foreign pension fund organized in Country C that meets the requirements of paragraph (c)(2) of this section as of December 31, 2022 and December 31, 2023. Fund purchases an interest in Company A, a United States real property holding company, on June 1, 2024. As of December 31, 2024, Fund fails to satisfy the present valuation requirement of paragraph (c)(2)(ii)(B)(*2*) of this section and does not satisfy the alternative calculation under paragraph (c)(2)(ii)(C)(*2*) of this section. From December 31, 2025, through December 31, 2030, Fund satisfies the present valuation requirement of paragraph (c)(2)(ii)(B)(*2*) of this section and meets all other requirements in paragraph (c)(2) of this section to be treated as a qualified foreign pension fund. On June

1, 2026, Fund purchases all of the stock of Company B, a Country C corporation that owns no United States real property interests and is not a qualified foreign pension fund, a part of a qualified foreign pension fund, or a qualified controlled entity. On January 1, 2027, Company B purchases Property D, a United States real property interest. Company B retains or distributes to Fund all of its net earnings, and upon dissolution, must distribute all of its assets to its stockholders (that is, Fund) after satisfaction of liabilities to its creditors. On June 1, 2031, Fund realizes $100x of gain on the disposition of stock in Company A, and Company B realizes $100x of gain on the disposition of Property D.

(ii) *Analysis.* (A) Fund owned Company A, a United States real property holding company, as of December 31, 2025, the earliest date during an uninterrupted period ending on the date of the disposition, June 1, 2031, during which Fund satisfied the requirements of paragraph (c)(2) of this section. Accordingly, to be a qualified holder, Fund must satisfy the requirements of paragraph (d)(3) of this section. The testing period with respect to Fund, determined under paragraph (d)(3) of this section, ends on June 1, 2031 (the date of disposition) and begins on June 1, 2021 (the date that is ten years before the disposition date). Fund is not a qualified holder because it failed to satisfy the requirements of paragraph (c)(2) of this section as of December 31, 2024 and, thus, has not satisfied the requirements of paragraph (c)(2) of this section continuously for the duration of the testing period. Accordingly, the $100x of gain realized by Fund on the disposition of the stock of Company A is not exempt from tax under section 897(l).

(B) Although Fund is not a qualified holder as of June 1, 2031, the date of Company B's disposition of Property D, Fund is still a qualified foreign pension fund because it satisfies the requirements of paragraph (c)(2) of this section. Company B is therefore a qualified controlled entity within the meaning of paragraph (e)(9) of this section as of June 1, 2031, because it is wholly owned by Fund, a qualified foreign pension fund. Notwithstanding that Fund is not a qualified holder under either paragraph (d)(2) or (3) of this section, Company B is a qualified holder under paragraph (d)(2) of this section because Company B did not own a United States real property interest as of June 1, 2026, the earliest date during an uninterrupted period ending on June 1, 2031 (the date of the disposition) during which Company B was a qualified controlled entity. Lastly, all of Company B's assets constitute a qualified segregated account. Accordingly, the $100x of gain realized by Company B on the disposition of Property D is exempt from tax under section 897(l).

(g) *Applicability date*—(1) *In general.* Except as otherwise provided in paragraph (g)(2) of this section, this section applies to dispositions of United States real property interests and distributions described in section 897(h) occurring on or after December 29, 2022.

(2) *Certain provisions.* Paragraphs (b)(1), (d), (e)(5) and (e)(9) of this section apply with respect to dispositions of United States real property interests and distributions described in section 897(h) occurring on or after June 6, 2019.

(3) *Early application.* An eligible fund may choose to apply this section with respect to dispositions and distributions occurring on or after December 18, 2015, and before December 29, 2022, provided that the eligible fund, and all persons bearing a relationship to the eligible fund described in section 267(b) or 707(b), consistently apply the rules in this section for all relevant years. An eligible fund that chooses to apply this section pursuant to this paragraph (g)(3) must apply the principles of paragraph (d)(4)(i) of this section to any valuation requirements with respect to dates preceding December 18, 2015.

■ **Par. 3.** Section 1.1441–3 is amended by revising paragraphs (c)(4)(i) introductory text, (c)(4)(i)(B)(*2*), and (c)(4)(i)(C) and adding paragraph (c)(4)(iii) to read as follows:

§ 1.1441–3 Determination of amounts to be withheld.

* * * * *

(c) * * *

(4) * * *

(i) *In general.* A distribution from a U.S. Real Property Holding Corporation (USRPHC) (or from a corporation that was a USRPHC at any time during the five-year period ending on the date of distribution) with respect to stock that is a U.S. real property interest under section 897(c) or from a Real Estate Investment Trust (REIT) or other entity that is a qualified investment entity (QIE) under section 897(h)(4) with respect to its stock is subject to the withholding provisions under section 1441 (or section 1442 or 1443) and section 1445. A USRPHC (other than a REIT or other entity that is a QIE) making a distribution shall be treated as satisfying its withholding obligations under both sections if it withholds in accordance with one of the procedures described in either paragraph (c)(4)(i)(A) or (B) of this section. A USRPHC must apply the same withholding procedure to all the distributions made during the taxable year. However, the USRPHC may change the applicable withholding procedure from year to year. For rules regarding distributions by REITs and other entities that are QIEs, see paragraph (c)(4)(i)(C) of this section. To the extent withholding under sections 1441, 1442, or 1443 applies under this paragraph (c)(4)(i) to any portion of a distribution that is a withholdable payment, see paragraph (a)(2) of this section for rules coordinating withholding under chapter 4.

* * * * *

(B) * * *

(*2*) Withhold under section 1445(e)(3) and § 1.1445–5(e) on the remainder of the distribution (except for any portion paid to a withholding qualified holder (as defined in § 1.1445–1(g)(11)) or on such smaller portion based on a withholding certificate obtained in accordance with § 1.1445–5(e)(3)(iv).

(C) *Coordination with REIT/QIE withholding.* In the case of a distribution from a REIT or other entity that is a QIE, withholding is required as described in paragraph (c)(4)(i)(C)(*1*) and (*2*) of this section.

(*1*) Withholding is required under section 1441 (or 1442 or 1443) on—

(*i*) The portion of the distribution that is not designated (for REITs) or reported (for regulated investment companies that are QIEs) as a capital gain dividend, a return of basis, or a distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE that is treated as a capital gain under section 301(c)(3); and

(*ii*) Any portion of a capital gain dividend from a REIT or other entity that is a QIE that is not treated as gain attributable to the sale or exchange of a U.S. real property interest pursuant to the second sentence of section 897(h)(1)).

(*2*) Withholding is required under section 1445 with respect to—

(*i*) A distribution in excess of a shareholder's adjusted basis in the stock of the REIT or QIE is, unless the interest in the REIT or QIE is not a U.S. real property interest (for example, an interest in a domestically controlled REIT or QIE under section 897(h)(2)) or the distribution is paid to a withholding qualified holder (as defined in § 1.1445–1(g)(11)); and

(*ii*) Any portion of a capital gain dividend that is attributable to the sale or exchange of a U.S. real property interest under section 897(h)(1), unless it is paid to a withholding qualified holder (as defined in § 1.1445–1(g)(11)). See § 1.1445–8.

* * * * *

(iii) *Applicability date.* Paragraphs (c)(4)(i), (c)(4)(i)(B)(*2*), and (c)(4)(i)(C) of this section apply to distributions made by a USRPHC or a QIE occurring on or after December 29, 2022. For distributions made by a USRPHC or a QIE occurring before December 29, 2022, see § 1.1441–3(c)(4)(i), (c)(4)(i)(B)(*2*), and (c)(4)(i)(C), as contained in 26 CFR part 1, revised as of April 1, 2021.

* * * * *

■ **Par. 4.** Section 1.1445–1 is amended by adding paragraph (g)(11) to read as follows:

§ 1.1445–1 Withholding on dispositions of U.S. real property interests by foreign persons: In general.

* * * * *

(g) * * *

(11) *Withholding qualified holder.* A withholding qualified holder means a qualified holder (under § 1.897(l)–1(d)), and a foreign partnership all of the interests of which are held by qualified holders (under § 1.897(l)–1(d)), including through one or more partnerships.

* * * * *

■ **Par. 5.** Section 1.1445–2 is amended by:

■ 1. Revising paragraph (b)(2)(i);

■ 2. Adding paragraph (b)(2)(vi); and

■ 3. Adding two sentences at the end of paragraph (e).

The revisions and addition read as follows:

§ 1.1445–2 Situations in which withholding is not required under section 1445(a).

* * * * *

(b) * * *

(2) * * *

(i) *In general.* The rules in this paragraph (b)(2)(i) apply for purposes of the transferor's certification of non-foreign status (including a certification of non-foreign status provided by a withholding qualified holder (as defined in § 1.1445–1(g)(11)).

(A) A transferee of a U.S. real property interest is not required to withhold under section 1445(a) if, before or at the time of the transfer, the transferor furnishes to the transferee a certification that is signed under penalties of perjury and—

(*1*) States that the transferor is not a foreign person; and

(*2*) Sets forth the transferor's name, identifying number and home address (in the case of an individual) or office address (in the case of an entity).

(B) For purposes of paragraph (b)(2)(i)(A) of this section, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, except that a withholding qualified holder (as defined in § 1.1445–1(g)(11)) is not a foreign person. Additionally, a foreign corporation that has made a valid election under section 897(i) is generally not treated as a foreign person for purposes of section 1445. In this regard, see § 1.1445–7. Pursuant to § 1.897–1(p), an individual's identifying number is the individual's Social Security number and any other person's identifying number is its U.S. employer identification number (EIN), or, if the transferor is a withholding qualified holder (as defined in § 1.1445–1(g)(11)) that does not have a U.S. taxpayer identification number, a foreign tax identification number issued by its jurisdiction of residence. A certification pursuant to this paragraph (b) must be verified as true and signed under penalties of perjury by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b), nor is any particular language required, so long as the document meets the requirements of this paragraph (b)(2)(i), except that, with respect to a certification submitted by a withholding qualified holder (as defined in § 1.1445–1(g)(11)), the transferor must state on the certification that it is treated as a non-foreign person because it is a withholding qualified holder and must further specify whether it qualifies as a withholding qualified holder because it is a qualified holder under § 1.897(l)–1(d) or a foreign partnership that satisfies the requirements of § 1.1445–1(g)(11). Samples of acceptable certifications are provided in paragraph (b)(2)(iv) of this section.

* * * * *

(vi) *Form W–8EXP.* A certification of non-foreign status may be made by a withholding qualified holder (as defined under § 1.1445–1(g)(11)) as provided in paragraph (b)(2)(i) of this section to certify its qualified holder status. A certification of non-foreign status under paragraph (b)(2)(i) of this section also includes a certification made on a Form W–8EXP (or its successor) that states that the transferor is treated as a non-foreign person because it is a withholding qualified holder and must further specify whether it qualifies as a withholding qualified holder because it is a qualified holder under § 1.897(l)–1(d) or a foreign partnership that satisfies the requirements of § 1.1445–1(g)(11). The certification must also meet all of the other requirements for a valid Form W–8EXP (or its successor) as provided on the form and the instructions to the form. A qualified holder may not provide a certification of non-foreign status on a Form W–9 (or its successor) as permitted in paragraph (b)(2)(v) of this section.

* * * * *

(e) * * * Paragraphs (b)(2)(i) and (b)(2)(vi) of this section, apply with respect to dispositions of U.S. real property interests and distributions described in section 897(h) occurring on or after December 29, 2022. For dispositions of U.S. real property interests and distributions described in section 897(h) occurring before December 29, 2022, see § 1.1445–2(b)(2)(i) and (b)(2)(vi), as contained in 26 CFR part 1, revised as of April 1, 2021.

■ **Par. 6.** Section 1.1445–5 is amended by revising paragraphs (b)(3)(ii)(A), (B), and (D) and adding two sentences at the end of paragraph (h) to read as follows:

§ 1.1445–5 Special rules concerning distributions and other transactions by corporations, partnerships, trusts, and estates.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) *In general.* For purposes of this section, an entity or fiduciary may treat any holder of an interest in the entity as a U.S. person if that interest-holder furnishes to the entity or fiduciary a certification stating that the interest-holder is not a foreign person, in accordance with the provisions of paragraph (b)(3)(ii)(B) of this section. In general, a foreign person is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate, except that a withholding qualified holder (as defined in § 1.1445–1(g)(11)) is not a foreign person for purposes of this section.

(B) *Procedural rules.* The rules in this paragraph (b)(3)(ii)(B) apply for purposes of the interest-holder's certification of non-foreign status (including a certification of non-foreign status provided by a withholding qualified holder (as defined in § 1.1445–1(g)(11)).

(*1*) An interest-holder's certification of non-foreign status must be signed under penalties of perjury and must state—

(*i*) That the interest-holder is not a foreign person; and

(*ii*) The interest-holder's name, identifying number, home address (in the case of an individual), or office address (in the case of an entity), and place of incorporation (in the case of a corporation).

(*2*) For purposes of paragraph (b)(3)(ii)(B)(*1*) of this section, an individual's identifying number is the individual's Social Security number and any other person's identifying number is its U.S. employer identification number (see § 1.897–1(p)), or, if the interest-holder is a withholding qualified holder (as defined in § 1.1445–1(g)(11)) that does not have a U.S. taxpayer identification number, a foreign tax identification number issued by its jurisdiction of residence. The certification must be signed by a responsible officer in the case of a corporation, by a general partner in the case of a partnership, and by a trustee, executor, or equivalent fiduciary in the case of a trust or estate. No particular form is needed for a certification pursuant to this paragraph (b)(3)(ii), nor is any particular language required, so long as the document meets the requirements of this paragraph, except that, with respect to certification submitted by a withholding qualified holder (as defined in § 1.1445–1(g)(11)), the transferor must state on the certification that it is treated as a non-foreign person because it is a withholding qualified holder and must further specify whether it qualifies as a withholding qualified holder because it is a qualified holder under § 1.897(l)–1(d) or a foreign partnership that satisfies the requirements of § 1.1445–1(g)(11). Samples of acceptable certifications are provided in paragraph (b)(3)(ii)(E) of this section.

(*3*) An entity may rely upon a certification pursuant to this paragraph (b)(3)(ii)(B) for a period of two calendar years following the close of the calendar year in which the certification was given. If an interest holder becomes a foreign person (or no longer is treated as a withholding qualified holder (as defined in § 1.1445–1(g)(11)) and therefore is no longer treated as a non-foreign person for purposes of withholding under section 1445 within the period described in the preceding sentence, the interest-holder must notify the entity before any further dispositions or distributions and upon receipt of such notice (or any other notification of the foreign status of the interest-holder) the entity may no longer rely upon the prior certification. An entity that obtains and relies upon a certification must retain that certification with its books and records for a period of three calendar years following the close of the last calendar year in which the entity relied upon the certification.

* * * * *

(D) *Form W–8EXP.* A certification of non-foreign status can be made by a withholding qualified holder (as defined in § 1.1445–1(g)(11)) as provided in this paragraph (b)(3)(ii) to certify its qualified holder status. A certification of non-foreign status under this paragraph (b)(3)(ii) also includes a certification made on a Form W–8EXP that states that the interest-holder is treated as a non-foreign person because it is a withholding qualified holder and must further specify whether it qualifies as a withholding qualified holder because it is a qualified holder under § 1.897(l)–1(d) or a foreign partnership that satisfies the requirements of § 1.1445–1(g)(11). The certification must also meet all of the other requirements for a valid Form W–8EXP as provided on the form and the instructions to the form. A qualified holder may not provide a certification of non-foreign status on a Form W–9, as described in paragraph (b)(3)(iv) of this section.

* * * * *

(h) * * * Paragraph (b)(3)(ii)(A) of this section applies with respect to dispositions of U.S. real property interests and distributions described in section 897(h) occurring on or after December 29, 2022. For dispositions of U.S. real property interests and distributions described in section 897(h) occurring before December 29, 2022, see § 1.1445–5(b)(3)(ii)(A), as contained in 26 CFR part 1, revised as of April 1, 2021.

■ **Par. 7.** Section 1.1445–8 is amended by revising paragraph (e) and adding two sentences after the first sentence in paragraph (j) to read as follows:

§ 1.1445–8 Special rules regarding publicly traded partnerships, publicly traded trusts and real estate investment trusts (REITs).

* * * * *

(e) *Determination of non-foreign status by withholding agent.* A withholding agent may rely on a certification of non-foreign status pursuant to § 1.1445–5(b)(3)(ii) to determine whether an interest holder is not a foreign person. Reliance on these documents will excuse the withholding agent from liability imposed under section 1445(e)(1) in the absence of actual knowledge that the interest holder is a foreign person. A withholding agent may also employ other means to determine the status of an interest holder, but, if the agent relies on such other means and the interest holder proves, in fact, to be a foreign person (or, is not a withholding qualified holder (as defined in § 1.1445–1(g)(11)) and therefore is not treated as a non-foreign person for purposes of withholding under section 1445), then the withholding agent is subject to any liability imposed pursuant to section 1445 and the regulations thereunder for failure to withhold. See also § 1.1445–5(b)(3)(ii)(B)(*3*) for the period during which a withholding agent may rely on a certification of non-foreign status submitted by a withholding qualified holder (as defined in § 1.1445–1(g)(11)), which applies under this paragraph (e).

* * * * *

(j) * * * Paragraph (e) of this section applies with respect to distributions made on or after December 29, 2022. For distributions made before December 29, 2022, see § 1.1445–8(e) as contained in 26 CFR part 1, as revised April 1, 2021.

* * *

■ **Par. 8.** Section 1.1446–1 is amended by revising the second sentence of paragraph (c)(2)(ii)(G) and by revising paragraph (c)(2)(ii)(H) to read as follows:

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(G) * * * However, except as set forth in § 1.1446–2(b)(4)(iii) (regarding withholding qualified holders (as defined in § 1.1445–1(g)(11)) and § 1.1446–3(c)(3) (regarding certain tax-exempt organizations described in section 501(c)), the submission of Form W–8EXP (or successor) will have no effect on whether there is a 1446 tax due with respect to such partner's allocable share of partnership ECTI. * * *

(H) *Foreign corporations, certain foreign trusts, and foreign estates.* Consistent with the rules of this paragraph (c)(2) and paragraph (c)(3) of this section, a foreign corporation, a foreign trust (other than a foreign grantor trust described in paragraph (c)(2)(ii)(E) of this section), or a foreign estate may generally submit any appropriate Form W–8 (for example, Form W–8BEN–E or Form W–8IMY) to the partnership to establish its foreign status for purposes of section 1446. In addition, a foreign entity may also submit a certification of non-foreign status (including a Form W–8EXP) described in § 1.1445–5(b)(3)(ii) for purposes of documenting itself as a withholding qualified holder (as defined in § 1.1445–1(g)(11)).

* * * * *

■ **Par. 9.** Section 1.1446–2 is amended by adding paragraph (b)(4)(iii) to read as follows:

§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

* * * * *

(b) * * *

(4) * * *

(iii) *Special rule for qualified holders.* With respect to a foreign partner that is a withholding qualified holder (as defined in § 1.1445–1(g)(11)), the foreign partner's allocable share of partnership ECTI does not include gain or loss that is not taken into account under § 1.897(l)–1(b) and that is not otherwise treated as effectively connected with a trade or business in the United States. The partnership must have received from the partner a valid certificate of non-foreign status (including a Form W–8EXP) described in § 1.1445–2(b)(2)(i) or § 1.1445–5(b)(3)(ii). See § 1.1446–1(c)(2)(ii)(G) and (H) regarding documentation of withholding qualified holders.

* * * * *

■ **Par. 10.** Section 1.1446–7 is amended by adding two sentences at the end to read as follows

§ 1.1446–7 Applicability dates.

* * * Sections 1.1446–1(c)(2)(ii)(G) and (H) and 1.1446–2(b)(4)(iii) apply with respect to dispositions of U.S. real property interests and distributions described in section 897(h) occurring on or after December 29, 2022. For dispositions of U.S. real property interests and distributions described in section 897(h) occurring before December 29, 2022, see §§ 1.1446–1(c)(2)(ii)(G) and (H), as contained in 26 CFR part 1, revised as of April 1, 2021.

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 9, 2022

Lily Batchelder,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2022–27978 Filed 12–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0971]

RIN 1625–AA00

Safety Zone; New Year's Fireworks Show, Savannah River, Savannah, GA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Savannah River around Savannah, GA for the Savannah's Waterfront New Year's Eve event. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by fallout from the fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Savannah or a designated representative.

DATES: This rule is effective from 11 p.m. on December 31, 2022, through 00:30 a.m., on January 1, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0971 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Ashley Schad, of the Marine Safety Unit Savannah Office of Waterways Management, Coast Guard, at telephone 912–652–4353, extension 231, or via email at *Ashley.M.Schad@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The primary justification for this action is that the Coast Guard did not receive final details of the event until December 8, 2022 and the event is scheduled to begin on December 31, 2022. The event would begin before the rulemaking process would be completed. Therefore, the Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. Because of the dangers posed by the fireworks display, a safety zone is necessary without delay. It is impracticable and contrary to the public interest to delay promulgating this rule because it is necessary to protect personnel, vessels, and the marine environment from potential hazards created by the fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with a fireworks display adjacent to a major shipping channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Savannah (COTP) has determined that potential hazards associated with a fireworks display on the Savannah River, near downtown Savannah, starting 11:00 p.m. on December 31, 2022, through 00:30 a.m., on January 1, 2023 will be a safety concern for anyone within the area. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the New Year's Eve Fireworks display.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 11 p.m. on December 31, 2022, through 00:30 a.m., on January 1, 2023. The safety zone will cover all navigable waters in the Savannah River adjacent to downtown Savannah. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by fallout from the New Year's Eve Fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: (1) the safety zone only being enforced for a total of one hour and thirty minutes; (2) although persons and vessels may not enter, transit through, anchor in, or remain within the zone without authorization from the COTP or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the areas during the enforcement period if authorized by the COTP or a designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

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

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0971 to read as follows:

§ 165.T07–0971 Safety Zone; New Year's Fireworks Show, Savannah River, Savannah, GA.

(a) *Location.* The following area is a safety zone: All waters of the Savannah River, from surface to bottom, bounded by a line drawn from a point located at 32°4′56.79″ N, 0 81°5′18.24″ W, thence to 32°05′10″ N, 081°05′39″ W, thence to 32°05′04″ N, 081°05′30″ W, thence to 32°04′57″ N, 081°05′34″ W.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Savannah (COTP) in the enforcement of the safety zone.

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

(2) Persons or vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact COTP Savannah by telephone at (912) 247–0073, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the COTP Savannah or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners, Marine Safety Information Bulletins, and on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from from 11 p.m. on December 31, 2022, through 00:30 a.m., on January 1, 2023.

Dated: December 21, 2022.

K.A. Broyles,

Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2022–28236 Filed 12–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0993]

RIN 1625–AA00

Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from 8 p.m. on December 29, 2022 through 4 a.m. on December 30, 2022. For the purposes of enforcement, actual notice will be used from December 27, 2022 until December 29, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with pipeline removal operations in the Corpus Christi Shipping Channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 8 p.m. on December 27, 2022 through 4 a.m. on December 30, 2022 will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on December 27, 2022 through 4 a.m. on December 30, 2022 and will be subject to enforcement from 8 p.m. to 4 a.m. of the next day, each day. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The pipeline will be removed along the floor of the Corpus

Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 8 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f),and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(c) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0993 to read as follows:

§ 165.T08–0993 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W.

(b) *Effective period.* This section is effective from 8 p.m. on December 27, 2022 through 4 a.m. on December 30, 2022. This section is subject to enforcement from 8 p.m. to 4 a.m. of the next day, each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into the temporary safety zone described in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: December 19, 2022.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–28371 Filed 12–23–22; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0975]

RIN 1625–AA00

Safety Zone; Lake Charles, Lake Charles, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters within a 650-foot radius of a drone flight area at 30°14′0.014″ N, 93°14′43.492″ W, on Lake Charles. This safety zone is necessary to protect persons and vessels from hazards associated with a drone show. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Marine Safety Unit Port Arthur or a designated representative.

DATES: This rule is effective on December 30, 2022, from 8:50 p.m. through 9:30 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0975 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Mache Mason, U.S. Coast Guard; telephone 337–912–0073, email *msulcwwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The NPRM process would delay the establishment of the safety zone until after the drone show event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be impracticable because we must establish this safety zone by December 30, 2022 to respond to the potential safety hazards associated with the drone show event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 700034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Port Arthur has determined that potential hazards associated with the drone show at this location would be a safety concern for spectator craft and vessels in the vicinity of the designated flight area location. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

This rule establishes a safety zone from 8:50 p.m. through 9:30 p.m. on December 30, 2022. The safety zone will cover all navigable waters within a 650-foot radius of a drone flight area located at 30°14′0.014″ N and 93°14′43.492″ W. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, in the nearby navigable waters during the drone show.

No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on size, location, and duration of the safety zones. This action involves a drone flight area at 30°14′0.014″ N and 93°14′43.492″ W, in Lake Charles on December 30, 2022. This safety zone will be in effect for forty minutes in a 650-foot radius. This rule would be enforced to protect personnel, vessels, and the marine environment from hazards associated with the drone show.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only forty minutes that will prohibit entry within a 650-foot radius of a drone flight area. It is categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 700034, 700051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T08–0975 to read as follows:

§ 165.T08–0975 Safety Zone; Lake Charles, Lake Charles, Louisiana.

(a) *Location.* All waters within a 650-foot radius of the drone flight area at 30°14′0.014″ N and 93°14′43.492″ W, on Lake Charles on December 30, 2022, from 8:50 p.m. until 9:30 p.m. The duration of the safety zone is intended to protect participants, spectators, and other persons and vessels, on the navigable waters of the Lake Charles during the drone show.

(b) *Enforcement period.* This section is effective from 8:50 p.m. through 9:30 p.m. on December 30, 2022.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into the safety zone described in paragraph

(a) of this section is prohibited unless authorized by the Captain of the Port Marine Safety Unit Port Arthur (COTP) or a designated representative. They may be contacted on VHF–FM channel 13 or 16, or by phone at 337–912–0073.

(2) The COTP or a designated representative may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(3) The COTP or a designated representative may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(4) The COTP or a designated representative will terminate enforcement of the special local regulations at the conclusion of the event.

(d) *Informational broadcasts.* The COTP or a designated representative will inform the public of the effective period for the safety zone as well as any changes in the dates and times of enforcement through Local Notice to Mariners (LNMs), Broadcast Notices to Mariners (BNMs), and/or Marine Safety Information Bulletins (MSIBs) as appropriate.

Dated: December 20, 2022.

M.A. Wike,

Captain, U.S. Coast Guard, Captain of the Port Marine Safety Unit Port Arthur.

[FR Doc. 2022–28280 Filed 12–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2018–0031]

RIN 0651–AD31

Setting and Adjusting Patent Fees During Fiscal Year 2020

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule; delay of effective date and final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) published a final rule in the **Federal Register** on August 3, 2020, that includes a fee for patent applications that are not filed in DOCX format, except for design, plant, or provisional applications. This new fee was scheduled to become effective on January 1, 2023. Through this final rule, the USPTO is delaying the effective date of this fee until April 3, 2023.

DATES: This final rule is effective April 3, 2023. As of December 29, 2022, the effective date of amendatory instruction 2.i. (affecting 37 CFR 1.16(u)), published at 85 FR 46932 on August 3, 2020, and delayed at 86 FR 66192, November 22, 2021, is further delayed until April 3, 2023. The change to 37 CFR 1.16(u) in amendatory instruction 2.i., published at 85 FR 46932 on August 3, 2020, is applicable only to nonprovisional utility applications filed under 35 U.S.C. 111 on or after April 3, 2023.

FOR FURTHER INFORMATION CONTACT: Mark O. Polutta, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7709; or Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, at 571–272–7727. You can also send inquiries by email to *patentpractice@uspto.gov.*

SUPPLEMENTARY INFORMATION: On August 3, 2020, the USPTO published a final rule in the **Federal Register** that included a new fee set forth in § 1.16(u) with an effective date of January 1, 2022. *See* Setting and Adjusting Patent Fees in Fiscal Year 2020, 85 FR 46932. As specified in § 1.16(u), the fee is due for any application filed under 35 U.S.C. 111 for an original patent—except design, plant, or provisional applications—where the specification, claims, and/or abstract do not conform to the USPTO requirements for submission in DOCX format. Therefore, the fee is due for nonprovisional utility applications filed under 35 U.S.C. 111, including continuing applications, that are not filed in DOCX format.

The USPTO conducted two pilot programs for filing applications in DOCX format. The eMod Text Pilot Program was conducted between August 2016 and September 2017. The USPTO then expanded the ability to file patent applications in DOCX format in EFS-Web to all users in September 2017. In 2018, the USPTO launched Patent Center and conducted the Patent Center Text Pilot Program from June 2018 through April 2020. All applicants have been able to file applications in DOCX format in Patent Center since April 2020. Information about Patent Center is available at *www.uspto.gov/patents/apply/patent-center.* In addition, the USPTO has held and continues to hold many discussions with stakeholders to ensure a fair and reasonable transition to the DOCX format.

The USPTO is delaying the effective date of the fee set forth in § 1.16(u) until April 3, 2023. Although the USPTO published a notice on December 20, 2022 (87 FR 77812) indicating that the fee set forth in § 1.16(u) was expected to go into effect on January 1, 2023, the USPTO is now further delaying the effective date for the fee to give applicants more time to adjust to filing patent applications in DOCX format.

Applicants are strongly encouraged to begin filing patent applications in DOCX format before the new effective date of the fee. Applicants are also reminded that they can file test submissions through Patent Center training mode to practice filing in DOCX. Furthermore, applicants who have not yet taken advantage of the DOCX training sessions hosted by the USPTO are strongly encouraged to do so. Information on filing application documents in DOCX and a link to the DOCX training sessions are available at *www.uspto.gov/patents/docx.*

Rulemaking Requirements

A. Administrative Procedure Act: This final rule revises the effective date of a final rule published on August 3, 2020, implementing a non-DOCX filing surcharge fee, and is a rule of agency practice and procedure pursuant to 5 U.S.C. 553(b)(A). *See JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 32 (D.C. Cir. 1994) (''[T]he 'critical feature' of the procedural exception [in 5 U.S.C. 553(b)(A)] 'is that it covers agency actions that do not themselves alter the rights or interests of parties, although [they] may alter the manner in which the parties present themselves or their viewpoints to the agency.' '' (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980))); *see also Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims). Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'' (quoting 5 U.S.C. 553(b)(A))).

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B), finds good cause to adopt the change to the effective date of § 1.16(u)

in this final rule without prior notice and an opportunity for public comment, as such procedures would be impracticable and contrary to the public interest. The change to the effective date will provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the DOCX format before the new fee is effective. Delay of this provision to provide prior notice and comment procedures is also impracticable because it would allow § 1.16(u) to go into effect before the public is ready for the DOCX format. In addition, the Director finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of this rule. Immediate implementation of the delay in effective date of the fee is in the public interest because it will provide the public an opportunity to more fully comprehend the nature of, and prepare to comply with, the DOCX format before the new fee in section 1.16(u) is effective.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a regulatory flexibility analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. *See* 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Paperwork Reduction Act: The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The USPTO has determined that there are no new requirements for information collection associated with this final rule.

List of Subjects for 37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Office amends 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

§ 1.16 [Amended]

■ 2. In § 1.16, amend paragraph (u) introductory text by removing ''January 1, 2023'' and adding ''April 3, 2023'' in its place.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–28436 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R06–OAR–2022–0546; FRL–10189–02–R6]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; Arkansas; Control of Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving the CAA section 111(d) state plan submitted by the State of Arkansas for sources subject to the Municipal Solid Waste (MSW) Landfills Emission Guidelines (EG). The Arkansas MSW landfills plan was submitted to fulfill the state's obligations under CAA section 111(d) to implement and enforce the requirements under the MSW Landfills EG. The EPA is approving the state plan and amending the agency regulations in accordance with the requirements of the CAA.

DATES: This rule is effective on January 30, 2023. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register January 30, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2022–0546. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karolina Ruan Lei, EPA Region 6 Office, Air and Radiation Division—State Planning and Implementation Branch, (214) 665–7346, *ruan-lei.karolina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

I. Background

The background for this action is discussed in detail in our September 30, 2022 proposal (87 FR 59376) and accompanying Technical Support Document (TSD). In that document we proposed to approve the Arkansas MSW landfills plan submitted by the Arkansas Department of Energy and Environment, Division of Environmental Quality (ADEQ) in accordance with the requirements of section 111(d) of the CAA and to amend 40 CFR part 62, subpart E, to codify EPA's approval. We proposed to find that the Arkansas MSW landfills plan, submitted by ADEQ on June 20, 2022, and supplemented on August 24, 2022, and August 31, 2022, is at least as protective as the Federal requirements provided under the MSW landfills EG, codified at 40 CFR part 60, subpart Cf.

II. Response to Comments

We received one comment regarding our proposal. The comment and response to the comment are provided below.

Comment: This is part of an assignment to practice using the *Regulations.gov* website. I chose to comment on this proposed rule because I find environmental justice to be highly important. As stated in the proposed rule, the emissions from landfill waste can be hazardous and detrimental to the health of the community. For this reason, the limiting of these emissions by regulations described in the rule is of the utmost importance. Furthermore, because of the hazardous nature of these emissions, it is crucial that the locations of the landfills are properly considered, so as not to expose a densely populated area, or an area populated largely by minority groups. The figures presented in Table 1 are shocking for many reasons. The relatively high percentiles that most of the landfills noted fall into demonstrate a need for reduction, for the safety of the communities. Furthermore, the discrepancies between different areas' landfills also raises a concern for the health of each individual community, and demonstrates a need for a more

equitable approach to environmental justice in Arkansas.

Response: We appreciate the commenter's statements, which provide general support for regulations that reduce landfill emissions as well as the commenter's perspectives regarding environmental justice. However, the commenter's statements regarding the siting of landfills and the need for a more equitable approach to environmental justice in Arkansas are outside the scope of this rulemaking. This final action approving the Arkansas MSW landfills plan concerns the regulation of emissions from existing MSW landfills for which construction, reconstruction, or modification was commenced on or before July 17, 2014. As discussed in the proposed rule, we believe that these requirements for existing MSW landfills and resulting emissions reductions have contributed to reduced environmental and health impacts on all populations impacted by emissions from these sources in Arkansas. Additionally, we would like to clarify that while we did provide additional analysis of environmental justice associated with this action in the proposed rule, this analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. As stated in this final rule and the associated proposed rule, this rule finds that the Arkansas MSW landfills plan is at least as protective as the Federal requirements provided under the MSW landfills EG. EPA is statutorily required to approve CAA section 111(d) plans that meet the Federal criteria for approval. For more information, please see the proposal and the accompanying TSD for the detailed basis and rationale for this action.

III. Final Action

In this final action, the EPA is amending 40 CFR part 62, subpart E, to reflect approval of the Arkansas MSW landfills plan from ADEQ, received on June 20, 2022, and supplemented on August 24, 2022, and August 31, 2022, in accordance with section 111(d) of the CAA.

IV. Environmental Justice Considerations

EPA provided additional analysis of environmental justice associated with this action in our September 30, 2022 proposal (87 FR 59376) for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. These EG requirements implemented under the MSW Landfills Federal Plan and now incorporated by Arkansas in its MSW landfills plan is designed to result in significant emissions reductions for MSW landfills.[1] As discussed in the proposed action, we believe that these requirements for existing MSW landfills and resulting emissions reductions have climate benefits and have contributed to reduced environmental and health impacts on all populations impacted by emissions from these sources in Arkansas, including people of color and low-income populations, and will continue to do so under Federal oversight. This rule will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns because it is not anticipated to result in or contribute to emissions increases in Arkansas.

V. Incorporation by Reference

In accordance with the requirements of 1 CFR 51.5, we are finalizing regulatory text that includes the incorporation by reference of Arkansas Pollution Control and Ecology Commission (APC&EC) Rule 19, Chapter 17, adopted January 28, 2022, which is part of the CAA section 111(d) Plan applicable to existing MSW landfills subject to the MSW Landfills Emission Guidelines, at 40 CFR part 60, subpart Cf, within ADEQ's jurisdiction in the State of Arkansas. The regulatory provisions of APC&EC Rule 19, Chapter 17 incorporate the MSW Landfills Emissions Guidelines promulgated by the EPA at 40 CFR part 60, subpart Cf, and establish emission standards and compliance times for the control of municipal solid waste landfills, as defined in subpart Cf, that commenced construction, modification, or reconstruction on or before July 17, 2014. The EPA has made and will continue to make APC&EC Rule 19, Chapter 17, generally available at the EPA Region 6 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). They are also available at: *https://www.regulations.gov*. This incorporation by reference has been approved by the Office of the Federal Register and the Plan is federally enforceable under the CAA as of the effective date of this final rulemaking.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a CAA section 111(d) submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7411(d); 42 U.S.C. 7429; 40 CFR part 60, subparts B and Cf; and 40 CFR part 62, subpart A. Thus, in reviewing CAA section 111(d) state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act and implementing regulations. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the CAA section 111(d) plan is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as

[1] Described in the MSW landfill EG proposed and final rules (80 FR 52100; 81 FR 59276).

specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: December 21, 2022.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart E—Arkansas

■ 2. Amend § 62.850 by adding paragraph (c)(3) to read as follows:

§ 62.850 Identification of plan.

* * * * *

(c) * * *

(3) Municipal solid waste landfills.

■ 3. Add an undesignated center heading and § 62.857 to read as follows:

Emissions From Existing Municipal Solid Waste Landfills

§ 62.857 Identification of plan.

(a) *Identification of plan.* Control of air emissions from existing municipal solid waste landfills, as adopted by the State of Arkansas on January 28, 2022, and submitted on June 20, 2022, by the Governor in a letter dated May 12, 2022. The plan includes the regulatory provisions cited in paragraph (d) of this section, which EPA incorporates by reference.

(b) *Identification of sources.* The plan, as adopted by the State of Arkansas on January 28, 2022, and submitted on June 20, 2022, applies to existing municipal solid waste landfills subject to the Municipal Solid Waste Landfills Emission Guidelines, at 40 CFR part 60, subpart Cf, within its jurisdiction in the State of Arkansas.

(c) *Effective Date.* The effective date of the plan is January 30, 2023.

(d) *Incorporation by reference.* The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the material may be inspected or obtained from the EPA Region 6 office, 1201 Elm Street, Suite 500, Dallas, Texas 75270, 214–665–2200. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit: *www.archives.gov/federal-register/cfr/ibr-locations.html,* or email: *fr.inspection@nara.gov.* The material is available from State of Arkansas, Office of the Secretary of State, Arkansas Register, State Capitol, Room 026, Little Rock, AR 72201, *arkansasregister@sos.arkansas.gov, https://www.sos.arkansas.gov/rules-regulations/arkansas-register/.*

(1) APC&EC Rule No. 19 Chapter 17, Arkansas Pollution Control and Ecology Commission Rule 19, Rules of the Arkansas Plan of Implementation for Air Pollution Control, Chapter 17, 111(d) Requirements for Landfills, adopted January 28, 2022.

(2) [Reserved]

[FR Doc. 2022–28154 Filed 12–28–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2022–0815; FRL–10250–02–R9]

Finding of Failure To Attain and Reclassification as Serious Nonattainment for the 2012 Annual Fine Particulate Standard: Plumas County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the Plumas County nonattainment area failed to attain the 2012 annual fine particulate matter (''$PM_{2.5}$'') national ambient air quality standard (NAAQS or ''standard'') by the December 31, 2021 ''Moderate'' area attainment date. This determination is based on ambient air quality monitoring data from 2019 through 2021. With this final determination, Clean Air Act (CAA or ''Act'') section 188(b)(2) requires that the nonattainment area be reclassified to Serious by operation of law. Within 18 months from the effective date of the reclassification to Serious, the State must submit a revision to its State Implementation Plan (SIP) that complies with the statutory and regulatory requirements for Serious $PM_{2.5}$ nonattainment areas.

DATES: This effective date of this rule is January 30, 2023.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2022–0815. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Michael Dorantes, Air Planning Office

(AIR–2), EPA Region IX, (415) 972–3934, *dorantes.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. Summary of Proposed Action
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I. Summary of Proposed Action

On November 1, 2022,[1] the EPA proposed to find that the Plumas County nonattainment area (''Portola nonattainment area'') failed to attain the 2012 $PM_{2.5}$ NAAQS by the December 31, 2021 Moderate area attainment date. This proposal was based on our review of quality-assured and certified $PM_{2.5}$ air quality monitoring data from the 2019–2021 calendar years, which we compared to the 2012 annual $PM_{2.5}$ NAAQS attainment for the Portola nonattainment area.[2] Please refer to our proposal for additional information regarding our review of the monitoring data and associated documentation. As explained in our proposed rulemaking, if we finalize the determination that the area did not attain the standard by the applicable attainment date, in accordance with section 188(b)(1) of the Act, the Portola nonattainment area would be reclassified by operation of law from Moderate to Serious for the 2012 annual $PM_{2.5}$ standard. In our proposed action, we further explained that upon reclassification, California would be required to submit an additional SIP revision to satisfy the statutory requirements that apply to Serious $PM_{2.5}$ nonattainment areas, including the requirements of subpart 4 of part D, title I of the Act and 40 CFR part 51, subpart Z.

II. Public Comments and EPA Responses

The 30-day public comment period for the proposed rule closed on December 1, 2022. During this period, the EPA received one comment, which argued that Plumas County has been affected by illegal immigration and that such immigration results in pollution from vehicles, lawn equipment, discarded clothing, and phone batteries.[3] After reviewing the comment, the EPA has determined that the comment fails to raise issues germane to the proposed finding and reclassification of the Portola nonattainment area, which is based solely upon air monitoring data. Therefore, we have determined that this comment does not necessitate a response, and the EPA will not provide a specific response to the comment in this notice.

III. Summary of Final Action

For the reasons discussed in our proposed rule and summarized in this document, we are finalizing our finding that the Portola nonattainment area did not attain the 2012 annual $PM_{2.5}$ NAAQS by its applicable Moderate area attainment date of December 31, 2021. Pursuant to CAA section 188(b)(2), upon the effective date of this action, the Portola nonattainment area will be reclassified as a Serious $PM_{2.5}$ nonattainment area by operation of law and will be subject to all applicable Serious area requirements.

The Serious area SIP elements that California is required to submit are as follows:

1. Provisions to assure that the best available control measures, including the best available control technology for stationary sources, for the control of direct $PM_{2.5}$ and $PM_{2.5}$ precursors shall be implemented no later than four years after the area is reclassified (CAA section 189(b)(1)(B));
2. A demonstration (including air quality modeling) that the plan provides for attainment as expeditiously as practicable but not later than December 31, 2025, or where the state is seeking an extension of the attainment date under section 188(e), a demonstration that attainment by December 31, 2025 is impracticable and that the plan provides for attainment by the most expeditious alternative date practicable and not later than December 31, 2030 (CAA sections 189(b)(1)(A), 188(c)(2), and 188(e));
3. Plan provisions that require reasonable further progress (RFP) (CAA section 172(c)(2));
4. Quantitative milestones that are to be achieved every three years until the area is redesignated to attainment and that demonstrate RFP toward attainment by the applicable date (CAA section 189(c));
5. Provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area (CAA section 189(e));
6. A comprehensive, accurate, current inventory of actual emissions from all sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area (CAA section 172(c)(3));
7. Contingency measures to be implemented if the area fails to meet any requirement concerning RFP or quantitative milestones or fails to attain by the applicable attainment date (CAA section 172(c)(9)); and
8. A revision to the nonattainment new source review program to lower the applicable ''major stationary source''[4] threshold from 100 tons per year (tpy) to 70 tpy (CAA section 189(b)(3)) and to satisfy the subpart 4 requirements for major stationary sources of $PM_{2.5}$ precursors (CAA section 189(e)).

Pursuant to CAA section 189(b)(2), the SIP revision that satisfies these elements will be due 18 months from the effective date of the final reclassification to Serious. Under section 188(c)(2) of the Act, the attainment date for a Serious area ''shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . .'' The EPA designated Plumas County as nonattainment for the 2012 $PM_{2.5}$ NAAQS effective January 15, 2015. Therefore, upon reclassification to Serious, the latest permissible attainment date under section 188(c)(2) of the Act for the purposes of the 2012 $PM_{2.5}$ NAAQS in the Portola nonattainment area is December 31, 2025.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

[1] 87 FR 65719 (November 1, 2022).

[2] The $PM_{2.5}$ monitoring data that the EPA reviewed indicate that the annual $PM_{2.5}$ design value for 2021 is at 16.5 micrograms per cubic meter (μg/m³) at the Portola monitoring site (AQS Site ID: 06–063–1010) in the nonattainment area, which is above the level of the 2012 $PM_{2.5}$ NAAQS (12.0 μg/m³). 87 FR 65719 (November 1, 2022).

[3] The comment is available in the docket for this rulemaking. See Docket ID EPA–R09–2022–0815 at *https://www.regulations.gov.*

[4] For any Serious area, the terms ''major source'' and ''major stationary source'' include any stationary source that emits or has the potential to emit at least 70 tpy of $PM_{2.5}$ (CAA section 189(b)(3) and 40 CFR 51.1000).

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action requires the state to adopt and submit a SIP revision to satisfy CAA requirements and does not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This final action is to determine that the Portola nonattainment area failed to attain the NAAQS by the applicable attainment date. As of the effective date, this determination triggers existing statutory timeframes for the state to submit a SIP revision. Such a determination in and of itself does not impose any federal intergovernmental mandate.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. As there are no federally recognized tribes within the Portola nonattainment area,[5] the finding of failure to attain the 2012 annual $PM_{2.5}$ NAAQS does not apply to tribal areas, and the rule does not impose a burden on Indian reservation lands or other areas where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Portola nonattainment area. Thus, this rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because the effect of this action will trigger additional planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record indicating that this action is inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. This rule makes factual determinations for specific entities and does not direct regulate any entities. The determination of a failure to attain by the attainment date and reclassification does not in itself create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 27, 2023. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: December 21, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. In § 81.305 amend the table ''California—2012 Annual $PM_{2.5}$ NAAQS [Primary]'' by revising the entry for ''Plumas County, CA'' to read as follows:

§ 81.305 California.

* * * * *

[5] Map of Federally-Recognized Tribes in EPA's Pacific Southwest (Region 9) is available at *https://www.epa.gov/tribal-pacific-sw/map-federally-recognized-tribes-epas-pacific-southwest-region-9.*

CALIFORNIA—2012 ANNUAL $PM_{2.5}$ NAAQS

[Primary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * * *	*	*	*	*
Plumas County, CA				
Plumas County (part)	.....	Nonattainment	January 30, 2023.	Serious.
That portion of Plumas County within the following Super Planning Watersheds (SPWS), as defined by the State of California's Department of Conservation Statewide Watershed Program: Humbug Valley (#55183301), Sulpher Creek (#55183302), Frazier Creek (#55183303), and Eureka Lake (#55183304)				
* * * *	*	*	*	*

[1] Includes areas of Indian country located in each county or area, except as otherwise specified.
[2] This date is April 15, 2015, unless otherwise noted.

* * * * *

[FR Doc. 2022–28269 Filed 12–28–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[EPA–HQ–OW–2022–0834; FRL–10123–04–OW]

RIN 2040–AG27

NPDES Small MS4 Urbanized Area Clarification; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the direct final rule entitled ''NPDES Small MS4 Urbanized Area Clarification.'' EPA is extending the comment period for 15 days, from January 3, 2023 to January 18, 2023, in response to a stakeholder request for an extension. EPA is also publishing the same extension of the comment period in the ''Proposed Rules'' section of the **Federal Register**.

DATES: The comment period for the direct final rule published in the **Federal Register** on December 2, 2022 (87 FR 73965) is being extended for fifteen days. Comments must be received on or before January 18, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0834 to *https://www.regulations.gov/*. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The agencies will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Huddle, Water Permits Division (MC4203), Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20004; telephone number: (202) 564–7932; email address: *huddle.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 2, 2022, EPA published a direct final rule (87 FR 73965) and a proposed rule (87 FR 74066) entitled ''NPDES Small MS4 Urbanized Area Clarification.'' The original deadline to submit comments was January 3, 2023. This action extends the comment period for 15 days. Written comments must now be received by January 18, 2023. Related to this extension, the direct final rule will become effective on March 2, 2023 without further notice, unless EPA receives adverse comment by January 18, 2023. If EPA receives adverse comment by January 18, 2023, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

Wynne Miller,

Deputy Director, Office of Wastewater Management.

[FR Doc. 2022–28314 Filed 12–28–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–117; RM–11923; DA 22–1231; FR ID 117280]

Television Broadcasting Services Great Falls, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On March 10, 2022, the Media Bureau, Video Division (Bureau) issued a *Notice of Proposed Rulemaking* (*NPRM*) in response to a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KRTV(TV) (Station), channel 7, Great Falls, Montana, requesting the substitution of channel 22 for channel 7 at Great Falls in the Table of Allotments. For the reasons set forth in the *Report and Order* referenced below, the Bureau amends FCC regulations to substitute channel 22 for channel 7 at Great Falls.

DATES: Effective December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was published at 87 FR 16157 on March 22, 2022. The Petitioner filed comments in support of the petition reaffirming its commitment

to apply for channel 22. No other comments were filed.

The *Report and Order* substitutes channel 22 for channel 7 at Great Falls, Montana. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on VHF channel 7, and the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service. The Engineering Statement provided with the Petition confirmed that the proposed channel 22 contour would continue to reach virtually all of the population within the Station's current service area and fully cover the city of Great Falls. An analysis using the Commission's *TVStudy* software tool indicates that KRTV's move from channel 7 to channel 22 is predicted to create a small area where 554 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contour of other Scripps owned CBS affiliated stations. Once those other sources of CBS programming are factored into the loss analysis, the new loss area that would be created by the proposed channel substitution would contain only 255 persons, which is a level of service loss the Commission considers to be *de minimis.* Concurrence from the Canadian government was required and has been obtained.

This is a synopsis of the Commission's *Report and Order,* MB Docket No. 22–117; RM–11923; DA 22–1231, adopted November 29, 2022, and released November 29, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments, under ''Montana'', by revising the entry for ''Great Falls'' to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Great Falls	8, 17, *21, 22, 26
* * * * *	

[FR Doc. 2022–28275 Filed 12–28–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 234]

Endangered and Threatened Wildlife and Plants; One Species Not Warranted for Delisting and Seven Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce findings that one species is not warranted for delisting and that seven species are not warranted for listing as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to delist Bone Cave harvestman (*Texella reyesi;* formerly listed as endangered as the Bee Creek Cave harvestman, *Texella reddelli*). We find that it is not warranted at this time to list Brandegee's buckwheat (*Eriogonum brandegeei* Rydberg), Chowanoke crayfish (*Faxonius virginiensis),* Cisco milkvetch (*Astragalus sabulosus*), stage station milkvetch (*A. vehiculus*), Isely's milkvetch (*A. iselyi*), Columbia Oregonian (*Cryptomastix hendersoni*), and Rye Cove cave isopod (*Lirceus culveri*). However, we ask the public to submit to us at any time any new information relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on December 29, 2022.

ADDRESSES: Detailed descriptions of the bases for these findings are available on the internet at *https://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Bone Cave harvestman	FWS–R2–ES–2022–0157
Brandegee's buckwheat	FWS–R6–ES–2022–0127
Chowanoke crayfish	FWS–R5–ES–2022–0128
Cisco milkvetch	FWS–R6–ES–2022–0129
Stage station milkvetch	FWS–R6–ES–2022–0130
Isely's milkvetch	FWS–R6–ES–2022–0131
Columbia Oregonian	FWS–R1–ES–2022–0132
Rye Cove cave isopod	FWS–R5–ES–2022–0133

Those descriptions are also available by contacting the appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Bone Cave harvestman	Michael Warriner, Supervisory Fish and Wildlife Biologist, Austin Ecological Services Field Office, *michael_warriner@fws.gov,* 512–490–0057.
Brandegee's buckwheat	Liisa Niva, Eastern Colorado Supervisor, Colorado Field Office, *liisa_niva@fws.gov,* 303–436–4773.
Chowanoke crayfish, Rye Cove cave isopod	Cindy Shulz, Field Supervisor, Virginia Field Office, *cindy_shulz@fws.gov,* 804–693–6694.
Cisco milkvetch, Stage station milkvetch, Isely's milkvetch.	Yvette Converse, Field Supervisor, Utah Ecological Services Field Office, *yvette_converse@fws.gov,* 801–975–3330.
Columbia Oregonian	Craig Rowland, Deputy State Supervisor, Portland, Oregon Regional Office, *craig_rowland@fws.gov,* 503–231–6179.

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:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding on whether or not a petitioned action is warranted within 12 months after receiving any petition that we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (known as a ''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded by other listing activity. We must publish a notification of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following 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.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the Act's 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.'' The regulatory language that is applicable to determinations of the foreseeable future is contained in the regulations at 50 CFR 424.11(d) promulgated in 2019 (*In re: Washington Cattlemen's Ass'n,* No. 22–70194 (9th Cir. Sept. 21, 2022) (staying the district court's vacatur of the 2019 regulations pending resolution of the motion for reconsideration) (*Washington Cattlemen's*)). However, those regulations remain the subject of ongoing litigation, and their continued applicability is therefore uncertain. If the litigation results in vacatur of the 2019 regulations, the regulations that were in effect before those 2019 regulations (the pre-2019 regulations) would again become the governing law for listing decisions. Because of the uncertainty surrounding the legal status of the regulations, we undertook two analyses of the foreseeable future for each species identified in this notification of findings: one under the 2019 regulations and one under the pre-

2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 424.11(d). Those pre-2019 regulations did not include provisions clarifying the meaning of ''foreseeable future,'' so we applied a 2009 Department of the Interior Solicitor's opinion (M–37021, ''The Meaning of 'Foreseeable Future' in Section 3(2) of the Endangered Species Act,'' Jan. 16, 2009).

The analyses under both the 2019 regulations and the pre-2019 regulations are included in the decision file for these findings and are posted on *https://www.regulations.gov* under the appropriate docket numbers for each species under **ADDRESSES**, above. Based on those analyses, we concluded that our determination of the foreseeable future would be the same under the pre-2019 regulations as under the 2019 regulations for each species included in this notification of findings and that our determination that delisting one species is not warranted would be the same under the pre-2019 regulations as under the 2019 regulations.

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' 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.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Bone Cave harvestman (*Texella reyesi;* formerly listed as endangered as the Bee Creek Cave harvestman, *Texella reddelli*), Brandegee's buckwheat (*Eriogonum brandegeei* Rydberg), Chowanoke crayfish (*Faxonius virginiensis*), Cisco milkvetch (*Astragalus sabulosus*), stage station milkvetch (*A. vehiculus*), Isely's milkvetch (*A. iselyi*), Columbia Oregonian (*Cryptomastix hendersoni*), and Rye Cove cave isopod (*Lirceus culveri*) meet the Act's definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information for all these species. Our evaluation may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

In accordance with the regulations at 50 CFR 424.14(h)(2)(i), this document announces the not-warranted findings for eight species (on a petition to delist one species and petitions to list seven species), in accordance with the regulations at 50 CFR 424.14(h)(2)(i). We have also elected to include brief summaries of the analyses on which these findings are based. We provide the full analyses, including the reasons and data on which the findings are based, in the decisional file for each of the eight actions included in this document. The following is a description of the documents containing these analyses:

The species assessment form for the Bone Cave harvestman contains more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that the species meets the Act's definition of an ''endangered species.'' The species assessment forms for Brandegee's buckwheat, Chowanoke crayfish, Cisco milkvetch, stage station milkvetch, Isely's milkvetch, Columbia Oregonian, and Rye Cove cave isopod contain more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that each species does not meet the Act's definition of an ''endangered species'' or a ''threatened species.'' To inform our status reviews, we completed species status assessment (SSA) reports for the Bone Cave harvestman (Service 2021, entire), Brandegee's buckwheat (Service 2022a, entire), Chowanoke crayfish (Service 2022b, entire), Cisco milkvetch, stage station milkvetch, and Isely's milkvetch (Service 2022c, entire), Columbia Oregonian (Service 2022d, entire), and Rye Cove cave isopod (Service 2022e, entire). Each SSA contains a thorough review of the taxonomy, life history, ecology, current status, and projected future status for each species. This supporting information can be found on the internet at *https://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above).

Bone Cave Harvestman

Previous Federal Actions

The Bone Cave harvestman was originally listed as endangered as the Bee Creek Cave harvestman (*Texella reddelli*) on September 16, 1988 (53 FR 36029). The species was subsequently reclassified into two species, and on August 18, 1993, we listed the Bone Cave harvestman (*Texella reyesi*) as a separate species under the Act (58 FR 43818). This 1993 technical correction ensured that the Bone Cave harvestman continued to be listed under the Act. On December 4, 2009, we completed a 5-year review of the Bone Cave harvestman, which recommended that the species remain listed as endangered (Service 2009).

On June 2, 2014, we received a petition dated June 2, 2014, from John Yearwood, Kathryn Heidemann, Charles and Cheryl Shell, the Walter Sidney Shell Management Trust, the American Stewards of Liberty, and Steven W. Carothers requesting that the endangered Bone Cave harvestman be delisted due to recovery and error in information. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required at that time by 50 CFR 424.14(a). We evaluated this petition under the 50 CFR 424.14 requirements that were in effect at the time we received the petition, and on June 1, 2015 (80 FR 30990), we published an initial 90-day finding that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

Following litigation in 2016 and 2017, we published a 90-day finding in the **Federal Register** on October 10, 2019 (84 FR 54542), that the petition presented substantial scientific or commercial information indicating that delisting the Bone Cave harvestman may be warranted. Previous Federal actions and the history of relevant lawsuits and court decisions can be found in the 2019 90-day finding (84 FR 54542; October 10, 2019). The regulations at 50 CFR 424.14(h)(2)(i) require that we publish not-warranted 12-month findings in the **Federal Register**, and this document constitutes our 12-month finding for Bone Cave harvestman in response to the 2014 petition and 2019 90-day finding.

Summary of Finding

The Bone Cave harvestman is an arachnid that occurs only in subterranean habitats of the Balcones Canyonlands in portions of Travis and Williamson Counties, Texas. The Balcones Canyonlands ecoregion forms the eastern to southeastern boundary of the Edwards Plateau, where the activity of rivers, springs, and streams has produced an extensive karst landscape of canyons, caves, and sinkholes. Bone Cave harvestmen spend their entire lives underground within voids of varying sizes—from caves to smaller diameter mesocaverns that are inaccessible by humans. Preliminary genetic results on the variation among Bone Cave harvestman specimens from across the range of the species indicate at least three genetic clades exist, generally corresponding to the northern, central, and southern part of the species' range, with a potential for at least two more clades. These results indicate the species' ability to adapt to environmental changes (*i.e.,* representation) but are not indicative of a separate species. More research would be necessary to understand whether these potential divergences coincide with morphological diversity and to understand whether the genetic variation is suggestive of further speciation (Hedin and Derkarabetian 2020, pp. 12, 16–17).

Bone Cave harvestman populations require subterranean habitats with high humidity and stable temperatures. Intact networks of subterranean voids provide living space and a buffer or refugia from the effects of humidity and temperature extremes. Functional surface and subsurface drainage basins supply water that aids in the maintenance of high relative humidity. The Bone Cave harvestman also requires a source of food in the form of invertebrates or other organic matter. The majority of nutrients that support cave ecosystems originate from surface habitats, specifically the natural communities that overlay these systems. Nutrients may include animal or plant material washed in by water, blown by wind, or transported by animals.

The stressors that may influence the overall viability of the Bone Cave harvestman are habitat destruction, degradation, and fragmentation that results from urban, suburban, and exurban development (*i.e.,* ''human development'' Factor A). The species' range in Travis and Williamson Counties has experienced substantial human population growth and development. During the period from 1980 to 2010, the Austin–Round Rock area was among the fastest growing metropolitan areas in the United States. Within that same timespan, Williamson County was the seventh fastest growing exurban/emerging suburban county nationally. In 2019, the Austin–Round Rock–Georgetown area was rated as the eighth fastest growing metropolitan area in the United States (U.S. Census Bureau 2019a).

Development in the areas surrounding currently suitable sites reduces Bone Cave harvestman population resiliency. Smaller areas of open space are more vulnerable to edge effects, may contain reduced cave cricket populations, are more susceptible to contamination events or an altered hydrological regime, and are potentially unable to sustain native plant community composition over the long term.

To assess the current conditions of Bone Cave harvestman populations across their range, we also evaluated redundancy and representation in addition to resiliency. The Bone Cave harvestman occurs in all or portions of six of the currently delineated karst fauna regions in Travis and Williamson Counties. From north to south, these regions are the North Williamson County, Georgetown, McNeil/Round Rock, East Cedar Park, Jollyville Plateau, and Central Austin Karst Fauna Regions (Service 1994, p. 33; Veni and Jones 2021, pp. 24, 40). The McNeil/Round Rock Karst Fauna Region, roughly in the center of the species' range, currently lacks any protected high- or moderate-resiliency sites that provide redundancy or representation for that region. Widespread urbanization has resulted in the loss of all high- to moderate-resiliency sites in the Cedar Park and Central Austin Karst Fauna Regions. Protection of representative sites within each of the occupied karst fauna regions is important given the north-to-south morphological variation in Bone Cave harvestman populations, the presence of at least three genetic clades, and the variety of ecological conditions present at each cave site throughout the range.

We forecasted future resiliency, redundancy, and representation for the Bone Cave harvestman in each occupied karst fauna region under two potential scenarios. The scenarios evaluated two levels of conservation effort. Under Scenario 1, we assume that future conservation efforts to acquire, protect and manage currently known, unprotected cave clusters and individual caves continues as in the past and some additional protected areas are established. Under Scenario 2, we assume that there is no additional conservation effort to protect and manage currently known, unprotected cave clusters and individual caves and no additional protected areas are established.

These scenarios forecast viability of the species from the present to the year 2050 because this date encompasses the timeframe for which we have the longest reliable projection of human population growth in Travis and Williamson Counties. As noted earlier, human population growth and associated development is projected to be the factor most likely to impact the viability of this species.

Forecasts of future resiliency, redundancy, and representation underscore the critical role that adequate habitat protection will play in securing long-term persistence of Bone Cave harvestman populations. Economic demand for converting natural open space to development is high in the Austin–Round Rock–Georgetown metropolitan area, and that demand is only expected to increase in response to a growing human population, limiting the potential for conserving existing unprotected high- or moderate-resiliency sites.

Our review of the best available scientific and commercial information regarding the past, present, and future threats to the species indicates that the Bone Cave harvestman is in danger of extinction throughout all or a significant portion of its range and meets the definition of an endangered species under the Act. The species currently occurs in 77 extant Bone Cave harvestman cave clusters and individual cave sites. Our analysis shows that 38 of those sites are classified as having low or impaired resiliency. These sites have reduced or insufficient open space and are generally directly adjacent to human development. The remaining 39 sites are located on larger tracts of open space that have increasing risk of impacts due to human development surrounding these sites. These latter sites are scattered and sometimes isolated, and only four have permanent protections. The center of the species' range, represented by the McNeil/Round Rock, East Cedar Park, and Central Austin Karst Fauna Regions, currently lacks any protected high- to moderate-resiliency sites.

The primary stressor and reason for past loss, human development, is continuing currently and will continue into the future. Ongoing human population growth and its associated development activities throughout the species' range have resulted in habitat loss that has been impacting the Bone Cave harvestman for decades. The rate of such development has increased in recent years and is expected to further

accelerate in both the near term and the foreseeable future, which we projected out to 2050 in the SSA. The impacts to Bone Cave harvestman from this development activity are uniform throughout the range of the species and include severe, immediate, and often irreversible destruction, degradation, and fragmentation of existing limited habitat. These development activities have also facilitated the introduction of nonnative species such as the red imported fire ant, which negatively impacts the nutrient availability at Bone Cave harvestman sites.

These factors, combined with the narrowly restricted range and the loss of redundancy and genetic representation across the range, have acted together to reduce the overall viability of the species. Therefore, we find that the Bone Cave harvestman should remain listed as an endangered species under the Act, and the petitioned action is not warranted at this time. A detailed discussion of the basis for this finding can be found in the Bone Cave harvestman species assessment form and other supporting documents (see **ADDRESSES**, above).

Brandegee's Buckwheat

Previous Federal Actions

In July 2007, the Service received a petition from Forest Guardians (now WildEarth Guardians) requesting that the Service list 206 species, including Brandegee's buckwheat (*Eriogonum brandegeei* Rydberg) (Forest Guardians 2007, p. 36). In response to this petition, the Service published a 90-day finding for Brandegee's buckwheat in 2009, concluding that the petition presented substantial scientific or commercial information indicating that the listing of Brandegee's buckwheat may be warranted (74 FR 41649; August 18, 2009). The regulations at 50 CFR 424.14(h)(2)(i) require that we publish not-warranted 12-month findings in the **Federal Register**, and this document constitutes our 12-month finding for Brandegee's buckwheat in response to the 2007 petition and 2009 90-day finding.

Summary of Finding

Brandegee's buckwheat is a narrow endemic plant species that is a long-lived, hardy perennial. It is only known to occur in Chaffee and Fremont Counties in south-central Colorado and currently occupies approximately 846 acres (342 hectares). The species occurs in two distinct areas separated by more than 60 miles (97 kilometers).

Brandegee's buckwheat is found on barren outcrops of the Dry Union and Morrison formations within open sagebrush and pinyon-juniper communities. Brandegee's buckwheat requires barren bentonite soils from the Dry Union or Morrison Formation, adequate precipitation or other water source, low plant cover, sufficient pollinators, and adequate nutrients. Resilient analysis units (AUs) also contain enough individuals across each life stage (seed, seedling, and mature reproductive adult) to bounce back after experiencing environmental stressors such as intermediate disturbance from recreational use or occasional drought. Brandegee's buckwheat redundancy is influenced by the number of AUs across the landscape. More AUs across its range increase the species' ability to withstand catastrophic events. Individuals and AUs inhabiting diverse ecological settings and exhibiting genetic or phenological variation add to the level of representation across the species' range. The greater the diversity observed in Brandegee's buckwheat genetics, habitats, and morphology, the more likely it is to be able to adapt to change over time.

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Brandegee's buckwheat, and we evaluated all relevant stressors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors with the potential to affect Brandegee's buckwheat's biological status are recreation (Factor A), development (Factor A), and climate change (Factor E). We conducted an evaluation of the environmental conditions that negatively affect individuals or populations of Brandegee's buckwheat, as well as conservation efforts that ameliorate those stressors. Currently, all AUs of Brandegee's buckwheat have high levels of resiliency. The species occurs in two genetically distinct AUs in unique climatic zones separated by more than 60 miles, contributing to its current redundancy and representation. In all future scenarios we considered, the AUs maintain high or moderate resiliency (with the exception of one subunit under one out of three scenarios) into the foreseeable future (*i.e.,* 30 years into the future). While redundancy could decrease slightly in the future, commensurate with decreases in resiliency, we expect all AUs to remain extant, maintaining the species' ability to withstand catastrophic events, given the separation between AUs and the low likelihood of a catastrophe affecting both areas simultaneously. Further, the species' high genetic variation and ecological differences between the AUs will be maintained in the future, sustaining the species' ability to adapt to future change.

We also evaluated whether there are any significant portions of the range that could be in danger of extinction now or in the foreseeable future (see Service 2022a, entire). While the Southern Salida subunit is projected to have lower resiliency than the other two subunits in future Scenario 3, we do not find that the species is likely to become in danger of extinction in the foreseeable future in this portion of the range. Despite the increased stressors in this future scenario, 87 percent of this subunit is Federal land, where BLM manages Brandegee's buckwheat as a sensitive species, aiming to reduce or mitigate the effects of stressors on the species. Moreover, we have observed thus far that Brandegee's plants can survive extremely close to recreational areas; they have a natural resiliency to the effects of this stressor, as long as off-highway vehicle users are not directly riding over the plants. In addition, we found that the conditions in Scenario 3, while plausible, are less likely than other future scenarios. Moreover, in the other two future scenarios, the resiliency of this subunit remains high or moderate, with moderate soil condition and relatively stable growth rates. Given the low likelihood of this scenario, and the fact that resiliency is moderate to high under the two more likely scenarios, we do not find that Brandegee's buckwheat is likely to become endangered in this portion of the species' range in the foreseeable future.

Therefore, we find that listing Brandegee's buckwheat as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Brandegee's buckwheat species assessment form and other supporting documents (see **ADDRESSES**, above).

Chowanoke Crayfish

Previous Federal Actions

On November 21, 1991, Chowanoke crayfish (*Faxonius virginiensis*) was identified as a category 2 candidate species by the Service under the Act (56 FR 58804). A subsequent candidate notice of review (CNOR) in 1994 (59 FR 58982; November 15, 1994) maintained the Chowanoke crayfish as a category 2 species. However, after the publication of the Service's February 28, 1996, CNOR (61 FR 7596), which revised the

Service's candidate list to include only Category 1 species, the Chowanoke crayfish was no longer considered a candidate species. On April 20, 2010, the Service received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including Chowanoke crayfish, as endangered or threatened species under the Act. On September 27, 2011, the Service published a 90-day finding (76 FR 59836) announcing that the petition presented substantial scientific or commercial information indicating that listing may be warranted. The regulations at 50 CFR 424.14(h)(2)(i) require that we publish not-warranted 12-month findings in the **Federal Register**, and this document constitutes our 12-month finding for Chowanoke crayfish in response to the 2010 petition and 2011 90-day finding.

Summary of Finding

The Chowanoke crayfish's historical range is the Chowan River basin in southeastern Virginia and northeastern North Carolina, and the Roanoke River basin in northcentral and northeastern North Carolina. The historical range of the Chowanoke crayfish included documented distribution in six analysis units (AUs) within the two populations (*i.e.,* basins). The Chowanoke crayfish is currently extant in all 6 AUs and occupies 86 percent (24 of 28) of the historically occupied Hydrologic Unit Code 10 (HUC10) watersheds, which are evenly distributed within AUs and both populations.

The Chowanoke crayfish is a small, freshwater, tertiary burrowing crustacean native to the Chowan and Roanoke River basins in Virginia and North Carolina. The species occurs in perennial streams and rivers with moderate to high gradient and flow, with rocky substrate, woody debris, and/or vegetation for shelter, that likely burrows only during the breeding season and/or during drought conditions. The species' needs are unembedded coarse hard structure (boulder, cobble, and gravel), woody debris, leaf litter, undercut banks, and/or abandoned crayfish burrows for breeding, sheltering, and feeding; perennial streams that are third order or greater; sufficient water quantity (not stagnant) with noticeable current to maintain habitat and water quality; sufficient water quality consisting of freshwater, low levels of silt, sand, and turbidity to promote food sources and resistance to nonnative, invasive species and disease; and habitat connectivity for individuals to access adequate shelter, food, and space and to move to suitable habitat and climate over time. The species is assumed to be an opportunistic omnivore feeding on a wide variety of items including aquatic and terrestrial vegetation, plant detritus, insects, snails, and small aquatic vertebrates. Most of the occupied streams and rivers are non-tidal and freshwater, except for near the mouth of the Roanoke River and Chowan River in North Carolina. The occurrence of Chowanoke crayfish near the river mouth suggest that they have some tolerance to infrequent low-salinity conditions.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Chowanoke crayfish, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary threats with the potential to affect the Chowanoke crayfish's biological status include land use modification (Factor A), climate change (Factor E), and nonnative crayfish (Factors C and E). The species currently has high resiliency, representation, and redundancy. The effects of land use change and climate change have likely begun to occur in minor portions of the current Chowanoke range and may have contributed to some habitat degradation. However, these threats appear to have low imminence and magnitude, and the current risk of extinction is low. Therefore, after assessing the best available information, we conclude that the Chowanoke crayfish is not in danger of extinction throughout all of its range and does not meet the definition of an endangered species.

As for determining whether the species may be threatened, we have little scientific information that informs the species' likely response to changes related to sea level rise and the spread of nonnative crayfish; however, based on the best available information, we do not expect changes from climate change or nonnative crayfish to be primary stressors affecting the species' viability. Even with the impacts of increased salinity, the species has sufficient healthy populations distributed across the range such that the species is not in danger of extinction in the foreseeable future, which we determined to be 50 years. Because negative impacts of nonnative crayfish on Chowanoke crayfish have not been documented, it was not considered as an active threat in the analysis. Based on current and projected habitat conditions and population factors for two future scenarios (1 and 3), estimates of current and future resiliency for Chowanoke crayfish are high to moderate in all the AUs and Chowan and Roanoke populations, as are estimates for redundancy and representation at the end of 50 years (Service 2022b, entire). For scenario 2, the Middle Roanoke AU in the Roanoke population is predicted to be likely extirpated, but the other five AUs in the Chowan and Roanoke populations will be in moderate or high condition, thus maintaining resiliency for five (83 percent) subpopulations. Redundancy is predicted to be reduced, but still at a moderate level across the range, with 68 percent of the HUC10 watersheds occupied (Service 2022b, entire). After assessing the best available information, we conclude that Chowanoke crayfish is not likely to become endangered within the foreseeable future throughout all of its range.

We found no biologically meaningful portion of the Chowanoke crayfish range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range, or where the condition of the species differs from its condition elsewhere in its range such that the status of the species in that portion differs from any other portion of the species' range. Thus, after assessing the best available information, we determine that Chowanoke crayfish is not in danger of extinction now or likely to become so within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that listing the Chowanoke crayfish as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Chowanoke crayfish species assessment form and other supporting documents (see **ADDRESSES**, above).

Cisco Milkvetch, Stage Station Milkvetch, and Isely's Milkvetch

Previous Federal Actions

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) to list 206 species in the mountain-prairie region of the United States, including Cisco milkvetch (*Astragalus sabulosus*) and Isely's milkvetch (*A. iselyi*), as endangered or threatened species under the Act. We completed a 90-day finding on August 18, 2009 (74 FR 41649; correction on September 14, 2009, 74 FR 46965), in which we

announced our finding that the petition contained substantial information that listing may be warranted for numerous species, including Cisco milkvetch and Isely's milkvetch. There are no previous Federal actions for stage station milkvetch because stage station milkvetch was only recently (in 2015) identified as being a separate species from Cisco milkvetch. The regulations at 50 CFR 424.14(h)(2)(i) require that we publish not-warranted 12-month findings in the **Federal Register**, and this document constitutes our 12-month finding for the Cisco milkvetch and Isely's milkvetch in response to the 2007 petition and our 2009 90-day finding. This document also constitutes the notification of review for the stage station milkvetch, indicating under § 424.15(b) that there is not sufficient scientific or commercial information available to warrant proposing to list.

Summary of Findings

Cisco milkvetch, stage station milkvetch, and Isely's milkvetch are perennial flowering plants found in southeast Utah in Grand and San Juan Counties. As narrow endemics, there have likely always been relatively few populations of these species within a narrow range. Based on the best available information, the current distribution of the species is similar to its historical distribution.

Cisco milkvetch, stage station milkvetch, and Isely's milkvetch appear to be narrowly restricted to specific environmental conditions, including open, sparsely vegetated areas with little competition from other plants, and they have only been observed growing in selenium-rich soils. Although these species require sufficient seasonal precipitation for seed germination, seedling emergence, vegetative plant growth, flowering, and fruit set, specific suitable microsite characteristics are also unknown.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Cisco, stage station, and Isely's milkvetches, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these threats. The primary threats with the potential to affect the Cisco, stage station, and Isely's milkvetches' biological status include recreation (Factor B); oil and gas development (Factor A); land development and conversion (Factor A); major energy and transportation corridor (Factor A); nonnative, invasive species (Factors C and E); and the effects of drought and climate change (Factor E), as well as mining of mineral resources for stage station and Isely's milkvetches (Factor A).

Our assessment of current viability included all primary threats to Cisco, stage station, and Isely's milkvetch. Despite past and ongoing stressors, Cisco and Isely's milkvetch have multiple, healthy populations (high and medium condition), and stage station milkvetch has maintained the only historically known population in a moderate condition. To assess future viability of these species, we considered the foreseeable future out to 2050 and projected the influence of three future scenarios that included climate change and the other primary threats included in the assessment of current viability. Within the SSA for the three species (Service 2022c, entire), we evaluated the viability of each of the three milkvetches, including a review of ongoing and future threats. Concurrent with the development of the SSA, with partners, we developed a Conservation Agreement and Strategy (Agreement) for the Cisco, stage station, and Isely's milkvetches (BLM et al. 2022, entire) to address the ongoing and future threats identified in the SSA. We conducted an analysis of the Agreement under the Policy for Evaluation of Conservation Efforts (68 FR 15100; March 28, 2003); based on our findings that the Agreement has a high level of certainty of future implementation and certainty of the effectiveness, we were able to consider the Agreement as part of the basis for our 12-month finding for Cisco and Isely's milkvetches and our discretionary status assessment for the stage station milkvetch.

As part of our future viability assessment, we also considered the implementation of the Agreement and projected that it will mitigate or reduce non-climate-related threats in the foreseeable future. The best available information indicates that these species have life-history traits conducive to surviving periodic drought and hot summers similar to projected conditions resulting from climate change. Additionally, the implementation of the Agreement will mitigate or reduce non-climate-related stressors and reduce the potential cumulative interaction of climate change with non-climate-related stressors. Therefore, the three species are expected to maintain levels of resiliency, redundancy, and representation that are similar to current conditions, and most populations of Cisco and Isely's milkvetches and the only known population of stage station milkvetch appear sufficiently robust and are not likely to change significantly in the foreseeable future. No significant portions of the range of any of these three species are in danger of extinction or likely to become so in the foreseeable future.

After assessing the best available information, we conclude that the Cisco milkvetch, stage station milkvetch, and Isely's milkvetch are not in danger of extinction or likely to become in danger of extinction throughout all of their range or in any significant portion of their range. Therefore, we find that listing the Cisco milkvetch, stage station milkvetch, and Isely's milkvetch as endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Cisco milkvetch, stage station milkvetch, and Isely's milkvetch species assessment forms and supporting documents (see **ADDRESSES**, above).

Columbia Oregonian

Previous Federal Actions

On March 17, 2008, the Service received a petition from the Center for Biological Diversity, Conservation Northwest, the Environmental Protection Information Center, the Klamath-Siskiyou Wildlands Center, and Oregon Wild, requesting that the Service list 32 species and subspecies of mollusks in the Pacific Northwest, including the Columbia Oregonian (*Cryptomastix hendersoni*), as endangered or threatened under the Act. The petition also requested that the Service designate critical habitat concurrent with listing. On October 5, 2011, the Service found in our 90-day finding that the petition presented substantial scientific or commercial information indicating that listing the Columbia Oregonian may be warranted (76 FR 61826). The regulations at 50 CFR 424.14(h)(2)(i) require that we publish not-warranted 12-month findings in the **Federal Register**, and this document constitutes our 12-month finding for Columbia Oregonian in response to the 2008 petition and 2011 90-day finding.

Summary of Finding

The Columbia Oregonian is a small terrestrial gastropod (snail) associated with riparian habitat found along the moist edges of seeps, springs, and streams. It is known historically from locations near The Dalles, Oregon, with a few occurrences near Walla Walla and Yakima in the State of Washington, as well as in west-central Idaho. Its current range includes additional areas along the Columbia River corridor, into the Blue Mountains of northeast Oregon,

along Hells Canyon in western Idaho and in northern Idaho, and locations west of Yakima, Washington, in the Snoqualmie National Forest.

The Columbia Oregonian occurs on talus slopes (especially near the base where moisture levels tend to be higher) along the margins of seeps and spring-fed streams in low- to middle-elevation areas (average 78 meters) of major river drainages (Jordan and Black 2015, p. 13). In Idaho, specimens have also been reported in habitats outside riparian areas at higher elevations in conifer-dominated forests (Idaho Department of Fish and Game 2021, p. 3). The Columbia Oregonian is an air-breathing (or pulmonate) gastropod that reproduces both sexually and asexually, and lays eggs that hatch after approximately 1 month (Frest and Johannes 1995, p. 25). While the specific life-history needs of the Columbia Oregonian have not been documented, sources describe *Cryptomastix* spp. as requiring habitat containing adequate soil moisture and appropriate soil chemistry, sources of refugia, and moderate air temperatures, and a diet consisting of various plant material, microorganisms, algae, and other organic matter found at the edge of streams and seeps for nutrition (Jordan and Black 2015, p. 10).

We carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Columbia Oregonian, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors with the potential to affect the Columbia Oregonian's biological status include habitat loss and fragmentation due to livestock grazing and riparian habitat conversion (Factor A), and the climate-mediated risk of drought and wildfire (Factor E).

Currently, the species occurs in 19 resiliency units (delineated from 32 occurrence records), the majority of which are currently in moderate to high condition, with only one unit currently in low condition. These resiliency units are distributed across the historical range of the species and occupy a diversity of ecological settings. Thus, we determined that the species is not in danger of extinction throughout all of its range.

To assess whether the species is in danger of extinction in the foreseeable future, we considered three plausible future scenarios that projected changes in livestock grazing, riparian habitat conversion, the risk of drought and wildfire as influenced by climate change, and how these threats would impact Columbia Oregonian habitat and population connectivity. For the purposes of this analysis, we considered the foreseeable future to be the timeframe from the present to about mid-century (or to 2069, given available data sets), as that is the timeframe for which we can reasonably determine likely future changes in climate that influence two of the four major threats we analyzed for the Columbia Oregonian (wildfire and drought), and the species' responses to these changes.

We determined that these threats are likely to reduce resiliency to a modest degree in two of the three future scenarios we considered, thereby having the potential to also modestly reduce redundancy and representation (through reduced abundance or the loss of populations and/or occupied representation units). However, even in the highest threat impact future scenario, more than half of the resiliency units would continue to occur in moderate to high condition, and only 3 of the 19 resiliency units would decline to low or very low condition. Extirpation of low-condition populations is possible in this highest threat impact future scenario, but even in this scenario, multiple moderate- to high-condition populations would remain across most or all of the historical and current range of the species. Therefore, our analysis indicates that even with the projected decline in habitat quality, and by proxy the decline in the species' condition, the Columbia Oregonian will maintain adequate levels of resiliency across most populations, and adequate redundancy and representation rangewide, to maintain species viability into the foreseeable future.

In considering the significant portion of its range, we found no biologically meaningful portion of the Columbia Oregonian range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range, or where the condition of the species differs from its condition elsewhere in its range such that the status of the species in that portion differs from any other portion of the species' range. The Weiser resiliency unit is currently in low condition and is projected to remain low in future scenarios. Given this, we consider the Weiser resiliency unit to have different status than the remainder of the range. However, we found that the unit does not represent a significant portion of the species' range. The only known occurrence in the larger Weiser watershed unit is based on a single historical record of a dead individual Columbia Oregonian that was collected in 1991. Therefore, the best available information does not indicate that the Weiser resiliency unit represents a part of the species' range that hosts a particularly high concentration of individuals, nor does it represent a particularly large area proportional to the rest of the species' range (the Weiser resiliency unit comprises 5 percent of the total area made up by the 19 resiliency units). For these reasons, we conclude that Weiser is not a significant portion of the range. Therefore, we find that listing the Columbia Oregonian as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Columbia Oregonian species assessment form and other supporting documents (see **ADDRESSES**, above).

Rye Cove Cave Isopod

Previous Federal Actions

On April 20, 2010, the Service received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including Rye Cove cave isopod (*Lirceus culverii*), as endangered or threatened species under the Act (see Center for Biological Diversity 2010, pp. 1–66, 192–193). On September 27, 2011, the Service published a 90-day finding in the **Federal Register** (76 FR 59836) announcing that the petition presented substantial scientific or commercial information indicating that listing may be warranted. The regulations at 50 CFR 424.14(h)(2)(i) require that we publish not-warranted 12-month findings in the **Federal Register**, and this document constitutes our 12-month finding for Rye Cove cave isopod in response to the 2010 petition and 2011 90-day finding.

Summary of Finding

The Rye Cove cave isopod occupies a small range of approximately 14 kilometers (8.7 miles) of cave streams fed by a drainage area of approximately 19 square kilometers (7.3 square miles) within the Rye Cove area of Scott County in southwestern Virginia. The Rye Cove area is a trough within the Appalachian Valley, bound by Big Ridge to the south and Cove Ridge to the north; the floor of the cove is about 500 feet (152 meters) lower than the surrounding ridges, which exceed 2,000 feet (610 meters). The Rye Cove cave isopod is now known to inhabit two distinct, adjacent karst drainages within

a single moderately sized spring basin. One drainage contains six caves, while the second contains two caves. All the streams and caves appear to eventually emerge aboveground over 1 mile east and 200 feet (61 meters) lower than the Rye Cove valley floor at a spring.

The Rye Cove cave isopod is an eyeless, unpigmented troglobitic species of isopod and is a crustacean with a rigid, segmented exoskeleton. Isopods also have two pairs of antennae, seven pairs of jointed limbs on the thorax, and five pairs of branching appendages (pleopods) on the abdomen that are used in swimming and for respiration. Rye Cove cave isopods require suitable substrate within the cave streams where clean water with adequate depth flows through riffles that help oxygenate the water. Streams must carry organic detritus on which the isopod can feed. However, excess nutrients allow surface organisms without troglomorphic (cave-adapted) characteristics to regularly survive in the cave environment. Thus, nutrient inputs should not be so high that surface-adapted organisms regularly occur and potentially outcompete the Rye Cove cave isopod, or that degrade water quality and the overall habitat conditions. The range of temperatures in which the isopod will thrive/survive is likely dependent on the average stream temperature in the cave and seasonal fluctuations.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Rye Cove cave isopod, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The Rye Cove cave isopod inherently has low redundancy and representation due to its being a narrow-ranging endemic. Survey data indicate that the species resiliency has remained unchanged over the years. The primary threats with the potential to affect the Rye Cove cave isopod's biological status include the effects of climate change (Factor E), land use and management (Factor A), and the risk of catastrophic events (Factor E). Based on the best available information, we conclude that major impacts from climate change in the foreseeable future (2040 to 2070) are unlikely. While little is known about the ecology of the genus *Lirceus,* the Rye Cove cave isopod has existed through climate variations, including both temperature and water quantity (drought conditions, flood conditions), given molecular evidence that points to a timeframe of millions of years since the Rye Cove cave isopod diverged from its closest relative.

The effects of land use and management have likely begun to occur in the current range of the Rye Cove cave isopod and may have contributed to some habitat degradation. However, these threats appear to have low imminence and magnitude such that they are not affecting the species' ability to maintain populations within its range. The Rye Cove cave isopod has the best viability into the future with zero to low land use changes. Intense future land uses (animal feeding operations, dairy farms, suburban neighborhoods) in Rye Cove are unlikely; trends and models do not predict major land use changes, and the terrain and access in Rye Cove may hinder this sort of development.

While the risk of a catastrophic event occurring increases with an increase in the risk factors, all of these risk factors are projected to remain low or decrease based on the geographic location, census, and modeling of human population growth and development in Rye Cove. And, while the Rye Cove cave isopod is at particular risk of catastrophic impacts due to its linear habitat, limited dispersal capabilities, and assumed sensitivity to contaminants, the cave streams likely also contain unmapped blind tributaries and refugia, as well as stream habitat connectivity to provide protection and re-population opportunities if a catastrophic event occurred. Finally, in considering the significant portion of its range, we found no biologically meaningful portion of the Rye Cove cave isopod range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range, or where the condition of the species differs from its condition elsewhere in its range such that the status of the species in that portion differs from any other portion of the species' range.

After assessing the best available information, we concluded that the Rye Cove cave isopod is not in danger of extinction or likely to become in danger of extinction throughout all of its range or in any significant portion of its range. Therefore, we find that listing the Rye Cove cave isopod as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Rye Cove cave isopod species assessment form and other supporting documents (see **ADDRESSES**, above).

References Cited

A list of the references cited in this petition finding is available in the relevant species assessment form, which is available on the internet at *https://www.regulations.gov* in the appropriate docket (see **ADDRESSES**, above) and upon request from the appropriate person (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–28233 Filed 12–28–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC623]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2023 Gulf of Alaska Pollock and Pacific Cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2023 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) pollock and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the GOA pollock and Pacific cod TACs are the appropriate amount based on the best available scientific information for pollock and Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska.

DATES: Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2023, until the effective date of the final 2023 and 2024 harvest specifications for GOA groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2023.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0094, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0094 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) set the 2023 pollock TAC at 139,977 metric tons (mt) in the GOA. In December 2022, the Council recommended a 2023 pollock TAC of 156,578 mt for the GOA, which is greater than the 139,977 mt established by the final 2022 and 2023 harvest specifications for groundfish in the GOA. The Council's recommended 2023 TAC, and the area and seasonal apportionments, is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2022.

The final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) set the 2023 Pacific cod TAC at 21,096 mt in the GOA. In December 2022, the Council recommended a 2023 Pacific cod TAC of 18,103 mt for the GOA, which is less than the 21,096 mt established by the final 2022 and 2023 harvest specifications for groundfish in the GOA. The Council's recommended 2023 TAC, and the area and seasonal apportionments, is based on the SAFE, dated November 2022.

Steller sea lions occur in the same location as the pollock and Pacific cod fisheries and are listed as endangered under the Endangered Species Act. Pollock and Pacific cod are principal prey species for Steller sea lions in the GOA. The seasonal apportionment of pollock and Pacific cod harvests are necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(5)(iv) specify how the pollock TAC will be apportioned and the regulations at § 679.20(a)(6)(ii) and (a)(12)(i) specify how the Pacific cod TAC will be apportioned.

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv) the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the best available scientific information for this fishery, the current GOA pollock and Pacific cod TACs are incorrectly specified. Consequently, pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2023 GOA pollock TAC to 156,578 mt and the 2023 Pacific cod TAC to 18,103 mt. Therefore, Tables 4 and 6 of the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) are revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(iv), Table 4 of the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) is revised for the 2023 TACs of pollock in the Central and Western Regulatory Area of the GOA.

TABLE 4—FINAL 2023 DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA; AREA APPORTIONMENTS[1]; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]

Season [2]	Shumigan (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total [3]
A (January 20-May 31)	1,685	58,039	9,121	68,846
B (September 1-November 1)	25,272	18,965	24,608	24,608
Annual Total	26,958	77,005	33,729	137,691

[1] Area apportionments and seasonal allowances may not total precisely due to rounding.

[2] As established by § 679.23(d)(2)(i) through (ii), the A and B season allowances are available from January 20 through May 31 and September 1 through November 1, respectively. The amounts of pollock for processing by the inshore and offshore components are not shown in this table.

[3] The West Yakutat and Southeast Outside District pollock TACs are not allocated by season and are not included in the total pollock TACs shown in this table.

Pursuant to § 679.20(a)(6)(ii) and (a)(12)(i), Table 6 of the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) is revised for the 2023 TACs of Pacific cod in the GOA.

TABLE 6—FINAL 2023 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TOTAL ALLOWABLE CATCH (TAC) AMOUNTS IN THE GOA; ALLOCATIONS IN THE WESTERN GOA AND CENTRAL GOA SECTORS, AND THE EASTERN GOA INSHORE AND OFFSHORE PROCESSING COMPONENTS

[Values are rounded to the nearest metric ton]

Regulatory area and sector	Annual allocation (mt)	A Season		B Season	
		Sector percentage of annual non-jig TAC	Seasonal allowances (mt)	Sector percentage of annual non-jig TAC	Seasonal allowances (mt)
Western GOA:					
Jig (3.5% of TAC)	183	N/A	110	N/A	73
Hook-and-line CV	71	0.70	35	0.70	35
Hook-and-line CP	998	10.90	550	8.90	449
Trawl CV	1,936	31.54	1,397	10.70	540
Trawl CP	121	0.90	45	1.50	76
All Pot CV and Pot CP	1,916	19.80	998	18.20	918
Total	5,225	63.84	3,135	36.16	2,090
Central GOA:					
Jig (1.0% of TAC)	111	N/A	67	N/A	44
Hook-and-line < 50 CV	1,608	9.32	1,026	5.29	582
Hook-and-line ≥ 50 CV	739	5.61	618	1.10	121
Hook-and-line CP	562	4.11	452	1.00	110
Trawl CV[1]	4,579	21.14	2,327	20.45	2,252
Trawl CP	462	2.00	221	2.19	242
All Pot CV and Pot CP	3,062	17.83	1,963	9.97	1,098
Total	11,123	64.16	6,674	35.84	4,449
Eastern GOA:	1,755	Inshore (90% of Annual TAC) 1,580		Offshore (10% of Annual TAC) 176	

[1] Trawl catcher vessels participating in Rockfish Program cooperatives receive 3.81 percent, or 424 mt, of the annual Central GOA TAC (see Table 28c to 50 CFR part 679), which is deducted from the Trawl CV B season allowance (see Table 13. Final 2023 Apportionments of Rockfish Secondary Species in the Central GOA and Table 28c to 50 CFR part 679).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would allow for harvests that exceed the appropriate allocation for pollock and Pacific cod based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 21, 2022.

Without this inseason adjustment, NMFS could not allow the fishery for pollock and Pacific cod in the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2023.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28349 Filed 12–23–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC635]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2023 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2023 total allowable catch (TAC) amounts for the Bering Sea and Aleutian Islands (BSAI) pollock, Atka mackerel, and Pacific cod fisheries. This action is necessary because NMFS has determined these TACs are incorrectly specified, and will ensure the BSAI pollock, Atka mackerel, and Pacific cod TACs are the appropriate amounts based on the best available scientific information. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.

DATES: Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2023, until the effective date of the final 2023 and 2024 harvest specifications for BSAI groundfish, unless otherwise modified or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 13, 2023.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0076, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0076 in the Search

box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) set the 2023 Aleutian Islands (AI) pollock TAC at 19,000 metric tons (mt), the 2023 Bering Sea (BS) pollock TAC at 1,289,000 mt, the 2023 BSAI Atka mackerel TAC at 60,958 mt, the 2023 BS Pacific cod TAC at 133,459 mt, and the 2023 AI Pacific cod TAC at 13,796 mt. In December 2022, the Council recommended a 2023 BS pollock TAC of 1,300,000 mt, which is more than the 1,289,000 mt TAC established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI. The Council also recommended a 2023 BSAI Atka mackerel TAC of 69,282 mt, which is more than the 60,958 mt TAC established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI. Furthermore, the Council recommended a 2023 BS Pacific cod TAC of 127,409 mt, and an AI Pacific cod TAC of 8,425 mt, which is less than the BS Pacific cod TAC of 133,459 mt, and less than the AI Pacific cod TAC of 13,796 mt established by the final 2022 and 2023 harvest specifications for groundfish in the BSAI. The Council's recommended 2023 TACs, and the area and seasonal apportionments, are based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2022, which NMFS has determined is the best available scientific information for these fisheries.

Steller sea lions occur in the same location as the pollock, Atka mackerel, and Pacific cod fisheries and are listed as endangered under the Endangered Species Act (ESA). Pollock, Atka mackerel, and Pacific cod are a principal prey species for Steller sea lions in the BSAI. The seasonal apportionment of pollock, Atka mackerel, and Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. NMFS published regulations and the revised harvest limit amounts for pollock, Atka mackerel, and Pacific cod fisheries to implement Steller sea lion protection measures to insure that groundfish fisheries of the BSAI are not likely to jeopardize the continued existence of the western distinct population segment of Steller sea lions or destroy or adversely modify their designated critical habitat (79 FR 70286, November 25, 2014).

In accordance with § 679.25(a)(1)(iii), (a)(2)(i)(B), and (a)(2)(iv), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2022 SAFE report for this fishery, the current BSAI pollock, Atka mackerel, and Pacific cod TACs are incorrectly specified. Pursuant to § 679.25(a)(1)(iii), the Regional Administrator is adjusting the 2023 BS pollock TAC to 1,300,000 mt, the 2023 BSAI Atka mackerel TAC to 69,282 mt, the 2023 BS Pacific cod TAC to 127,409 mt, and the 2023 AI Pacific cod TAC to 8,425 mt. Therefore, Table 2 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised consistent with this adjustment.

Pursuant to § 679.20(a)(5)(i) and (iii), Table 5 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised for the 2023 BS and AI allocations of pollock TAC to the directed pollock fisheries and to the Community Development Quota (CDQ) directed fishing allowances consistent with this adjustment.

TABLE 5—FINAL 2023 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season [1]		2023 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea TAC [1]	1,300,000	n/a	n/a	n/a
CDQ DFA	130,000	58,500	36,400	71,500
ICA [1]	50,000	n/a	n/a	n/a
Total Bering Sea non-CDQ DFA	1,120,000	504,000	313,600	616,000
AFA Inshore	560,000	252,000	156,800	308,000
AFA Catcher/Processors [3]	448,000	201,600	125,440	246,400
Catch by CPs	409,920	184,464	n/a	225,456
Catch by CVs [3]	38,080	17,136	n/a	20,944
Unlisted CP Limit [4]	2,240	1,008	n/a	1,232
AFA Motherships	112,000	50,400	31,360	61,600
Excessive Harvesting Limit [5]	196,000	n/a	n/a	n/a
Excessive Processing Limit [6]	336,000	n/a	n/a	n/a
Aleutian Islands subarea ABC	43,413	n/a	n/a	n/a
Aleutian Islands subarea TAC [1]	19,000	n/a	n/a	n/a

TABLE 5—FINAL 2023 ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA) [1]—Continued

[Amounts are in metric tons]

Area and sector	2023 Allocations	2023 A season [1]		2023 B season [1]
		A season DFA	SCA harvest limit [2]	B season DFA
CDQ DFA	1,900	1,856	n/a	44
ICA	2,500	1,250	n/a	1,250
Aleut Corporation	14,600	14,260	n/a	340
Area harvest limit [7]	n/a	n/a	n/a	n/a
541	13,024	n/a	n/a	n/a
542	6,512	n/a	n/a	n/a
543	2,171	n/a	n/a	n/a
Bogoslof District ICA [8]	300	n/a	n/a	n/a

[1] Pursuant to § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock TAC, after subtracting the CDQ DFA (10 percent) and the incidental catch allowance (ICA, 4 percent), is allocated as a DFA as follows: inshore sector—50 percent, catcher/processor sector (CP)—40 percent, and mothership sector—10 percent. In the Bering Sea subarea, 45 percent of the DFA is allocated to the A season (January 20–June 10) and 55 percent of the DFA is allocated to the B season (June 10–November 1). Pursuant to § 679.20(a)(5)(iii)(B)(*2*)(i) through (iii), the annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ DFA (10 percent) and second for the ICA (2,500 mt), is allocated to the Aleut Corporation for a pollock directed fishery. In the Aleutian Islands subarea, the A season is allocated up to 40 percent of the Aleutian Islands pollock ABC.

[2] In the Bering Sea subarea, pursuant to § 679.20(a)(5)(i)(C), no more than 28 percent of each sector's annual DFA may be taken from the SCA before noon, April 1.

[3] Pursuant to § 679.20(a)(5)(i)(A)(*4*), 8.5 percent of the DFA allocated to listed CPs shall be available for harvest only by eligible catcher vessels with a CP endorsement delivering to listed CPs, unless there is a CP sector cooperative for the year.

[4] Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processor sector's allocation of pollock.

[5] Pursuant to § 679.20(a)(5)(i)(A)(*6*), NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the non-CDQ pollock DFAs.

[6] Pursuant to § 679.20(a)(5)(i)(A)(*7*), NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the non-CDQ pollock DFAs.

[7] Pursuant to § 679.20(a)(5)(iii)(B)(*6*), NMFS establishes harvest limits for pollock in the A season in Area 541 of no more than 30 percent, in Area 542 of no more than 15 percent, and in Area 543 of no more than 5 percent of the Aleutian Islands pollock ABC.

[8] Pursuant to § 679.22(a)(7)(B), the Bogoslof District is closed to directed fishing for pollock. The amounts specified are for incidental catch only and are not apportioned by season or sector.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(8), Table 7 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised for the 2023 seasonal and spatial allowances, gear shares, CDQ reserve, incidental catch allowance, jig, BSAI trawl limited access, and Amendment 80 allocations of the BSAI Atka mackerel TAC consistent with this adjustment.

TABLE 7—FINAL 2023 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKERAL TAC

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2023 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District [5]	Western Aleutian District
TAC	n/a	27,260	17,351	24,671
CDQ reserve	Total	2,917	1,857	2,640
	A	1,458	928	1,320
	Critical Habitat	n/a	557	792
	B	1,458	928	1,320
	Critical Habitat	n/a	557	792
Non-CDQ TAC	n/a	24,343	15,494	22,031
ICA	Total	800	75	20
Jig [6]	Total	118	.....	.....
BSAI trawl limited access	Total	2,343	1,542	.....
	A	1,171	771	.....
	Critical Habitat	n/a	463	.....
	B	1,171	771	.....
	Critical Habitat	n/a	463	.....
Amendment 80 sector	Total	21,083	13,877	22,011
	A	10,541	6,939	11,006
	Critical Habitat	n/a	4,163	6,603
	B	10,541	6,939	11,006

TABLE 7—FINAL 2023 SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, CDQ RESERVE, INCIDENTAL CATCH ALLOWANCE, AND AMENDMENT 80 ALLOCATIONS OF THE BSAI ATKA MACKERAL TAC—Continued

[Amounts are in metric tons]

Sector [1]	Season [2 3 4]	2023 allocation by area		
		Eastern Aleutian District/Bering Sea	Central Aleutian District [5]	Western Aleutian District
	Critical Habitat	n/a	4,163	6,603

[1] Section 679.20(a)(8)(ii) allocates the Atka mackerel TACs, after subtracting the CDQ reserves, jig gear allocation, and ICAs, to the Amendment 80 and BSAI trawl limited access sectors. The allocation of the initial TAC (iTAC) for Atka mackerel to the Amendment 80 and BSAI trawl limited access sectors is established in Table 33 to 50 CFR part 679 and § 679.91. The CDQ reserve is 10.7 percent of the TAC for use by CDQ participants (see §§ 679.20(b)(1)(ii)(C) and 679.31).

[2] Sections 679.20(a)(8)(ii)(A) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.

[3] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.

[4] Section 679.23(e)(3) authorizes directed fishing for Atka mackerel with trawl gear during the A season from January 20 to June 10 and the B season from June 10 to December 31.

[5] Section 679.20(a)(8)(ii)(C)(*1*)(*i*) limits no more than 60 percent of the annual TACs in Areas 542 and 543 to be caught inside of Steller sea lion critical habitat; section 679.20(a)(8)(ii)(C)(*1*)(*ii*) equally divides the annual TACs between the A and B seasons as defined at § 679.23(e)(3); and section 679.20(a)(8)(ii)(C)(*2*) requires that the TAC in Area 543 shall be no more than 65 percent of ABC in Area 543.

[6] Sections 679.2 and 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea TAC be allocated to jig gear after subtracting the CDQ reserve and the ICA. NMFS sets the amount of this allocation for 2023 at 0.5 percent. The jig gear allocation is not apportioned by season.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Pursuant to § 679.20(a)(7), Table 9 of the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022) is revised for the 2023 gear shares and seasonal allowances of the BSAI Pacific cod TAC consistent with this adjustment.

TABLE 9—FINAL 2023 SECTOR ALLOCATIONS AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD TAC

[Amounts are in metric tons]

Sector	Percent	2023 share of total	2023 share of sector total	2023 seasonal apportionment	
				Season	Amount
BS TAC	n/a	127,409	n/a	n/a	n/a
BS CDQ	n/a	13,633	n/a	see § 679.20(a)(7)(i)(B)	n/a
BS non-CDQ TAC	n/a	113,776	n/a	n/a	n/a
AI TAC	n/a	8,425	n/a	n/a	n/a
AI CDQ	n/a	901	n/a	see § 679.20(a)(7)(i)(B)	n/a
AI non-CDQ TAC	n/a	7,524	n/a	n/a	n/a
Western Aleutian Island Limit	n/a	2,233	n/a	n/a	n/a
Total BSAI non-CDQ TAC [1]	100	121,300	n/a	n/a	n/a
Total hook-and-line/pot gear	60.8	73,750	n/a	n/a	n/a
Hook-and-line/pot ICA [2]	n/a	400	n/a	see § 679.20(a)(7)(ii)(B)	n/a
Hook-and-line/pot sub-total	n/a	73,350	n/a	n/a	n/a
Hook-and-line catcher/processor	48.7	n/a	58,753	Jan 1–Jun 10	29,964
				Jun 10–Dec 31	28,789
Hook-and-line catcher vessel ≤60 ft LOA.	0.2	n/a	241	Jan 1–Jun 10	123
				Jun 10–Dec 31	118
Pot catcher/processor	1.5	n/a	1,810	Jan 1–Jun 10	923
				Sept 1–Dec 31	887
Pot catcher vessel ≤60 ft LOA	8.4	n/a	10,134	Jan 1–Jun 10	5,168
				Sept 1–Dec 31	4,966
Catcher vessel <60 ft LOA using hook-and-line or pot gear.	2.0	n/a	2,413	n/a	n/a
Trawl catcher vessel	22.1	26,807	n/a	Jan 20–Apr 1	19,837
				Apr 1–Jun 10	2,949
				Jun 10–Nov 1	4,021
AFA trawl catcher/processor	2.3	2,790	n/a	Jan 20–Apr 1	2,092
				Apr 1–Jun 10	697
				Jun 10–Nov 1	
Amendment 80	13.4	16,254	n/a	Jan 20–Apr 1	12,191
				Apr 1–Jun 10	4,064
				Jun 10–Dec 31	
Jig	1.4	1,698	n/a	Jan 1–Apr 30	1,019
				Apr 30–Aug 31	340
				Aug 31–Dec 31	340

[1] The sector allocations and seasonal allowances for BSAI Pacific cod TAC are based on the sum of the BS and AI Pacific cod TACs, after the subtraction of the reserves for the CDQ Program. If the TAC for Pacific cod in either the AI or BS is or will be reached, then directed fishing for Pacific cod in that subarea will be prohibited, even if a BSAI allowance remains (§ 679.20(d)(1)(iii)).

[2] The ICA for the hook-and-line and pot sectors will be deducted from the aggregate portion of Pacific cod TAC allocated to the hook-and-line and pot sectors. The Regional Administrator approves an ICA of 400 mt for 2023 based on anticipated incidental catch in these fisheries.

Note: Seasonal or sector apportionments may not total precisely due to rounding.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would allow for harvests that exceed the appropriate allocations for pollock, Atka mackerel, and Pacific cod in the BSAI based on the best scientific information available. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 21, 2022.

Without this inseason adjustment, NMFS could not allow the fishery for pollock, Atka mackerel, and Pacific cod in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 13, 2023.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28343 Filed 12–23–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 87, No. 249

Thursday, December 29, 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 71

[Docket No. FAA–2022–1436; Airspace Docket No. 22–ACE–13]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–50, V–52, V–63, and V–586, and Revocation of V–582 in the Vicinity of Quincy, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–50, V–52, V–63, and V–586, and revoke VOR Federal airway V–582. The FAA is proposing this action due to the planned decommissioning of the VOR portion of the Quincy, IL (UIN), VOR/Tactical Air Navigation (VORTAC) navigational aid (NAVAID). The Quincy VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Comments must be received on or before February 13, 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 FAA Docket No. FAA–2022–1436; Airspace Docket No. 22–ACE–13 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA–2022–1436; Airspace Docket No. 22–ACE–13) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–1436; Airspace Docket No. 22–ACE–13.'' The postcard will be date/time stamped and returned to the commenter.

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

Availability of 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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11G, 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.

Background

The FAA is planning to decommission the VOR portion of the Quincy, IL, VORTAC in June 2023. The

Quincy VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082.

Although the VOR portion of the Quincy, IL, VORTAC is planned for decommissioning, the co-located DME portion of the NAVAID is being retained to support NextGen PBN flight procedure requirements.

The VOR Federal airways effected by the Quincy VOR decommissioning are VOR Federal airways V–50, V–52, V–63, V–582, and V–586. With the planned decommissioning of the Quincy VOR, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to the affected VOR Federal airways would result in creating gaps in three of the airways (V–50, V–52, and V–63), redefining an airway end point in one of the airways (V–586), and revoking one of the airways (V–582).

To overcome the proposed modifications to the affected airways, instrument flight rules (IFR) traffic could use portions of VOR Federal airways V–4, V–9, V–10, V–67, and V–580 or request air traffic control (ATC) radar vectors to circumnavigate or fly through the affected area. Additionally, pilots equipped with Area Navigation (RNAV) capabilities could also use portions of RNAV routes T–251, T–272, and T–397 or navigate point to point using the existing NAVAIDs and fixes that would remain in place to support continued operations though the affected area. Visual flight rules (VFR) pilots who elect to navigate via the affected VOR Federal airways could also take advantage of the adjacent airways or ATC services listed previously.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend VOR Federal airways V–50, V–52, V–63, and V–586, and revoke VOR Federal airway V–582 due to the planned decommissioning of the VOR portion of the Quincy, IL, VORTAC. The proposed airway actions are described below.

V–50: V–50 currently extends between the St Joseph, MO, VORTAC and the Dayton, OH, VOR/Distance Measuring Equipment (VOR/DME). The FAA proposes to remove the airway segment overlying the Quincy VORTAC between the Kirksville, MO, VORTAC and the Spinner, IL, VORTAC. As amended, the airway would extend between the St Joseph VORTAC and the Kirksville VORTAC and between the Spinner VORTAC and the Dayton VOR/DME.

V–52: V–52 currently extends between the Des Moines, IA, VORTAC and the Pocket City, IN, VORTAC. The FAA proposes to remove the airway segment overlying the Quincy VORTAC between the Ottumwa, IA, VOR/DME and the St Louis, MO, VORTAC. As amended, the airway would extend between the Des Moines VORTAC and the Ottumwa VOR/DME and between the St Louis VORTAC and the Pocket City VORTAC.

V–63: V–63 currently extends between the Razorback, AR, VORTAC and the Davenport, IA, VORTAC; between the Janesville, WI, VOR/DME and the Oshkosh, WI, VORTAC; and between the Rhinelander, WI, VOR/DME and the Houghton, MI, VOR/DME. The airspace at and above 10,000 feet mean sea level (MSL) from 5 nautical miles (NM) north to 46 NM north of Quincy, IL, is excluded when the Howard West Military Operations Area (MOA) is active. The FAA proposes to remove the airway segment overlying the Quincy VORTAC between the Hallsville, MO, VORTAC and the Burlington, IL, VOR/DME. The airspace exclusion language addressing the Howard West MOA activations would also be removed as the amended airway would no longer overlap the Howard West MOA. As amended, the airway would extend between the Razorback VORTAC and the Hallsville VORTAC, between the Burlington VOR/DME and the Davenport VORTAC, between the Janesville VOR/DME and the Oshkosh VORTAC, and between the Rhinelander VOR/DME and the Houghton VOR/DME.

V–582: V–582 currently extends between the St. Louis, MO, VORTAC and the Quincy, IL, VORTAC. The FAA proposes to remove the airway in its entirety.

V–586: V–586 currently extends between the Quincy, IL, VORTAC and the Joliet, IL, VOR/DME. The FAA proposes to remove the airway segment overlying the Quincy VORTAC between the Quincy, IL, VORTAC and the Peoria, IL, VORTAC. As amended, the airway would extend between the Peoria VORTAC and the Joliet VOR/DME.

The NAVAID radials listed in the VOR Federal airway V–52 description below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) 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 ATS routes listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–50 [Amended]

From St Joseph, MO; to Kirksville, MO. From Spinner, IL; Adders, IL; Terre Haute, IN; Brickyard, IN; to Dayton, OH.

* * * * *

V–52 [Amended]

From Des Moines, IA; to Ottumwa, IA. From St Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; to Pocket City.

* * * * *

V–63 [Amended]

From Razorback, AR; Springfield, MO; to Hallsville, MO. From Burlington, IA; Moline, IL; to Davenport, IA. From Janesville, WI; Badger, WI; to Oshkosh, WI. From Rhinelander, WI; to Houghton, MI.

* * * * *

V–582 [Removed]

* * * * *

V–586 [Amended]

From Peoria, IL; Pontiac, IL; to Joliet, IL.

* * * * *

Issued in Washington, DC, on December 23, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–28328 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100442–22]

RIN 1545–BQ36

Guidance on the Foreign Government Income Exemption and the Definition of Domestically Controlled Qualified Investment Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the treatment of certain entities, including qualified foreign pension funds, for purposes of the exemption from taxation afforded to foreign governments (the ''proposed regulations''). The proposed regulations also address the determination of whether a qualified investment entity is domestically controlled, including the treatment of qualified foreign pension funds for this purpose.

DATES: Written or electronic comments and requests for a public hearing must be received by February 27, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100442–22) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury and the IRS will publish for public availability any comments submitted electronically and comments submitted on paper to its public docket. Send hard copy submissions to: CC:PA:LPD:PR (REG–100442–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning § 1.892–5, Joel Deuth at (202) 317–6938; concerning § 1.897–1, Arielle Borsos at (202) 317–6937; concerning submissions of comments or requests for a public hearing, Regina Johnson at (202) 317–5177 (not toll-free numbers) or *publichearings@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

I. Section 892

Section 892(a)(1) of the Internal Revenue Code (the ''Code'') exempts from U.S. taxation certain income derived by a foreign government. This exemption, however, does not apply to income that is (1) derived from the conduct of a commercial activity (whether within or outside the United States), (2) received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity, or (3) derived from the disposition of an interest in a controlled commercial entity. Section 892(a)(2)(A).

Section 892(a)(2)(B) provides that for purposes of section 892(a)(2)(A), a controlled commercial entity is any entity engaged in commercial activities (whether within or outside the United States) and in which a foreign government holds (directly or indirectly) interests according to specified thresholds. The term ''entity'' in section 892(a)(2)(B) means a corporation, a partnership, a trust, and an estate. *See* § 1.892–5(a)(3).

A United States real property holding corporation (''USRPHC''), as defined in section 897(c)(2), or a foreign corporation that would be a USRPHC if it was a United States corporation, is treated as engaged in commercial activity and, therefore, is a controlled commercial entity if a foreign government meets certain ownership or control thresholds with respect to that USRPHC or foreign corporation. § 1.892–5T(b)(1).

II. Section 897

Section 897(a)(1) provides that gain or loss of a nonresident alien individual or foreign corporation from the disposition of a United States real property interest (''USRPI'') is taken into account under section 871(b)(1) or 882(a)(1), as applicable, as if the nonresident alien individual or foreign corporation were engaged in a trade or business within the United States during the taxable year and such gain or loss were effectively connected with that trade or business.

Subject to certain exceptions, section 897(c)(1)(A) defines a USRPI as an interest in real property (including an interest in a mine, well, or other natural deposit) located in the United States or the Virgin Islands, and any interest (other than solely as a creditor) in any domestic corporation unless the taxpayer establishes that such corporation was at no time a USRPHC during the period set forth in section 897(c)(1)(A)(ii) (generally, the five-year period ending on the date of the disposition of the interest). Under section 897(c)(2), a USRPHC is generally any corporation if the fair market value of its USRPIs equals or exceeds 50 percent of the aggregate fair market value of its USRPIs, its interests in real property located outside the United States, plus any other of its assets that are used or held for use in a trade or business.

Section 897(h)(1) provides that any distribution by a qualified investment entity (''QIE'') to a nonresident alien individual, a foreign corporation, or other QIE, to the extent attributable to gain from sales or exchanges by the QIE of USRPIs, is treated as gain recognized by such nonresident alien individual, foreign corporation, or other QIE from the sale or exchange of a USRPI, subject to certain exceptions. Section 897(h)(4)(A) defines a QIE as any (i) real estate investment trust (''REIT''), and (ii) any regulated investment company (''RIC'') which is a USRPHC or which would be a USRPHC if the exceptions in section 897(c)(3) and 897(h)(2) did not apply to interests in any REIT or RIC.

Section 897(h)(2) provides that a USRPI does not include an interest in a domestically controlled QIE (''DC–QIE exception''). Accordingly, gain or loss on the disposition of stock in a domestically controlled QIE is not subject to section 897(a) (other than to the extent provided in section 897(h)(1)). Section 897(h)(4)(B) provides that a QIE is domestically controlled if less than 50 percent of the value of its stock is held directly or indirectly by foreign persons at all times during the testing period prescribed in section 897(h)(4)(D) (generally, the five-year period ending on the date of the disposition). The legislative history accompanying the enactment of section 897 indicates that Congress intended for the DC–QIE exception to apply to entities controlled by United States persons. *See* H.R. Conf. Rep. No. 96–1479, at 188 (1980) (''In the case of REITs which are controlled by U.S. persons, sales of the REIT shares by foreign shareholders would not be subject to tax (other than in the case of distribution by the REIT).''). Section 1.897–9T(c) defines ''foreign person'' for purposes of section 897 as a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation (as defined in § 1.897–1(l)), a foreign partnership, a foreign trust, or a foreign estate, as such persons are defined respectively by § 1.871–2 and by section 7701 and the regulations thereunder.[1] Under § 1.897–1(l), the term ''foreign corporation'' generally has the meaning ascribed to it in section 7701(a)(3) and 7701(a)(5) and § 301.7701–5.

Section 897(h)(3) provides that in the case of a domestically controlled QIE, rules similar to those in section 897(d) (which prescribes rules requiring the recognition of gain on the distribution of a USRPI by a foreign corporation) apply to the foreign ownership percentage of any gain. Section 897(h)(4)(C) provides that the term ''foreign ownership percentage'' means the percentage of QIE stock that was held (directly or indirectly) by foreign persons at the time during the testing period (as defined in section 897(h)(4)(D)) during which the direct and indirect ownership of stock by foreign persons was greatest.

Section 1.897–1(c)(2)(i), which was issued when section 897(h) addressed only domestically controlled REITs, defines domestically controlled REITs (rather than QIEs) and otherwise restates the rule in section 897(h)(2).[2] Section 1.897–1(c)(2)(i) does not address the determination of whether stock of a REIT is considered ''held directly or indirectly by foreign persons'' under section 897(h)(4)(B) and provides only that, for purposes of determining the ownership of the REIT's stock, actual ownership under § 1.857–8 must be taken into account. Section 1.857–8(b) states that the actual owner of stock of a REIT is the person who is required to include in gross income in his return the dividends received on the stock and is generally the shareholder of record of the REIT.

Section 897(h)(4)(E), which was added to the Code in section 322(b)(1)(A) of the Protecting Americans from Tax Hikes Act of 2015, Public Law 114–113, div. Q (the ''PATH Act''), provides special ownership rules for determining the holder of QIE stock under section 897(h)(4)(B) and 897(h)(4)(C). Section 897(h)(4)(E)(i) states that, in the case of any class of stock of the QIE that is regularly traded on an established securities market in the United States (''U.S. publicly traded QIE stock''), a person holding less than five percent of such class of stock at all times during the testing period is treated as a United States person unless the QIE has actual knowledge that such person is not a United States person. Section 897(h)(4)(E)(ii) provides that any stock in the QIE held by another QIE (i) any class of stock of which is regularly traded on an established securities market, or (ii) which is a RIC that issues redeemable securities within the meaning of section 2 of the Investment Company Act of 1940 (an entity described in (i) or (ii), a ''public QIE'') is treated as held by a foreign person, except that if the public QIE is domestically controlled (determined after the application of section 897(h)(4)(E)), such stock is treated as held by a United States person. Finally, section 897(h)(4)(E)(iii) provides that any stock in the QIE held by a QIE that is not a public QIE (''non-public QIE'') is only treated as held by a United States person in proportion to the stock of the non-public QIE that is (or is treated under section 897(h)(4)(E)(ii) or 897(h)(4)(E)(iii) as) held by a United States person.

Section 897(l) provides an exception to the application of section 897(a) for certain foreign pension funds and their wholly owned subsidiaries. Section 897(l) was added to the Code in section 323(a) of the PATH Act. As originally enacted, section 897(l)(1) provided that section 897 does not apply to any USRPI held directly (or indirectly through one or more partnerships) by, or to any distribution received from a REIT by, a qualified foreign pension fund (''QFPF'') or any entity all of the interests of which are held by a QFPF. Congress later made several technical amendments to section 897(l) in section 101(q) of the Tax Technical Corrections Act of 2018, Public Law 115–141, div. U (the ''Technical Corrections Act''). As amended in the Technical Corrections Act, section 897(l) provides that neither a QFPF nor an entity all the interests of which are held by a QFPF is treated as a nonresident alien individual or foreign corporation for purposes of section 897. Section 897(l)(3) provides the Secretary with the authority to ''prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.''

On June 7, 2019, the Department of the Treasury (''Treasury Department'') and the IRS published proposed regulations in the **Federal Register** (84 FR 26605) (the ''2019 proposed regulations'') under sections 897(l), 1441, 1445 and 1446. The 2019 proposed regulations contained rules relating to qualification for the exception under section 897(l), as well as rules relating to withholding requirements under sections 1441, 1445 and 1446, for dispositions of USRPIs by, and distributions described in section 897(h) received by, QFPFs and entities that are wholly owned by one or more QFPFs (''qualified controlled entities,'' or ''QCEs''). The 2019 proposed regulations are finalized in the Final Rules section of this issue of the **Federal Register**.

Explanation of Provisions

I. Coordination of Exemption Under Section 897(l) With Section 892

The exemption from U.S. taxation provided to foreign governments by section 892 does not apply to income derived from the conduct of a commercial activity, or income received by a controlled commercial entity or received (directly or indirectly) from a controlled commercial entity. Section 1.892–4T(a). Section 1.892–5T(b)(1) treats a USRPHC (or a foreign corporation that would be a USRPHC if it was a United States corporation) as engaged in commercial activity and, therefore, a controlled commercial entity if it is controlled by a foreign government pursuant to § 1.892–5T(a).

[1] Section 1.897–9T(a) provides that § 1.897–9T(c) (the definition of ''foreign person'') would appear as § 1.897–1(k) if and when § 1.897–9T is adopted as a final regulation.

[2] Section 897(h) did not apply to RICs when the regulations were finalized. Section 411 of the American Jobs Creation Act of 2004, Public Law 108–357 (2004), amended section 897(h) to apply to certain RICs in addition to REITs and introduced the term QIE to include such entities.

A QFPF would be a controlled commercial entity for section 892 purposes if it qualified as a USRPHC within the meaning of § 1.892–5T(b)(1) and if it were controlled by a foreign government pursuant to § 1.892–5T(a). In such case, none of the income, including, for example, from investments in the United States in stocks or securities, received by the foreign government from that QFPF would be eligible for the section 892 exemption. A comment to the 2019 proposed regulations noted that § 1.892–5T(b)(1) incentivizes a government-controlled QFPF to reduce its USRPIs to preserve the exemption provided by section 892. In addition, the comment noted that § 1.892–5T(b)(1) may necessitate that such a QFPF monitor its USRPIs for section 892 purposes despite being exempt from the application of section 897(a). The comment recommended that a QFPF and a QCE be excluded from the application of § 1.892–5T(b)(1) or that § 1.892–5T(b)(1) be withdrawn.

Although these proposed regulations do not withdraw the rule entirely, the Treasury Department and the IRS agree that the rule in § 1.892–5T(b)(1) should not apply to a QFPF or a QCE, and these proposed regulations therefore adopt that recommendation. Proposed § 1.892–5(b)(1)(ii)(A). In addition, the proposed regulations exclude certain other USRPHCs from the application of § 1.892–5T(b)(1). Proposed § 1.892–5(b)(1)(ii)(B). Excluding certain other USRPHCs from the application of § 1.892–5T(b)(1) is consistent with the policy of section 892 with respect to deemed commercial activities. For example, in general, a foreign government under section 892 currently is not treated as engaging in commercial activities by reason of investing in stocks, bonds, and other securities. § 1.892–4T(c)(1)(i).[3] The proposed regulations add another category by excluding from the application of § 1.892–5T(b)(1) a corporation that is a USRPHC solely by reason of its direct or indirect ownership interest in one or more other corporations that are not controlled by the foreign government. Thus, for example, if a foreign government controls a USRPHC whose only assets are minority interests in REITs, the proposed regulations would not treat that corporation as a controlled commercial entity pursuant to § 1.892–5T(b)(1). The changes to § 1.892–5T(b)(1) made by the proposed regulations do not affect the analysis of whether the income itself is exempt from U.S. taxation under section 892.[4]

The proposed regulations also clarify § 1.892–5T(b)(1) by replacing the phrase ''or a foreign corporation that would be a United States real property holding corporation if it was a United States corporation'' with ''which may include a foreign corporation'' when referencing section 897(c)(2) to define a USRPHC. Proposed § 1.892–5(b)(1)(i). Section 897(c)(2) defines a USRPHC as including ''any corporation'', whether domestic or foreign.[5] Thus, the phrase ''or a foreign corporation that would be a United States real property holding corporation if it was a United States corporation'' when referencing the definition in section 897(c)(2) is unnecessary.

II. Effect of Section 897(l) on DC–QIE Exception

A comment received in response to the 2019 proposed regulations recommended that regulations clarify that a QFPF is treated as a domestic person for purposes of the DC–QIE exception. The comment reasoned that section 897(l)(1) states that a QFPF shall not be treated as a nonresident alien individual or foreign corporation for purposes of all of section 897, which includes the DC–QIE exception. The comment also noted that such a rule would be easily administrable for open-ended investment funds and would provide certainty to such funds and their investors that section 897(a) would not apply to the disposition of interests in open-ended investment funds which have QFPFs as significant investors. Another comment, however, stated that it is not clear that the intent behind section 897(l) was to provide that a QIE is domestically controlled if it is majority owned by QFPFs, as there was no indication that Congress intended that result. The comment recommended that regulations provide how QFPFs are to be treated for purposes of the DC–QIE exception but did not recommend a specific result.

Section 897(a) generally applies with respect to the gain or loss of ''a nonresident alien individual or a foreign corporation.'' In addition, section 897(h)(1) applies to any distribution by a QIE to a nonresident alien individual or a foreign corporation (or other QIE). Section 897(l) provides that, for purposes of section 897, a QFPF shall not be treated as ''a nonresident alien individual or a foreign corporation.'' The reference to ''a nonresident alien individual or a foreign corporation'' in section 897(l) therefore is consistent with the same class of persons subject to tax under section 897(a) and 897(h)(1). Thus, under the statute, when a QFPF disposes of a USRPI, section 897(a) does not apply to any gain or loss from the disposition because section 897(l) treats the QFPF as neither a nonresident alien individual nor a foreign corporation. Similarly, when a QFPF receives a distribution from a QIE that is attributable to gain from the sale or exchange of a USRPI, the look-through rule under section 897(h)(1), and the general rule under section 897(a) do not apply because section 897(l) treats the QFPF as neither a nonresident alien individual nor a foreign corporation.

In contrast, the ownership test in section 897(h)(4)(B) for the DC–QIE exception (which predates the enactment of section 897(l)) uses the term ''foreign persons'' and not ''nonresident individuals or foreign corporations.'' The DC–QIE exception applies to scenarios where a nonresident alien individual or foreign corporation disposes of stock in a QIE, but because the QIE is less than 50 percent owned by ''foreign persons,'' the stock disposed of is not considered a USRPI. Although section 897(l) provides that a QFPF is not treated as a nonresident alien individual or a foreign corporation for purposes of section 897, it does not expressly provide that a QFPF or QCE is not treated as a foreign person for purposes of the separate ownership test of the DC–QIE exception.

There is no indication that Congress intended for section 897(l) to provide that QFPFs and QCEs are not treated as foreign persons for purposes of applying the DC–QIE exception to other foreign persons that are neither QFPFs nor QCEs. As originally enacted in the PATH Act, section 897(l) provided that section 897 did not apply to USRPIs held, and REIT distributions received, by a QFPF and a QCE but did not alter the status of the QFPF or QCE. As a result, as originally enacted section

[3] Regulations proposed under section 892 in 2011 would also extend the policy embodied by § 1.892–4T(c)(1)(i) with respect to deemed commercial activities by providing that investments in financial instruments will not be treated as commercial activities for purposes of section 892, irrespective of whether such financial instruments are held in the execution of governmental financial or monetary policy. *See* proposed § 1.892–4(e)(1)(i). *See also* proposed §§ 1.892–4(e)(1)(iv) and 1.892–5(d)(5)(iii), which provide relief from being treated as engaged in certain deemed commercial activities.

[4] *See,* for example, proposed § 1.892–4(e)(1)(iv), which provides that gain derived from a disposition of a USRPI defined in section 897(c)(1)(A)(i) will not qualify for exemption from taxation under section 892 even though a disposition (including a deemed disposition under section 897(h)(1)) of a USRPI, by itself, does not constitute the conduct of a commercial activity.

[5] In contrast, section 897(c)(1)(A)(ii) defines a USRPI by reference to an interest in a USRPHC that is a domestic corporation.

897(l) turned off the application of section 897(a) to the QFPF or QCE.

In the same legislation, Congress also amended the rules in the DC–QIE exception. *See* PATH Act secs. 133 and 322.[6] Certain amendments to the DC–QIE exception deem ownership in a QIE as ownership by a United States or foreign person depending on whether certain conditions are met. *See* section 897(h)(4)(E)(i), 897(h)(4)(E)(ii). These amendments demonstrate that Congress knows how to directly identify the deemed classification of investors as foreign persons or United States persons and did so in one part of the PATH Act through amendments to the DC–QIE exception. Congress could have made a similar modification to the DC–QIE exception for QFPFs and QCEs in the same legislation but did not do so.

The Technical Corrections Act modified the language of section 897(l). In particular, the modified language specifies that a QFPF and a QCE are not treated as nonresident alien individuals or foreign corporations for purposes of section 897. The Joint Committee on Taxation explanation of the technical correction for section 897(l) states that the revised language was merely intended to clarify the language specifying which entities qualified for the benefit provided by the new subsection. *See* STAFF OF THE JOINT COMM. ON TAX'N, General Explanation of Tax Legislation Enacted in the 115th Congress (JCS–2–19) (General Explanation) 145 (2019) (''2019 General Explanation''). Although the 2019 General Explanation does not specify the technical error with the PATH Act language that was corrected by the 2018 amendment, when comparing the technical correction to the PATH Act formulation, the correction clearly allows a QFPF and QCE to jointly own a USRPI and qualify for section 897(l) with respect to their partial interests in it, whereas the PATH Act formulation used ''or'' between QFPF and QCE, which suggested that all of the USRPI had to be owned by a single entity. Additionally, the change clarified that the exception applied to distributions from all QIEs and not just REITs. Lastly, by shifting the focus of section 897(l) from applying to the USRPI in the PATH Act formulation (''[T]his section shall not apply to any United States real property interest held by . . .'') to instead applying to the QFPF in the Technical Corrections Act formulation (''[F]or purposes of this section, a qualified foreign pension fund shall not be treated as . . .''), the technical correction aligned the section 897(l) exception with the operative provision in section 897(a), which modifies the tax treatment of the entity receiving income via disposition or distribution (the QFPF or QCE), not the tax treatment of the USRPI itself.

Ultimately, as a technical correction, the modification to section 897(l) cannot expand on the policy Congress intended to enact in the PATH Act. A technical correction is a change that clarifies existing law, such as through correcting errors, rather than one that fundamentally or substantively changes the law. *See Fed. Nat'l Mortgage Assoc.* v. *United States,* 56 Fed. Cl. 228, 234, 237 (2003), *rev'd and remanded on other grounds,* 379 F.3d 1303 (Fed. Cir. 2004) (''Congress turns to technical corrections when it wishes to clarify existing law or repair a scrivener's error, rather than to change the substantive meaning of the statute. . . . [A] technical correction that merely restores the rule Congress intended to enact cannot be construed as a fundamental change in the operation of the statute.''); STAFF OF THE JOINT COMM. ON TAX'N, Overview of Revenue Estimating Procedures and Methodologies Used by the Staff of the Joint Committee on Taxation (JCX–1–05) 33 (2005) (describing a technical correction as ''legislation that is designed to correct errors in existing law in order to fully implement the intended policies of previously enacted legislation'' and a change that ''conforms to and does not alter the intent'' of the underlying legislation). Both the PATH Act General Explanation and the 2019 General Explanation make clear that the intent of section 897(l), as originally enacted and as corrected, was to provide that ''in determining the U.S. income tax of a qualified foreign pension fund, section 897 does not apply.'' *See* 2019 General Explanation, at 145. This intent was also clear in the original language of section 897(l) and could not have been expanded by the modifications in the Technical Corrections Act. Additionally, because section 897(l) already specifically excludes QFPF and QCEs from the application of section 897(a), treating them as not being a foreign person for purposes of the DC–QIE exception would serve only to benefit other foreign investors in the same QIE. Nothing in the statute or legislative history indicates that majority ownership of a QIE by a QFPF or QCE should allow other investors to avoid section 897, and such treatment does not follow from the policy of either section 897(l) or the DC–QIE exception as expressed in the legislative history of those provisions. Further, if Congress had intended for a QFPF to not be treated as a ''foreign person,'' which is a different and broader characterization beyond section 897(l)'s treatment as not ''a nonresident alien individual or a foreign corporation,'' which is needed to turn off section 897(a) as to the QFPF or QCE, Congress presumably would have expressly provided for that result. Cf. section 1445(f)(3)(B) (solely for purposes of section 1445, providing that an entity that is exempt under section 897(l) is not a foreign person) and section 897(h)(4)(E) (as discussed, treating certain QIE investors as foreign persons (even if in fact a domestic corporation)).

Accordingly, proposed § 1.897–1(c)(3)(iv)(A) provides that a QFPF (including any part of a QFPF) or a QCE is a foreign person for purposes of the DC–QIE exception. *See* parts III and IV of this Explanation of Provisions for a discussion of the definition of domestically controlled QIE in proposed § 1.897–1(c)(3). The IRS may challenge contrary positions before the issuance of any final regulations regarding the treatment of a QFPF or QCE for purposes of the DC–QIE exception.

The proposed regulations make related changes to the definitions provided in § 1.897–1. Proposed § 1.897–1(k) and (l) revise the definition of ''foreign person'' (as provided in § 1.897–9T(c)) and ''foreign corporation'' to remove references that are no longer applicable and to add cross references to the rule in proposed § 1.897–1(c)(3)(iv)(A).

III. QIE Stock Held Directly or Indirectly Under Section 897(h)(4)(B)

A. Overview

The proposed regulations provide guidance for determining whether stock of a QIE is considered ''held directly or indirectly'' by foreign persons for determining whether a QIE is domestically controlled under section 897(h)(4)(B). The proposed regulations define stock that is held ''indirectly'' by taking into account stock of the QIE held through certain entities under a limited ''look-through'' approach. The look-through approach balances the policies of the DC–QIE exception with the requirement in section 897(h)(4)(B) to take into account ''indirect'' ownership of QIE stock by foreign persons in determining whether a QIE is domestically controlled. It is also

[6] Those amendments did not relate to the new rules in section 897(l) and are described separately in the Joint Committee on Taxation's General Explanation. *See* STAFF OF THE JOINT COMM. ON TAX'N, General Explanation of Tax Legislation Enacted in 2015 (JCS–1–16) (General Explanation) 155, 280–83 (2016) (''PATH Act General Explanation'').

intended to prevent the use of intermediary entities to achieve results contrary to the purposes of the DC–QIE exception.

Questions have arisen as to whether the reference to stock held ''indirectly'' in section 897(h)(4)(B) could be interpreted to require looking through all entities, including, for example, all domestic and foreign corporations, to determine the extent to which the ultimate individual shareholders of a QIE are foreign or domestic. In its broadest sense, the statute refers to stock held ''indirectly'' by foreign persons, which could encompass ownership by a foreign individual through multiple tiers of entities of any type. However, the Treasury Department and the IRS have concluded that the term ''indirectly'' should not be interpreted so broadly given the policy underlying section 897(h)(4). Section 897(h)(4)(B) indicates that the determination of whether a QIE is domestically controlled looks to ownership of QIE stock by ''foreign persons,'' not just individuals. In addition, such a broad interpretation of ''indirectly'' mandating the look-through of all entity types, including through multiple tiers of entities, would likely be difficult for taxpayers to comply with, and for the IRS to administer, particularly with respect to publicly traded entities.

Notwithstanding that a complete look-through approach is inappropriate, the Treasury Department and the IRS are issuing proposed § 1.897–1(c)(3) based on the conclusion that a look-through approach in determining ''indirect'' ownership of a QIE should still apply in specified circumstances to QIE stock held by intermediary entities. The proposed regulations thus address the treatment of QIE stock held by certain intermediary entities, such as domestic partnerships. For example, assume USR, a REIT, holds a USRPI as its sole asset. Nonresident alien individuals hold 49 percent of USR's single class of stock. PRS, a domestic partnership 50 percent of the interests of which are held by each of two foreign corporations, holds the remaining 51 percent of the USR stock. If USR stock is disposed of, taxpayers may assert that the stock is not a USRPI under the DC–QIE exception, and therefore not subject to section 897(a), because PRS is a United States person and, consequently, foreign persons could be viewed as directly or indirectly holding less than 50 percent of USR's stock by value. Taxpayers may assert this position even though, taking into account the USR stock held by the foreign corporations through their interests in PRS, foreign persons hold directly or indirectly all of USR's outstanding stock. In support of this position, taxpayers may point to § 1.897–1(c)(2)(i) and its reference to § 1.857–8 as suggesting that the inclusion of the dividends received on QIE stock in gross income on a domestic partnership's tax return, without regard to stock held indirectly by another person, establishes the partnership not only as the actual owner of QIE stock but, as a result of such actual ownership, as the only relevant person for determining whether a QIE is domestically controlled. Taxpayers may take this position even though the determination of actual ownership pursuant to § 1.857–8 is only intended to ensure the beneficial owner of stock is taken into account when different from the shareholder of record, and § 1.897–1(c)(2)(i) does not state or otherwise suggest that the actual owners of QIE stock as determined under § 1.857–8 are the only relevant persons for determining whether a QIE is domestically controlled or provide any guidance on the meaning of ''held directly or indirectly by foreign persons.''

The Treasury Department and the IRS have concluded that the interpretation of the DC–QIE exception described in the preceding paragraph is incorrect because it would permit nonresident alien individuals and foreign corporations to dispose of USRPIs held indirectly through certain intermediate entities, such as domestic partnerships, to avoid taxation under section 897(a). To prevent this result, entities such as partnerships that are generally not subject to U.S. Federal income tax should not, subject to certain limited exceptions, be treated as holders of QIE stock for purposes of determining whether a QIE is domestically controlled. This type of look-through analysis is consistent with section 897(h)(4)(B), which references ''indirect'' ownership in determining the shareholders of a QIE that should be taken into account in applying the DC–QIE exception.

B. General Look-Through Approach

Consistent with the reference to stock held ''indirectly'' by foreign persons in section 897(h)(4)(B), the determination of whether a QIE is domestically controlled under the proposed regulations generally applies a ''look-through'' approach to stock of a QIE that is held through certain entities. Thus, in determining whether a QIE is domestically controlled, only a ''non-look-through person'' is treated as holding directly or indirectly stock of a QIE, and stock of a QIE held by or through one or more intervening ''look-through persons'' is treated as held proportionately by the look-through person's ultimate owners that are non-look-through persons. Proposed § 1.897–1(c)(3)(ii)(A) and (B).

Proposed § 1.897–1(c)(3)(ii)(C) provides that stock of a QIE considered held directly or indirectly by a non-look-through person is not considered held directly or indirectly by any other person. Under this rule, for example, if stock of a QIE is held directly or indirectly by a domestic C corporation (that is not a foreign-owned domestic corporation), it is treated as held directly or indirectly only by that domestic C corporation and is not treated as held directly or indirectly by non-look-through shareholders of the domestic C corporation (or any other person).

Subject to a special look-through rule for foreign-owned domestic corporations and the special ownership rules in section 897(h)(4)(E), discussed in parts III.C and III.D of this Explanation of Provisions, respectively, the proposed regulations define a ''non-look-through person'' to include persons such as individuals, ''domestic C corporations'' (defined as a domestic corporation other than an S corporation, a REIT or a RIC) and foreign corporations (including, for the avoidance of doubt, foreign governments pursuant to section 892(a)(3)). Proposed § 1.897–1(c)(3)(v)(D). The definition of a non-look-through person also includes ''nontaxable holders'' (defined to include tax-exempt entities under section 501(a) or the United States, a State, a U.S. territory, an Indian tribal government or any subdivision of the foregoing) because they generally do not have owners to which the look-through approach could apply. For the same reason, the definition of a ''non-look-through person'' includes international organizations (as defined in section 7701(18)). In addition, a non-look-through person includes publicly traded partnerships (domestic or foreign) because it may be difficult to look-through such entities and it is unlikely that these entities could be affirmatively used as intermediary entities to create a domestically controlled QIE. Finally, a non-look-through person includes a QFPF (including any part of a QFPF) or QCE, which ensures that such entities are taken into account as foreign persons for purposes of section 897(h)(4)(B) as provided under proposed § 1.897–1(c)(3)(iv)(A).

A ''look-through person'' is defined as any person that is not a non-look-through person and includes, for example, a REIT or a RIC (subject to the

special ownership rule in proposed § 1.897–1(c)(3)(iii)(C)), an S corporation, a non-publicly traded partnership (domestic or foreign), and a trust (domestic or foreign). Proposed § 1.897–1(c)(3)(v)(C).

C. Special Look-Through Rule for Foreign-Owned Domestic Corporations

Even though domestic C corporations are generally treated as non-look-through persons, the Treasury Department and the IRS are issuing proposed § 1.897–1(c)(3)(iii)(B) based on the conclusion that a limited look-through approach should apply to non-publicly traded domestic C corporations in which foreign persons hold a meaningful ownership interest. This rule would, for example, prevent the use of intermediary domestic C corporations by foreign investors to create domestically controlled QIEs that could exempt from the application of section 897 QIE stock held directly by those or other foreign investors. In such cases, the ownership of the domestic C corporation by foreign persons should be ascertainable and taken into account in determining the ''indirect'' ownership of the QIE by foreign persons in applying section 897(h)(4)(B).

Accordingly, in determining whether a QIE is domestically controlled, the proposed regulations treat a domestic C corporation whose stock is not regularly traded on an established securities market (''non-public domestic C corporation'') as a look-through person, but only if the non-public domestic C corporation is a foreign-owned domestic corporation. Proposed § 1.897–1(c)(3)(iii)(B). For this purpose, a ''foreign-owned domestic corporation'' is any non-public domestic C corporation if foreign persons hold directly or indirectly 25 percent or more of the fair market value of the corporation's outstanding stock. Proposed § 1.897–1(c)(3)(v)(B). Whether a non-public domestic C corporation is a foreign-owned domestic corporation is determined by, in general, applying the same look-through rules that apply in determining whether a QIE is domestically controlled. Thus, for example, stock of the domestic corporation held by look-through persons would be treated as held directly or indirectly by the look-through person's shareholders, partners, or beneficiaries for this purpose.

D. Special Ownership Rules in Section 897(h)(4)(E)

The proposed regulations incorporate the special ownership rules in section 897(h)(4)(E)(i) and 897(h)(4)(E)(ii). These rules treat a person that holds stock in a QIE as a non-look-through person to the extent required to ensure the treatment of such person as a foreign or United States person as prescribed under section 897(h)(4)(E)(i) and 897(h)(4)(E)(ii). Thus, a person holding less than five percent of U.S. publicly traded QIE stock that section 897(h)(4)(E)(i) deems to be a United States person (absent actual knowledge by the QIE that such person is not a United States person) is treated under the proposed regulations as a non-look-through person with respect to that stock. Proposed § 1.897–1(c)(3)(iii)(A). Stock of a QIE held by a public QIE that, under section 897(h)(4)(E)(ii), is treated as held by a foreign or United States person based on whether the public QIE is a domestically controlled QIE is similarly treated under the proposed regulations as held by a non-look-through person (even though the general definition of a non-look-through person excludes QIEs). Proposed § 1.897–1(c)(3)(iii)(C).

For QIE stock held by a non-public QIE, whose ownership should be more readily ascertainable, the general look-through rules in the proposed regulations are consistent with the approach in section 897(h)(4)(E)(iii) that looks to the proportionate ownership of the non-public QIE to determine the QIE stock held by United States persons.

The rule in proposed § 1.897–1(c)(3)(iii)(A) regarding U.S. publicly traded QIE stock applies notwithstanding any other provision under proposed § 1.897–1(c)(3) (rules regarding domestically controlled QIEs). Thus, for example, a QFPF that holds less than five percent of U.S. publicly traded QIE stock at all times during the testing period (and absent actual knowledge that the person is not a United States person), is treated as a United States person that is a non-look through person with respect to that stock even though the QFPF would otherwise be treated as a foreign person under proposed § 1.897–1(c)(3)(iv)(A). The Treasury Department and the IRS have determined that this priority rule is appropriate due to the administrative and compliance difficulties that could result in determining whether other rules would, absent the application of the U.S publicly traded QIE rule, treat less-than-five-percent holders of U.S. publicly traded QIE stock as foreign persons.

IV. QIE Stock Held Directly or Indirectly Under Section 897(h)(4)(C)

As noted in the Background section of this preamble, section 897(h)(4)(C) provides that the term ''foreign ownership percentage'' means the percentage of QIE stock that was held (directly or indirectly) by foreign persons at the time during the testing period during which the direct and indirect ownership of stock by foreign persons was greatest. The Treasury Department and the IRS have concluded that the determination of QIE stock held ''directly or indirectly'' in section 897(h)(4)(C) should be interpreted in the same manner as such phrase is interpreted in the definition of a domestically controlled QIE in section 897(h)(4)(2). Accordingly, proposed § 1.897–1(c)(4) provides that for purposes of calculating the foreign ownership percentage, the determination of the QIE stock that was held directly or indirectly by foreign persons is made under the rules that apply for purposes of determining whether a QIE is domestically controlled.

V. Other Rules and Modifications

The proposed regulations treat international organizations (as defined in section 7701(18)) as foreign persons for purposes of determining whether a QIE is domestically controlled. Proposed § 1.897–1(c)(3)(iv)(B). Notwithstanding that international organizations are generally not treated as foreign persons for section 897 purposes under § 1.897–9T(e), the Treasury Department and the IRS believe that, for reasons similar to those described in part II of this Explanation of Provisions regarding QFPFs and QCEs, and because international organizations would not otherwise constitute United States persons under section 7701(a)(30), international organizations should be treated as foreign persons in applying the DC–QIE exception.

The proposed regulations do not retain the reference to § 1.857–8 in § 1.897–1(c)(2)(i), which is not necessary given the rules provided in the proposed regulations for determining whether stock of a QIE is considered to be held directly or indirectly. The look-through rules set forth in proposed § 1.897–1(c)(3) apply only with respect to determining whether a QIE is domestically controlled under section 897(h)(4)(B) and do not apply with respect to any other provision, including section 897(c)(3).

Finally, the proposed regulations revise the definition of domestically controlled REIT in § 1.897–1(c)(2)(i) to reflect amendments to section 897(h) made after those regulations were issued that extended the application of section 897(h) to certain RICs. Accordingly, the proposed regulations replace the

definition of ''domestically controlled REIT'' in § 1.897–1(c)(2)(i) by defining a ''domestically controlled QIE'' in proposed § 1.897–1(c)(3).

Applicability Dates

The regulations under section 892 are proposed to apply to taxable years ending on or after December 28, 2022. Taxpayers may rely on the proposed regulations under section 892 until the date of publication of the Treasury decision adopting the regulations as final in the **Federal Register**.

Subject to a special rule for entity classification elections, the regulations under section 897 are proposed to apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**; however, rules applicable for determining whether a QIE is domestically controlled may be relevant for determining QIE ownership during periods before the date these regulations are published as final regulations in the **Federal Register** to the extent the testing period related to a transaction that occurs after the date these regulations are published as final regulations in the **Federal Register** includes periods before that date. The IRS may challenge positions contrary to proposed § 1.897–1(c)(3) and (4) before the issuance of final regulations relating to the topics addressed in those proposed rules.

Special Analyses

I. Regulatory Planning and Review—Economic Analysis

The Administrator of the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, has determined that this proposed rule is not a significant regulatory action, as that term is defined in section 3(f) of Executive Order 12866. Therefore, OIRA has not reviewed this proposed rule pursuant to section 6(a)(3)(A) of Executive Order 12866 and the April 11, 2018, Memorandum of Agreement between the Treasury Department and the Office of Management and Budget (''OMB'').

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the OMB before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. There are no additional information collection requirements associated with these proposed regulations.

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (5 U.S.C. chapter 6) (''RFA'') requires the agency ''to prepare and make available for public comment an initial regulatory flexibility analysis'' that will ''describe the impact of the proposed rule on small entities.'' *See* 5 U.S.C. 603(a). Section 605 of the RFA provides an exception to this requirement if the agency certifies that the proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A small entity is defined as a small business, small nonprofit organization, or small governmental jurisdiction. *See* 5 U.S.C. 601(3) through (6).

The Treasury Department and the IRS do not expect that proposed § 1.892–5(b)(1) will have a significant economic impact on a substantial number of small entities within the meaning of sections 601(3) through 601(6) of the RFA. Proposed § 1.892–5(b)(1) provides guidance regarding whether certain foreign government-controlled entities may be treated as controlled commercial entities within the meaning of section 892. Proposed § 1.892–5(b)(1) does not impose any new costs on these entities. Consequently, the Treasury Department and the IRS do not expect that proposed § 1.892–5(b)(1) will have a significant economic impact on a substantial number of small entities.

Because there is a possibility, however, of significant economic impact on a substantial number of small entities as a result of the rules relating to the treatment of QFPFs and QCEs for purposes of the DC–QIE exception and the definition of a domestically controlled QIE, an initial regulatory flexibility analysis for the proposed regulations is provided below. The Treasury Department and the IRS request comments from the public on the number of small entities that may be impacted and whether that impact will be economically significant.

A. Reasons Why Action Is Being Considered

As discussed in part II of the Explanation of Provisions, there may be some uncertainty as to whether QFPFs and QCEs, which are treated as not ''nonresident alien individuals or foreign corporations'' for purposes of section 897, are treated as foreign persons for purposes of the DC–QIE exception. Treating QFPFs and QCEs as non-foreign investors for purposes of the DC–QIE exception has the potential to expand the effect of section 897(l) to foreign investors who are neither QFPFs nor QCEs (by exempting such investors from tax under section 897(a). These regulations eliminate any uncertainty that taxpayers may have as to the proper classification of QFPFs and QCEs for purposes of the DC–QIE exception by providing that QFPFs and QCEs are treated as foreign persons for purposes of the DC–QIE exception.

As discussed in part III of the Explanation of Provisions, there is uncertainty regarding the determination of whether stock of a QIE is held ''directly or indirectly'' by foreign persons for purposes of the DC–QIE exception. These regulations provide rules to clarify this determination.

B. Objectives of and Legal Basis for the Proposed Regulations

These regulations clarify the treatment of QFPFs and QCEs for two purposes: the first is for purposes of the section 892 exemption from taxation for foreign governments, and the second is the DC–QIE exception. The rules are intended to ensure the following: (1) foreign government-controlled QFPFs (and QCEs) that qualify for the exemption under section 897(l) (and certain other foreign government entities) are not treated as controlled commercial entities for section 892 purposes by reason of qualifying as a USRPHC, and (2) the exemption under section 897(l) does not inappropriately inure to non-QFPFs or non-QCEs by treating QFPFs and QCEs as domestic investors for purposes of the DC–QIE exception. These regulations also clarify whether stock of a QIE is held ''directly or indirectly'' by foreign persons in determining whether the DC–QIE exception applies. The legal basis for these regulations is contained in sections 892(c), 897(l) and 7805.

C. Small Entities to Which These Regulations Will Apply

The regulation relating to the treatment of QFPFs and QCEs for purposes of the DC–QIE exception affects other foreign investors in QIEs. The regulation defining a domestically controlled QIE also affects foreign investors in QIEs. Because an estimate of the number of small businesses affected is not currently feasible, this initial regulatory flexibility analysis assumes that a substantial number of small businesses will be affected. The Treasury Department and the IRS do not expect that these regulations will affect a substantial number of small nonprofit organizations or small governmental jurisdictions.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

These regulations do not impose additional reporting or recordkeeping obligations.

E. Duplicate, Overlapping, or Relevant Federal Rules

The Treasury Department and the IRS are not aware of any Federal rules that duplicate, overlap, or conflict with these regulations.

F. Alternatives Considered

Section 897(a) applies to nonresident alien individuals and foreign corporations, and neither the statute nor prior regulations establish different rules for small entities. Moreover, the DC–QIE exception is measured based on the ownership interests in a QIE, regardless of the size of the investor. Because the DC–QIE exception takes into account all investors, regardless of size, the Treasury Department and the IRS have concluded that the DC–QIE exception should apply uniformly to large and small business entities. The Treasury Department and the IRS did not consider any significant alternative to the rule that provides for the treatment of QFPFs and QCEs under the DC–QIE exception, or for the rule relating to QFPFs, QCEs, or certain other foreign government entities under section 892.

The Treasury Department and the IRS did consider alternatives for the rule that defines a domestically controlled QIE, including one alternative that generally would treat all domestic C corporations as non-look through persons (that is, without the special rule for foreign-owned domestic corporations discussed in part III.C of the Explanation of Provisions section of this preamble). However, the Treasury Department and the IRS concluded that the look-through approach in the proposed rules best serves the purposes of the DC–QIE exception while also taking into account ''indirect'' ownership of QIE stock by foreign persons in determining whether a QIE is domestically controlled under section 897(h)(4)(B). As noted in part III.C of the Explanation of Provisions section of this preamble, the purpose of the special rule for foreign-owned domestic corporations is to prevent the use of intermediary domestic C corporations by foreign investors to create domestically controlled QIEs that could exempt from the application of section 897 QIE stock held directly by those or other foreign investors.

The proposed rules address potential uncertainty under current law and do not impose an additional economic burden. Consequently, the rules represent the approach with the least economic impact.

IV. Section 7805(f)

Pursuant to section 7805(f) of the Code, the proposed regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

V. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector in excess of that threshold.

VI. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Comments and Requests for Public Hearing

Before the proposed amendments are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations, including the definitions of look-through person and non-look-through person, and whether special treatment for particular entities, such as cooperatives, may be warranted. Any electronic and paper comments submitted will be made available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin or Cumulative Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Drafting Information

The principal authors of these regulations are Arielle Borsos and Joel Deuth of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.897–1 also issued under 26 U.S.C. 897(l)(3).

* * * * *

■ **Par. 2.** Section 1.892–5, as proposed to be amended in 76 FR 68119 (November 3, 2011), is further amended by revising paragraphs (b) through (d) to read as follows:

§ 1.892–5 Controlled commercial entity.

* * * * *

(b) *Entities treated as engaged in commercial activity*—(1) *United States real property holding corporations*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, a

United States real property holding corporation as defined in section 897(c)(2), which may include a foreign corporation, is treated as engaged in commercial activity and, therefore, is a controlled commercial entity if the requirements of § 1.892–5T(a)(1) or (2) are satisfied.

(ii) *Exceptions.* Paragraph (b)(1)(i) of this section does not apply to the following—

(A) A foreign corporation that is a qualified holder under § 1.897(l)–1(d); or

(B) A corporation that is a United States real property holding corporation, as defined in section 897(c)(2), solely by reason of its direct or indirect ownership interest in one or more other corporations that are not controlled by the foreign government (as determined under § 1.892–5T(a)).

(iii) *Applicability date.* This paragraph (b)(1) applies to taxable years ending on or after December 28, 2022. For rules that apply to taxable years ending before December 28, 2022, *see* § 1.892–5T(b)(1), as contained in 26 CFR part 1, revised as of April 1, 2022.

(b)(2) through (d)(4). For further guidance, *see* § 1.892–5T(b)(2) through (d)(4).

* * * * *

■ **Par. 3.** Section 1.892–5T is amended by revising paragraph (b)(1) to read as follows:

§ 1.892–5T Controlled commercial entity (temporary regulations).

* * * * *

(b) * * *

(1)(i) For further guidance, see § 1.892–5(b)(1)(i).

(ii) For further guidance, see § 1.892–5(b)(1)(ii).

* * * * *

■ **Par 4.** Section 1.897–1 is amended by:

■ a. Revising paragraph (a)(2);

■ b. Removing and reserving paragraph (c)(2)(i);

■ c. Adding paragraphs (c)(3) and (4);

■ d. Adding paragraph (k);

■ e. Removing the language ''or section 897(k) and § 1.897–4'' in the second sentence and adding two sentences to the end of paragraph (l); and

■ f. Adding paragraph (n).

The revision and additions read as follows:

§ 1.897–1 Taxation of foreign investment in United States real property interests, definition of terms.

(a) * * *

(2) *Effective date.* Except as otherwise provided in this paragraph (a)(2), the regulations set forth in §§ 1.897–1 through 1.897–4 are effective for transactions occurring after June 18, 1980. Paragraphs (c)(3) and (4), (k), and (l) of this section apply to transactions occurring on or after [the date these regulations are published as final regulations in the **Federal Register**] and transactions occurring before [the date these regulations are published as final regulations in the **Federal Register**] resulting from an entity classification election under § 301.7701–3 of this chapter that was effective on or before [the date these regulations are published as final regulations in the **Federal Register**] but was filed on or after [DATE OF PUBLICATION OF FINAL RULE]. For transactions occurring before [DATE OF PUBLICATION OF FINAL RULE], *see* paragraphs (c)(2)(i) and (l) of this section and § 1.897–9T(c) as in effect and contained in 26 CFR part 1, as revised April 1, 2022.

* * * * *

(c) * * *

(3) *Domestically controlled QIE*—(i) *In general.* An interest in a domestically controlled QIE is not a United States real property interest. A QIE is domestically controlled if foreign persons hold directly or indirectly less than 50 percent of the fair market value of the QIE's outstanding stock at all times during the testing period. For rules that apply to distributions by a QIE (including a domestically controlled QIE) attributable to gain from the sale or exchange of a United States real property interest, *see* section 897(h)(1).

(ii) *Look-through approach for determining QIE stock held directly or indirectly.* The following rules apply for purposes of determining whether a QIE is domestically controlled:

(A) *Non-look-through persons considered holders.* Only a non-look-through person is considered to hold directly or indirectly stock of the QIE.

(B) *Attribution from look-through persons.* Stock of a QIE that, but for the application of paragraph (c)(3)(ii)(A) of this section, would be considered held by a look-through person, is instead considered held directly or indirectly by the look-through person's shareholders, partners, or beneficiaries, as applicable, that are non-look-through persons based on the non-look-through person's proportionate interest in the look-through person. To the extent the shareholders, partners, or beneficiaries, as applicable, of the look-through person are also look-through persons, this paragraph applies to such shareholders, partners, or beneficiaries as if they held, but for the application of paragraph (c)(3)(ii)(A) of this section, their proportionate share of the stock of the QIE.

(C) *No attribution from non-look-through persons.* Stock of a QIE considered held directly or indirectly by a non-look-through person is not considered held directly or indirectly by any other person.

(iii) *Special rules for applying look-through approach*—(A) *Certain holders of U.S. publicly traded QIE stock.* Notwithstanding any other provision of paragraph (c)(3) of this section, a person holding less than five percent of U.S. publicly traded QIE stock at all times during the testing period, determined without regard to paragraph (c)(3)(ii)(A) of this section, is treated as a United States person that is a non-look-through person with respect to that stock, unless the QIE has actual knowledge that such person is not a United States person. For an example illustrating the application of this paragraph (c)(3)(iii)(A), *see* paragraph (c)(3)(vi)(C) of this section.

(B) *Certain foreign-owned domestic C corporations.* A non-public domestic C corporation is treated as a look-through-person if it is a foreign-owned domestic corporation. For an example illustrating the application of this paragraph (c)(3)(iii)(B), *see* paragraph (c)(3)(vi)(B) of this section.

(C) *Public QIEs.* A public QIE is treated as a foreign person that is a non-look-through person. The preceding sentence does not apply, however, if the public QIE is a domestically controlled QIE as defined in paragraph (c)(3) of this section, determined after the application of this paragraph (c)(3)(iii)(C), in which case the public QIE is treated as a United States person that is a non-look-through person. For an example illustrating the application of this paragraph (c)(3)(iii)(C), *see* paragraph (c)(3)(vi)(C) of this section (*Example 3).*

(iv) *Treatment of certain persons as foreign persons*—(A) *Qualified foreign pension fund or qualified controlled entity.* For purposes of paragraph (c)(3) of this section, a qualified foreign pension fund (including any part of a qualified foreign pension fund) or a qualified controlled entity is treated as a foreign person, irrespective of whether the fund or entity qualifies for the exception from section 897 provided in § 1.897(l)– 1(b)(1). For an example illustrating the application of this paragraph (c)(3)(iv)(A), *see* paragraph (c)(3)(vi)(A) of this section (*Example 1). See* also paragraph (k) of this section for a definition of foreign person that applies for purposes of sections 897, 1445, and 6039C.

(B) *International organization.* For purposes of paragraph (c)(3) of this section, an international organization (as defined in section 7701(a)(18)) is treated as a foreign person. *See* § 1.897–

9T(e) regarding the treatment of international organizations under sections 897, 1445, and 6039C, which provides that an international organization is not a foreign person with respect to United States real property interests, and is not subject to sections 897, 1445, and 6039C on the disposition of a United States real property interest.

(v) *Definitions.* The following definitions apply for purposes of paragraph (c)(3) of this section:

(A) A *domestic C corporation* is any domestic corporation other than a regulated investment company (''RIC'') as defined in section 851, a real estate investment trust (''REIT'') as defined in section 856, or an S corporation as defined in section 1361.

(B) A *foreign-owned domestic corporation* is any non-public domestic C corporation if foreign persons hold directly or indirectly 25 percent or more of the fair market value of the non-public domestic C corporation's outstanding stock. For purposes of determining whether a non-public domestic C corporation is a foreign-owned domestic corporation, the rules of paragraphs (c)(3)(ii)(A) through (C) and (c)(3)(iii)(C) of this section apply with the following modifications—

(*1*) In paragraphs (c)(3)(ii)(A) through (C) of this section, treating references to ''QIE'' as references to ''non-public domestic C corporation''; and

(*2*) A non-public domestic C corporation that is a foreign-owned domestic corporation under paragraph (c)(3)(v)(B) of this section is treated as a look-through person for purposes of determining whether any other non-public domestic C corporation is a foreign-owned domestic corporation.

(C) A *look-through person* is any person other than a non-look-through person. Thus, for example, a look-through person includes a RIC, a REIT, an S corporation, a non-publicly traded partnership (domestic or foreign), and a trust (domestic or foreign, whether or not the trust is described in sections 671 through 679). For a special rule that treats certain non-public domestic C corporations as look-through persons, *see* paragraph (c)(3)(iii)(B) of this section.

(D) A *non-look-through person* is an individual, a domestic C corporation (other than a foreign-owned domestic corporation), a nontaxable holder, a foreign corporation (including a foreign government pursuant to section 892(a)(3)), a publicly traded partnership (domestic or foreign), an estate (domestic or foreign), an international organization (as defined in section 7701(a)(18)), a qualified foreign pension fund (including any part of a qualified foreign pension fund), or a qualified controlled entity. For special rules that treat certain holders of QIE stock as non-look-through persons, *see* paragraphs (c)(3)(iii)(A) and (C) of this section.

(E) A *non-public domestic C corporation* is any domestic C corporation that is not a public domestic C corporation.

(F) A *nontaxable holder* is—

(*1*) Any organization that is exempt from taxation by reason of section 501(a);

(*2*) The United States, any State (as defined in section 7701(a)(10)), any territory of the United States, or a political subdivision of any State or any territory of the United States; or

(*3*) Any Indian tribal government (as defined in section 7701(a)(40)) or its subdivision (determined in accordance with section 7871(d)).

(G) A *public domestic C corporation* is a domestic C corporation any class of stock of which is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d).

(H) A *public QIE* is a QIE any class of stock of which is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d), or that is a RIC that issues redeemable securities within the meaning of section 2 of the Investment Company Act of 1940.

(I) A *publicly traded partnership* is a partnership any class of interest of which is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d).

(J) A *qualified controlled entity* has the meaning set forth in § 1.897(l)–1(e)(9).

(K) A *qualified foreign pension fund* has the meaning set forth in § 1.897(l)–1(c).

(L) A *QIE* is a qualified investment entity, as defined in section 897(h)(4)(A).

(M) *Testing period* has the meaning set forth in section 897(h)(4)(D).

(N) *U.S. publicly traded QIE stock* is any class of stock of a QIE that is regularly traded on an established securities market within the meaning of §§ 1.897–1(m) and 1.897–9T(d), but only if the established securities market is in the United States.

(vi) *Examples.* The rules of this paragraph (c)(3) are illustrated by the following examples. It is presumed that each entity has a single class of stock or other ownership interests, that the ownership described existed throughout the relevant testing period and that, unless otherwise stated, a QIE is not a public QIE as defined under paragraph (c)(3)(v)(H) of this section.

(A) *Example 1: QIE stock held by public domestic C corporation*—(*1*) *Facts.* USR is a REIT, 51 percent of the stock of which is held by X, a public domestic C corporation as defined in paragraph (c)(3)(v)(G) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section.

(*2*) *Analysis.* Under paragraph (c)(3)(v)(L) of this section, USR is a QIE. X is a non-look-through person as defined under paragraph (c)(3)(v)(D) of this section. Thus, under paragraph (c)(3)(ii)(A) of this section X is considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(C) of this section, the USR stock held directly or indirectly by X is not considered held directly or indirectly by any other person, including the shareholders of X. Because X is not a foreign person as defined in paragraph (k) of this section and holds directly or indirectly 51 percent of the single class of outstanding stock of USR, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR, and USR therefore is a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(*3*) *Alternative facts: QIE stock held by domestic partnership.* The facts are the same as in paragraph (c)(3)(vi)(A)(*1*) of this section (*Example 1*), except that, instead of being a public domestic C corporation, X is a domestic partnership that is not a publicly traded partnership as defined in paragraph (c)(3)(v)(I) of this section. In addition, FC1, a foreign corporation, holds a 50 percent interest in X, and the remaining interests in X are held by U.S. citizens. X is a look-through person as defined in paragraph (c)(3)(v)(C) of this section and, therefore, under paragraph (c)(3)(ii)(A) of this section is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(B) of this section, the stock of USR that, but for paragraph (c)(3)(ii)(A) of this section, is considered held by X, a look-through person, is instead considered held proportionately by X's partners that are non-look-through persons. Accordingly, because FC1 and the U.S. citizen partners in X are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% × 51%), a foreign person

as defined in paragraph (k) of this section, and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% × 51%), who are not foreign persons as defined in paragraph (k) of this section. Foreign persons therefore hold directly or indirectly 74.5 percent of the stock of USR (49 percent of the stock of USR held directly or indirectly by nonresident alien individuals, who are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, plus the 25.5 percent held directly or indirectly by FC1), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section. The result described in this paragraph (c)(3)(vi)(A)(*3*) would be the same if, instead of being a domestic partnership, X were a foreign partnership.

(*4*) *Alternative facts: QIE stock held by a qualified foreign pension fund.* The facts are the same as in paragraph (c)(3)(vi)(A)(*3*) of this section (*Example 1*), except that, instead of being a foreign corporation, FC1 is a qualified foreign pension fund. The analysis is the same as in paragraph (c)(3)(vi)(A)(*3*) of this section regarding the treatment of X as a look-through person as defined in paragraph (c)(3)(v)(C) of this section. FC1, a foreign person under paragraph (c)(3)(iv)(A) of this section, is a non-look-through person as defined in paragraph (c)(3)(v)(D) of this section. Because FC1 and the U.S. citizen partners in X are non-look-through persons, 25.5 percent of the stock of USR is considered as held directly or indirectly by FC1 (50% × 51%), and 25.5 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen partners in X (50% × 51%). Foreign persons therefore hold directly or indirectly 74.5 percent of the stock of USR (49 percent of the stock of USR held directly or indirectly by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, plus the 25.5 percent held directly or indirectly by FC1), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(B) *Example 2: QIE stock held by non-public domestic C corporation that is a foreign-owned domestic corporation*—(*1*) *Facts.* USR is a REIT, 51 percent of the stock of which is held by X, a non-public domestic C corporation as defined in paragraph (c)(3)(v)(E) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section. FC1, a foreign corporation, holds 20 percent of the stock of X, and Y, a nonresident alien individual, holds 5 percent of the stock of X. The remaining 75 percent of the stock of X is held by U.S. citizens.

(*2*) *Analysis.* Under paragraph (c)(3)(v)(L) of this section, USR is a QIE. X is a non-look-through person as defined under paragraph (c)(3)(v)(D) of this section, unless paragraph (c)(3)(iii)(B) of this section applies to treat X as a look-through person because X is a foreign-owned domestic corporation. FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons as defined under paragraph (c)(3)(v)(D) of this section. Under paragraph (c)(3)(v)(B)(*1*) of this section, FC1, Y, and the U.S. citizen shareholders are all considered as holding directly or indirectly stock of X for purposes of determining whether X is a foreign-owned domestic corporation. Under paragraph (c)(3)(v)(B)(*1*) of this section, the stock held directly or indirectly by FC1, Y, and the U.S. citizen shareholders is not considered held directly or indirectly by any other person. Because FC1 and Y, both foreign persons as defined in paragraph (k) of this section, hold directly or indirectly 20 percent and 5 percent of the stock of X, respectively, foreign persons hold directly or indirectly 25 percent of the fair market value of the stock of X, and X is a foreign-owned domestic corporation under paragraph (c)(3)(v)(B) of this section. Accordingly, under paragraph (c)(3)(iii)(B) of this section, X is a look-through person as defined in paragraph (c)(3)(v)(C) of this section and, therefore, under paragraph (c)(3)(ii)(A) of this section is not considered as holding directly or indirectly stock of USR for purposes of determining whether USR is a domestically controlled QIE. Under paragraph (c)(3)(ii)(B) of this section, the stock of USR that, but for paragraph (c)(3)(ii)(A) of this section, is considered held by X, a look-through person, is instead considered held proportionately by X's shareholders that are non-look-through persons. Accordingly, because FC1, Y, and the U.S. citizen shareholders of X are non-look-through persons, 10.2 percent of the stock of USR is considered as held directly or indirectly by FC1 (20% × 51%), 2.55 percent of the stock of USR is considered as held directly or indirectly by Y (50% × 51%), and 38.25 percent (in the aggregate) of the stock of USR is considered as held directly or indirectly by the U.S. citizen shareholders (75% × 51%). Foreign persons therefore hold directly or indirectly 61.75 percent of the stock of USR (49 percent of the stock of USR held directly by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, plus the 10.2 percent and 2.55 percent held indirectly by FC1 and Y, respectively), and USR is not a domestically controlled QIE under paragraph (c)(3)(i) of this section. The result described in this paragraph (c)(3)(vi)(B)(*2*) would be different if Y were a U.S. citizen instead of a nonresident alien individual, in which case X would be a non-look-through person because it is not a foreign-owned domestic corporation under paragraph (c)(3)(v)(B) of this section and, consequently, USR would be a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(C) *Example 3: QIE stock held by public QIE that is a domestically controlled QIE*—(*1*) *Facts.* USR2 is a REIT, 51 percent of the stock of which is held by USR1, a REIT that is a public QIE as defined in paragraph (c)(3)(v)(H) of this section, and 49 percent of the stock of which is held by nonresident alien individuals, which are foreign persons as defined in paragraph (k) of this section. The stock of USR1 is U.S. publicly traded QIE stock as defined in paragraph (c)(3)(v)(N) of this section. FC1 and FC2, both foreign corporations, each hold 20 percent of the stock of USR1. The remaining 60 percent of the stock of USR1 is held by persons that each hold less than 5 percent of the stock of USR1 and with respect to which USR1 has no actual knowledge that such person is not a United States person (''USR1 small public shareholders'').

(*2*) *Analysis.* Under paragraph (c)(3)(v)(L) of this section, USR2 and USR1 are QIEs. Under paragraph (c)(3)(iii)(A) of this section, each of the USR1 small public shareholders is treated as a United States person that is a non-look-through person. Consequently, under paragraph (c)(3)(i) of this section USR1 is a domestically controlled QIE because FC1 and FC2, each a foreign person as defined in paragraph (k) of this section, together hold directly or indirectly only 40 percent of the stock of USR1 and, thus, foreign persons hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held directly or indirectly by a United States person that is a non-look-through person under paragraph (c)(3)(iii)(C) of this section. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons hold directly or indirectly less

than 50 percent of the fair market value of the stock of USR2, and USR2 is a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(*3*) *Alternative facts: QIE stock held by public QIE that is not a domestically controlled QIE.* The facts are the same as in paragraph (c)(3)(vi)(C)(*1*) of this section (*Example 3*), except that 25 percent of the stock of USR1 is held by each of FC1 and FC2, with the remaining 50 percent of the stock of USR1 held by the USR1 small public shareholders. Regardless of the treatment of the USR1 small public shareholders, USR1 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section because FC1 and FC2, each a foreign person as defined in paragraph (k) of this section, together hold directly or indirectly 50 percent of the stock of USR1 and, thus, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR1. In addition, the USR2 stock held by USR1 is treated as held by a foreign person that is a non-look-through person under paragraph (c)(3)(iii)(C) of this section. Because USR1 holds directly or indirectly 51 percent of the stock of USR2, foreign persons do not hold directly or indirectly less than 50 percent of the fair market value of the stock of USR2, and USR2 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(D) *Example 4: QIE stock held by non-public QIE*—(*1*) *Facts.* USR2 is a REIT, 49 percent of the stock of which is held by nonresident alien individuals, and 51 percent of the stock of which is held by USR1, a REIT. U.S. citizens hold 50 percent of the stock of USR1. The remaining 50 percent of the stock of USR1 is held by PRS, a domestic partnership, 50 percent of the interests in which are held by DC, a public domestic C corporation as defined in paragraph (c)(3)(v)(G) of this section, and 50 percent of the interests in which are held by nonresident alien individuals.

(*2*) *Analysis.* Under paragraph (c)(3)(v)(L) of this section, USR2 and USR1 are QIEs. USR1 is not treated as a non-look-through person under paragraph (c)(3)(iii)(C) of this section because USR1 is not a public QIE as defined in paragraph (c)(3)(v)(H) of this section. Each of USR1 and PRS is a look-through person as defined in paragraph (c)(3)(v)(C) of this section that is not treated as holding directly or indirectly stock in USR2 for purposes of determining whether USR2 is a domestically controlled QIE under paragraph (c)(3)(ii)(A) of this section. Under paragraph (c)(3)(ii)(B) of this section, stock of a QIE that would be considered held by a look-through person but for the application of paragraph (c)(3)(ii)(A) of this section is considered held directly or indirectly proportionately by the look-through person's direct or indirect owners that are non-look-through persons. Because the U.S. citizens who hold USR1 stock are non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, those U.S. citizens are treated as holding directly or indirectly 25.5 percent of the stock of USR2 through their USR1 stock interest (50% × 51%) in accordance with paragraph (c)(3)(ii)(A) of this section. Similarly, because DC and the nonresident alien partners in PRS are non-look-through persons, each is treated as holding directly or indirectly the stock of USR2 through its interest in PRS and PRS's interest in USR1. Thus, DC is treated as holding directly or indirectly 12.75 percent of the stock of USR2 (50% × 50% × 51%) and the nonresident alien individual partners, which are foreign persons as defined in paragraph (k) of this section, are treated as directly or indirectly holding a 12.75 percent aggregate interest in the stock of USR2 (50% × 50% × 51%). Foreign persons therefore hold directly or indirectly 63.25 percent of the stock of USR2 (the 49 percent stock in USR2 directly held by nonresident alien individuals, who are foreign persons and non-look-through persons as defined in paragraph (c)(3)(v)(D) of this section, plus the 12.75 percent in stock indirectly held by the nonresident alien individual partners in PRS), and USR2 is not a domestically controlled QIE under paragraph (c)(3)(i) of this section.

(4) *Foreign ownership percentage.* For purposes of calculating the foreign ownership percentage under section 897(h)(4)(C), the determination of the QIE stock that was held directly or indirectly by foreign persons is made under the rules of paragraphs (c)(3)(ii) through (vi) of this section.

* * * * *

(k) *Foreign person.* The term *foreign person* means a nonresident alien individual (including an individual subject to the provisions of section 877), a foreign corporation as defined in paragraph (l) of this section, a foreign partnership, a foreign trust or a foreign estate, as such persons are defined by section 7701 and the regulations in this chapter under section 7701. A resident alien individual, including a nonresident alien individual with respect to whom there is in effect an election under section 6013(g) or 6013(h) to be treated as United States resident, is not a foreign person. With respect to the status of foreign governments and international organizations, *see* § 1.897–9T(e). *See* paragraph (c)(3)(iv)(A) of this section regarding the treatment of qualified foreign pension funds and qualified controlled entities as foreign persons for purposes of section 897(h)(4)(B).

(l) * * * For purposes of sections 897 and 6039C, however, the term does not include a foreign corporation with respect to which there is in effect an election under section 897(i) and § 1.897–3 to be treated as a domestic corporation. For purposes of section 897, the term does not include a qualified holder described in § 1.897(l)–1(d); *see* paragraph (c)(3)(iv)(A) of this section regarding the treatment of qualified foreign pension funds and qualified controlled entities as foreign persons for purposes of section 897(h)(4)(B).

* * * * *

(n) *See* § 1.897–9T(d) for a definition of regularly traded for purposes of sections 897, 1445, and 6039C.

* * * * *

■ **Par. 5.** Section 1.897–9T is amended by removing and reserving paragraph (c) and adding a sentence after the second sentence of paragraph (e).

The addition reads as follows:

§ 1.897–9T Treatment of certain interest in publicly traded corporations, definition of foreign person, and foreign governments and international organizations (temporary).

* * * * *

(e) * * * *See* § 1.897–1(c)(3)(iv)(B) regarding the treatment of international organizations as foreign persons for purposes of section 897(h)(4)(B). * * *

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Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2022–27971 Filed 12–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[REG–146537–06]

RIN 1545–BG08

Income of Foreign Governments and International Organizations; Comment Period Reopening

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Department of the Treasury and the IRS are reopening the comment period for REG–146537–06, relating to the exemption from taxation afforded to foreign governments under section 892.

DATES: The comment period is reopened, and additional written or electronic comments and requests for a public hearing must be received by February 27, 2023.

ADDRESSES: Commenters are strongly encouraged to submit additional public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–146537–06) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (the ''Treasury Department'') and the Internal Revenue Service (the ''IRS'') will publish for public availability any comment submitted electronically, and on paper, to its public docket. Send hard copy submissions to: CC:PA:LPD:PR (REG–146537–06), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–146537–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Joel Deuth at (202) 317–6938; concerning submissions of comments or requests for a public hearing, Vivian Hayes at (202) 317–5306 (not toll-free numbers) or by sending an email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION: Generally, the 2011 proposed regulations provide guidance relating to the exemption from taxation afforded to foreign governments from qualified investments in the United States under section 892 of the Internal Revenue Code. The Treasury Department and the IRS are considering finalizing the 2011 proposed regulations and, therefore, are reopening the comment period with respect to the 2011 proposed regulations for 60 days. Comments that were previously submitted in accordance with the 2011 proposed regulations will be considered and do not need to be submitted again in response to this reopening of the comment period. The 2011 proposed regulations may be finalized in conjunction with finalizing the proposed regulations published in this issue of the **Federal Register** regarding the treatment of certain entities for purposes of the section 892 exemption that relate in some respects to certain provisions of the 2011 proposed regulations.

Requests for Public Hearing: A public hearing will be scheduled if requested in writing by any person who timely submits written comments. Requests for a public hearing are encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 IRB 667, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Oluwafunmilayo A. Taylor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–27969 Filed 12–28–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[REG–100719–21]

RIN 1545–BQ26

User Fees Relating to Enrolled Actuaries; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on a proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations increasing both the enrollment and renewal of enrollment user fees for enrolled actuaries from $250.00 to $680.00.

DATES: The public hearing scheduled for January 9, 2023, at 10 a.m. EST is cancelled.

FOR FURTHER INFORMATION CONTACT: Vivian Hayes of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 317–5306 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A correction to a notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on November 9, 2022 (87 FR 67611) announced that a public hearing being held by teleconference was scheduled for January 9, 2023, at 10 a.m. EST. The subject of the public hearing is under 26 CFR part 300.

The public comment period for these regulations expired on December 19, 2022. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to testify and an outline of the topics to be addressed. We did not receive a request to testify at the Public Hearing. Therefore, the public hearing scheduled for January 9, 2023, at 10 a.m. EST is cancelled.

Oluwafunmilayo A. Taylor,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–28302 Filed 12–28–22; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 123

[EPA–HQ–OW–2022–0834; FRL–10123–03–OW]

RIN 2040–AG27

NPDES Small MS4 Urbanized Area Clarification; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule entitled ''NPDES Small MS4 Urbanized Area Clarification.'' EPA is extending the comment period for 15 days, from January 3, 2023 to January 18, 2023, in response to a stakeholder request for an extension. EPA is also publishing the same extension of the comment period to the direct final rule in the **Federal Register**.

DATES: The comment period for the proposed rule published in the **Federal Register** on December 2, 2022 (87 FR 74066), is being extended for fifteen days. Comments must be received on or before January 18, 2023.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OW–2022–0834 to *https://www.regulations.gov/*. Follow the online instructions for submitting comments.

Once submitted, comments cannot be edited or removed from *Regulations.gov*.

EPA may publish any comment received to the public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. The agencies will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Huddle, Water Permits Division (MC4203), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004; telephone number: (202) 564–7932; email address: *huddle.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 2, 2022, EPA published a direct final rule (87 FR 73965) and a proposed rule (87 FR 74066) entitled ''NPDES Small MS4 Urbanized Area Clarification.'' The original deadline to submit comments was January 3, 2023. This action extends the comment period for 15 days. Written comments must now be received by January 18, 2023. Related to this extension, the direct final rule will become effective on March 2, 2023 without further notice, unless EPA receives adverse comment by January 18, 2023. If EPA receives adverse comment by January 18, 2023, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

Wynne Miller,

Deputy Director, Office of Wastewater Management.

[FR Doc. 2022–28313 Filed 12–28–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 87, No. 249
Thursday, December 29, 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

Agricultural Marketing Service

[Doc. No. AMS–FGIS–18–0053]

United States Standards for Canola

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This action is being taken under the authority of the United States Grain Standards Act, as amended, (USGSA). The United States Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is making no changes regarding the United States (U.S.) Standards for Canola under the USGSA.

DATES: *Applicability date:* December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Gregory Giese, USDA AMS; Telephone: (816) 702–3926; Email: *Gregory.J.Giese@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 4 of the USGSA (7 U.S.C. 76(a)) grants the Secretary of Agriculture the authority to establish standards for grain regarding kind, class, quality, and condition. AMS published a request for information on June 29, 2018, in the **Federal Register** (83 FR 30590), inviting interested parties to comment on whether the current canola standards and grading practices needed to be amended. Based on a request to extend the comment period, AMS reopened the comment period in a **Federal Register** publication on October 2, 2018.

AMS received a total of eight comments, during two separate comment periods, one of which requested that AMS extend the first comment period. Two comments requested the establishment of a national calibration for canola oil content to guarantee fair trade. Another comment requested the establishment of a national monitoring program for canola oil testing, to reduce the variability in canola oil results.

In response to those comments, AMS notes that oil content is not a grade determining factor in any of the United States Standards for Grain. At this time, AMS has not received any comments that would support adding oil content as a grading factor to the canola standards. To pursue the development of standardized calibrations for analysis such oil content, the oil content of a specific grain would need to be identified as official criteria. AMS offers tests for official criteria, but the results do not impact the grade. A notice to propose official criteria must be published in the **Federal Register** (7 CFR 800.4). Because oil content is not an official criterion for canola, AMS is not pursuing the establishment of a national monitoring program for oil content.

AMS received one comment requesting the addition of erucic acid to the U.S. Standards for Canola because of its effect on human health. The commenter cited the English Centre for Food Safety as recommending erucic acid not exceed 5 percent of the weight of the fatty acid in oils. In response to this comment, AMS has already established, in the canola standard, the maximum level of erucic acid in canola (7 CFR 810.301). Canola, by definition, must contain less than 2 percent erucic acid in its fatty acid profile.

AMS received another comment from a stakeholder recommending the table of Grades and Grade Requirements in the Canola Regulations be changed to match the same table in Grain Inspection Handbook II, Chapter 3 Canola. AMS has reviewed the tables and confirmed that the information in the table of Grades and Grade Requirements is correct in both the Regulations and the Handbook, with differences only in formatting. AMS prefers the format of the table in the Regulations and will format the layout of the table in the Handbook to match the Regulations.

AMS received two additional comments, of which one was not germane to the request for information, and another provided support for retaining the Canola Standards without change, stating that they are meeting their stated purpose.

Final Action

Based on the comments received, AMS–FGIS is making no changes to the U.S Standards for Canola at this time.

(Authority: 7 U.S.C. 71–87k)

Melissa Bailey,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–28392 Filed 12–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–SC–22–0090]

Virtual Meeting of the Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (FVIAC). This meeting is being convened to discuss general Federal Advisory Committee operations for newly appointed representatives, hold elections, receive updates from USDA offices, and perform a series of administrative actions.

DATES: The FVIAC will meet via webinar (virtually) on January 25, 2023, from 10 a.m. to 4 p.m. Eastern Time (ET).

Written Comments: Written public comments will be accepted by 11:59 p.m. ET on January 11, 2023, via *http://www.regulations.gov:* Document #AMS–SC–22–0090. Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. AMS, Specialty Crops Program, strongly prefers that written comments be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Oral Comments: FVIAC will hear oral public comments via the webinar on

January 25, 2023. Each commenter wishing to address the FVIAC must pre-register by 11:59 p.m. ET on January 11, 2023. Instructions for registering and participating in the webinars can be found at *https://www.ams.usda.gov/event/usda-fruit-and-vegetable-industry-advisory-committee-virtual-meeting-0.*

ADDRESSES: The webinar for the meeting and public comment period can be accessed via the internet and/or phone. Members of the public must register in advance for this webinar. Instructions for registering and participating in the webinar can be found at *https://www.ams.usda.gov/event/usda-fruit-and-vegetable-industry-advisory-committee-virtual-meeting-0.*

FOR FURTHER INFORMATION CONTACT: Darrell Hughes, Designated Federal Officer, Fruit and Vegetable Industry Advisory Committee, USDA–AMS-Specialty Crops Program, 1400 Independence Avenue SW, Suite 1575, STOP 0235, Washington, DC 20250–0235; Telephone: (202) 378–2576; Email: *SCPFVIAC@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2), the Secretary of Agriculture (Secretary) established the Committee in 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the fruit and vegetable industry's needs.

The AMS Chief of Staff for the Specialty Crops Program serves as the Committee's Designated Federal Officer, leading the effort to administer the Committee's activities. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are periodically called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may participate and present their views via written comments. The meeting is open to the public.

Agenda items may include, but are not limited to, welcome and introductions; administrative matters; and presentations by subject matter experts as requested by the Committee.

Written Comments: Written public comments will be accepted by 11:59 p.m. ET on January 11, 2023, via *http://www.regulations.gov:* Document #AMS–SC–22–0090. Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. AMS, Specialty Crops Program, strongly prefers that written comments be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Oral Comments: FVIAC will hear oral public comments via the webinar on January 25, 2023. Each commenter wishing to address the FVIAC must pre-register by 11:59 p.m. ET on January 11, 2023. Instructions for registering and participating in the webinars can be found at *https://www.ams.usda.gov/event/usda-fruit-and-vegetable-industry-advisory-committee-virtual-meeting-0.*

Meeting Accommodations: The USDA provides reasonable accommodation to individuals with disabilities. The FVIAC virtual meeting will have sign language interpretation. If you are a person requiring other reasonable accommodation, please make requests in advance to the person listed under the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: December 23, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–28390 Filed 12–28–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on Wednesday, February 8, 2023, from 1–4 p.m. EST. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 43rd Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) of the Codex Alimentarius Commission, which will meet in Dusseldorf, Germany, from March 6–10, 2023. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 43rd Session of the CCNFSDU and to address items on the agenda.

DATES: The public meeting is scheduled for February 8, 2023, from 1:00–4:00 p.m. EST.

ADDRESSES: The public meeting will take place via video teleconference only. Documents related to the 43rd Session of the CCNFSDU will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCNFSDU&session=43.*

Dr. Douglas Balentine, U.S. Delegate to the 43rd Session of the CCNFSDU, invites interested U.S. parties to submit their comments electronically to the following email address: *douglas.balentine@fda.hhs.gov.*

Registration: Attendees may register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJItde-srD4oHLgvBHwXapaGAw8FzQxO3j8.*

After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 43rd Session of the CCNFSDU, contact U.S. Delegate, Dr. Douglas Balentine, Senior Science Advisor, International Nutrition Policy, Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, 5001 Campus Drive (HFS–830), College Park, MD 20740; Phone: (240) 672–7292; Email: *douglas.balentine@fda.hhs.gov.* For further information about the public meeting, contact the U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250; Phone 202–205–7760; Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations: the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) are:

(a) To study specific nutritional problems assigned to it by the Commission and advise the Commission on general nutrition issues;

(b) To draft general provisions, as appropriate, concerning the nutritional aspects of all foods;

(c) To develop standards, guidelines, or related texts for foods for special dietary uses, in cooperation with other committees where necessary;

(d) To consider, amend if necessary, and endorse provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines, and related texts.

The CCNFSDU is hosted by Germany. The United States attends the CCNFSDU as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 43rd Session of the CCNFSDU will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or other subsidiary bodies
- Matters of interest arising from FAO and WHO
- Review of the *Standard for Follow-up Formula* (CXS 156–1987)
  - Preamble and structure
- Technological justification for several food additives
- Prioritization mechanism/emerging issues or new work proposals
- Other Business and Future Work
- Methods of analysis

Public Meeting

At the public meeting on February 8, 2023, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Douglas Balentine, U.S. Delegate to the 43rd Session of the CCNFSDU (see **ADDRESSES**). Written comments should state that they relate to activities of the 43rd Session of the CCNFSDU.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *http://www.usda.gov/codex/,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. *Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; *Fax:* (202) 690–7442; *Email: program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington DC, on December 23, 2022.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2022–28341 Filed 12–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Residues of Veterinary Drugs in Foods

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on January 19, 2023, from 1–3 p.m. EST. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 26th Session of the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF)of the Codex Alimentarius Commission, which will meet in Portland, Oregon, from February 13–17, 2023. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary, Office of Trade and Foreign Agricultural Affairs, recognize the importance of providing interested parties the opportunity to obtain background information on the 26th Session of the CCRVDF and to address items on the agenda.

DATES: The public meeting is scheduled for January 19, 2023, from 1–3 p.m. EST.

ADDRESSES: The public meeting will take place via video teleconference only. Documents related to the 26th Session of the CCRVDF will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/it/?meeting=CCRVDF&session=26.*

Dr. Jonathan Greene, U.S. Delegate to the 26th Session of the CCRVDF, invites interested U.S. parties to submit their comments electronically to the following email address: *Jonathan.Greene1@fda.hhs.gov.*

Registration: Attendees may register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsc-6hqTMjE5ICvoM7yPKT1nGbIslVVf0.*

After registering, you will receive a confirmation email containing information about joining the meeting.

FOR FURTHER INFORMATION CONTACT: For further information about the 26th session of CCRVDF, contact Jonathan M. Greene, Ph.D., Biologist, Residue Chemistry Team, HFV 151, Division of Human Food Safety, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, U.S. Food and Drug Administration, Phone +1(240)402–4697, Email: *Jonathan.Greene1@fda.hhs.gov.* For further information contact about the public meeting, contact: Ken Lowery, U.S. Codex Office, 1400 Independence Avenue SW. Room 4861, South Building, Washington, DC 20250. Phone:(202) 690–4042, Email: *ken.lowery@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference for the Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) are:

(a) to determine priorities for the consideration of residues of veterinary drugs in foods;

(b) to recommend Maximum Residue Limits (MRLs) for veterinary drugs;

(c) to develop codes of practice as may be required; and,

(d) to consider methods of sampling and analysis for the determination of veterinary drug residues in foods.

A veterinary drug is defined as any substance applied or administered to any food producing animal, such as meat or milk producing animals, poultry, fish, or bees, whether used for therapeutic, prophylactic or diagnostic purposes, or for modification of physiological functions or behavior.

A Codex Maximum Residue Limit (MRL) for residues of veterinary drugs is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. Residues of a veterinary drug include the parent compounds or their metabolites in any edible portion of the animal product and include residues of associated impurities of the veterinary drug concerned. An MRL is based on the type and amount of residue considered to be without any toxicological hazard for human health as expressed by the Acceptable Daily Intake (ADI) or on the basis of a temporary ADI that utilizes an additional safety factor. When establishing an MRL, consideration is also given to residues that occur in food of plant origin or the environment. Furthermore, the MRL may be reduced to be consistent with official recommended or authorized usage, approved by national authorities, of the veterinary drugs under practical conditions.

An ADI is an estimate made by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, which can be ingested daily in food over a lifetime without appreciable health risk.

The CCRVDF is hosted by the United States of America, and the meeting is attended by the United States as a member country of the Codex Alimentarius.

Issues to Be Discussed at the Public Meeting

The following items on the Agenda for the 26th Session of the CCRVDF will be discussed during the public meeting:

- Matters referred by CAC and other subsidiary bodies
- Matters of interest arising from FAO/WHO including JECFA
- Matters of interest arising from the Joint FAO/International Atomic Energy Agency (IAEA) Centre
- Matters of interest arising from the World Organisation for Animal Health (WOAH, formerly OIE), including the Veterinary International Conference on Harmonization (VICH)
- MRLs for veterinary drugs in foods
  - MRLs for Ivermectin (sheep, pigs and goats—fat, kidney, liver and muscle)
  - MRLs for Ivermectin (pigs, sheep and goats) and Nicarbazin (chicken)
- Extrapolation of MRLs for veterinary drugs in foods
  - Extrapolated MRLs for different combinations of compounds/commodities
  - Approach for the extrapolation of MRLs for residues of veterinary drugs for offal tissues
- Criteria or requirements for the establishment of action levels for unintended or unavoidable carryover from feed to food of animal origin
- Coordination of work between the Codex Committee on Pesticide Residues (CCPR) and CCRVDF
  - Matters of interest arising from the Joint CCPR/CCRVDF Working Group
  - Work in parallel on issues pertaining to harmonization of edible offal (*i.e.* Classification of Food and Feed (CXA 4–1989) and Food descriptors—Coordination between JECFA/JMPR)
- Priority list of veterinary drugs for evaluation or re-evaluation by JECFA
- Other business and future work

Public Meeting

At the public meeting on January 19, 2023, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Jonathan Greene, U.S. Delegate for the 26th Session of the CCRVDF (see **ADDRESSES**). Written comments should state that they relate to activities of the 26th Session of the CCRVDF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

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Done at Washington, DC, on December 23, 2022.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2022–28339 Filed 12–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 221130–0255]

RIN 0607–XC067

2020 Census Qualifying Urban Areas and Final Criteria Clarifications

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice, technical clarifications.

SUMMARY: The Bureau of the Census (Census Bureau) delineates urban areas after each decennial census for the purpose of tabulating and presenting data for the urban and rural population and housing within the United States,

Puerto Rico, and the Island Areas. The Census Bureau delineated the 2020 urban areas based on 2020 Census of Population and Housing counts and density calculations. The Census Bureau's delineation of 2020 urban areas also accounted for non-residential urban land uses, such as commercial, industrial, transportation, and open space that are part of the urban landscape as outlined in the urban area criteria published in the **Federal Register** on March 24, 2022. This Notice provides the list of areas that qualified as urban based on the results of the 2020 Census for the United States, Puerto Rico, and the Island Areas. The designation of ''rural'' encompasses any population, housing, and territory not included in an urban area. Publication of this Notice constitutes the Census Bureau's official announcement of the list of qualifying urban areas for reference by all data users. This Notice also provides clarifications to the Census Bureau's criteria for defining urban areas as published in the **Federal Register** on March 24, 2022. The clarifications make the criteria easier to understand and interpret consistently and are in accordance with the Census Bureau's concept and delineation of urban areas for the 2020 Census.

FOR FURTHER INFORMATION CONTACT: Vincent Osier, Geography Division, U.S. Census Bureau, via email at *geo.urban@census.gov* or telephone at 301–763–1128.

SUPPLEMENTARY INFORMATION: The Census Bureau defines urban areas using an objective and nationally consistent approach designed to meet the analysis needs of a broad range of users interested in the definition of, and data for, urban and rural communities for statistical purposes. The Census Bureau recognizes that some federal and state agencies use this urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their various programs. The agencies that use the classification and data for such non-statistical purposes should be aware that these clarifications to the urban area criteria may affect the implementation of their programs.

While the Census Bureau is not responsible for the use of its urban-rural classification in non-statistical programs, we will work with tribal, federal, state, and local agencies and other stakeholders as appropriate, to ensure understanding of our classification. Agencies using the classification for their programs are responsible for ensuring that the classification is appropriate for their use.

On March 24, 2022, the Census Bureau published the criteria, *Urban Area Criteria for the 2020 Census—Final Criteria* (87 FR 16706) for the delineation of the 2020 Census urban areas. Upon additional review, the Census Bureau determined that clarification and additional information were needed to enable a better understanding of the process the Census Bureau used to define the final 2020 Census urban areas. The clarifications are informed by the Census Bureau's experience in delineating urban areas and by questions from the public. These clarifications make the criteria easier to understand, provide consistent interpretation, and ensure the criteria are in accordance with the delineation of the 2020 Census urban areas.

Urban Areas

This section of the Notice provides the list of the 2020 Census urban areas.

As a result of the 2020 Census, there are 2,646 urban areas: 2,613 urban areas in the United States, 26 in Puerto Rico, and 7 in the Island Areas.[1]

A. List of 2020 Census Urban Areas in the United States, Puerto Rico, and the Island Areas

An alphabetical list of all qualifying urban areas follows. All data included relate to data reported for the 2020 Census.

Urban area	Population	Housing	Land area (square miles)
Abbeville, LA	18,078	8,521	11.1
Abbeville, SC	4,940	2,453	4.9
Aberdeen, SD	27,982	13,246	13.9
Aberdeen, WA	26,603	11,561	11.0
Abilene, KS	6,605	3,216	3.6
Abilene, TX	118,138	50,514	62.0
Ada, OH	5,343	1,984	2.1
Ada, OK	17,264	8,654	14.2
Adairsville, GA	5,799	2,287	5.4
Adel, GA	7,034	2,965	6.1
Adel, IA	5,674	2,250	2.7
Adjuntas, PR	8,008	3,687	4.9
Adrian, MI	29,206	11,726	13.4
Agat—Apra Harbor, GU	8,712	2,881	4.0
Aguadilla—Isabela—San Sebastián, PR	232,573	114,369	187.3
Ahoskie, NC	4,861	2,308	3.3
Aibonito, PR	20,255	9,140	13.3
Akron, OH	541,879	251,080	300.6
Alamogordo, NM	30,801	15,200	13.7
Alamosa, CO	10,965	4,656	7.7
Albany, GA	85,960	39,864	66.5
Albany, OR	62,074	25,245	23.0
Albany—Schenectady, NY	593,142	272,369	271.3
Albemarle, NC	16,988	7,840	16.7
Albert Lea, MN	17,992	8,366	10.8
Albertville, AL	38,476	15,505	34.8
Albion, MI	8,133	3,472	4.7
Albion, NY	7,216	2,746	2.9

[1] The Island Areas are American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

Urban area	Population	Housing	Land area (square miles)
Albuquerque, NM	769,837	335,464	263.1
Alexander City, AL	8,920	4,428	9.8
Alexandria, IN	6,140	2,955	3.8
Alexandria, LA	78,305	35,538	64.7
Alexandria, MN	18,957	9,895	22.6
Algona, IA	5,443	2,684	3.4
Alice, TX	19,413	7,966	10.0
Allegan, MI	7,247	3,137	6.9
Allendale, MI	25,094	8,006	10.5
Allentown—Bethlehem, PA—NJ	621,703	251,480	261.5
Alliance, NE	8,119	3,956	4.9
Alliance, OH	30,944	14,282	17.3
Alma—St. Louis, MI	17,417	5,455	9.0
Alpena, MI	15,425	8,062	12.7
Alpine, CA	13,307	5,022	9.8
Alpine, TX	6,283	3,292	4.3
Altavista, VA	4,597	2,250	5.9
Alton, IL	79,260	38,052	59.7
Altoona, PA	74,426	34,467	37.0
Altus, OK	18,870	9,194	15.7
Alva, OK	5,145	2,637	3.6
Alvarado, TX	5,034	1,869	3.0
Amarillo, TX	205,860	87,615	84.0
Americus, GA	17,407	7,609	11.0
Ames, IA	66,342	27,846	22.4
Amherst Town—Northampton—Easthampton Town, MA	90,570	35,432	54.7
Amory, MS	5,977	2,952	5.6
Amsterdam, NY	21,753	10,808	10.1
Anaconda-Deer Lodge County, MT	6,697	3,828	2.6
Anacortes, WA	18,529	8,883	9.9
Anadarko, OK	5,005	2,252	2.1
Anamosa, IA	5,411	2,093	2.6
Anchorage Northeast, AK	29,561	11,251	17.7
Anchorage, AK	249,252	101,938	91.7
Andalusia, AL	6,391	3,351	6.9
Anderson, IN	79,517	36,893	52.2
Anderson—Clemson, SC	118,369	50,811	95.9
Andrews, TX	15,201	5,797	9.5
Angleton, TX	19,866	8,221	10.9
Angola, IN	12,686	6,728	12.4
Ann Arbor, MI	317,689	137,325	143.5
Anna, IL	6,068	2,749	4.4
Anniston—Oxford, AL	78,302	35,959	78.9
Antigo, WI	8,071	4,130	4.8
Antioch, CA	326,205	104,264	73.3
Appleton, WI	230,967	98,811	107.8
Arab, AL	7,849	3,494	8.7
Aransas Pass—Port Aransas—Ingleside, TX	21,868	13,912	24.6
Arcadia, FL	16,128	7,287	10.0
Arcata, CA	19,714	8,796	7.9
Ardmore, OK	21,403	10,020	15.0
Arecibo, PR	123,724	59,095	75.5
Arizona City, AZ	9,640	4,466	4.3
Arkadelphia, AR	10,086	4,205	6.2
Arkansas City, KS	11,878	5,372	6.8
Arlington, TN	14,230	4,634	7.7
Arroyo Grande—Grover Beach—Pismo Beach, CA	50,885	25,235	17.1
Artesia, NM	14,149	5,937	6.8
Arvin, CA	19,385	4,870	2.3
Asbury Lake—Middleburg, FL	23,649	8,746	23.0
Ashburn, GA	4,738	2,086	4.2
Asheboro, NC	37,523	16,252	27.4
Asheville, NC	285,776	138,374	248.6
Ashland, OH	19,206	8,954	9.9
Ashland, PA	4,249	2,530	1.4
Ashland, WI	7,225	3,543	4.2
Ashtabula, OH	27,421	14,439	21.7
Ashville, OH	6,670	2,715	3.8
Aspen, CO	7,674	6,597	5.2
Astoria, OR	15,825	7,690	9.7
Atchison, KS	10,907	4,385	5.4
Athens, AL	23,204	10,492	20.1
Athens, OH	27,355	10,036	9.5

Urban area	Population	Housing	Land area (square miles)
Athens, TN	15,724	7,179	15.5
Athens, TX	12,050	4,960	9.3
Athens-Clarke County, GA	143,213	60,979	91.8
Athol, MA	13,557	6,243	10.6
Atlanta, GA	4,999,259	1,998,084	2,450.5
Atlanta, TX	5,531	2,659	6.8
Atlantic City—Ocean City—Villas, NJ	294,921	201,613	162.9
Atlantic, IA	6,608	3,309	4.5
Atmore, AL	6,390	3,151	5.1
Atoka, TN	13,056	4,834	9.9
Au Gres, MI	1,869	2,201	4.0
Aubrey, TX	5,116	1,963	2.7
Auburn, AL	100,842	44,840	61.2
Auburn, CA	31,371	13,842	17.2
Auburn, IN	20,346	8,813	9.9
Auburn, NY	31,433	15,338	13.1
Augusta, KS	9,231	4,004	3.7
Augusta, ME	24,005	12,627	21.9
Augusta-Richmond County, GA—SC	431,480	184,589	273.3
Aurora, MO	7,466	3,488	5.3
Austin, MN	25,479	10,764	10.0
Austin, TX	1,809,888	765,527	619.6
Avalon, CA	3,362	2,165	1.2
Avenal, CA	13,304	2,480	3.6
Aztec, NM	7,301	3,446	6.8
Bainbridge, GA	13,857	6,070	10.7
Baker City, OR	9,768	4,509	4.5
Bakersfield, CA	570,235	186,629	132.1
Baltimore, MD	2,212,038	944,161	654.9
Bandon, OR	4,104	2,514	4.9
Bangor, ME	61,539	28,723	51.1
Baraboo, WI	14,201	6,569	6.8
Barbourville, KY	5,998	2,744	5.3
Barceloneta—Florida—Bajadero, PR	65,070	29,534	41.7
Bardstown, KY	17,682	7,738	13.4
Barnesville, GA	6,825	2,796	5.8
Barnstable Town, MA	303,269	195,668	341.3
Barre—Montpelier, VT	20,014	10,096	14.4
Barstow, CA	30,522	11,453	12.4
Bartlesville, OK	39,479	18,237	19.8
Bartow, FL	16,948	7,166	7.9
Basalt, CO	8,127	3,458	3.6
Bastrop, LA	12,604	5,701	10.3
Bastrop, TX	19,384	7,798	18.1
Batavia, NY	17,472	8,308	8.1
Batesburg-Leesville, SC	4,989	2,342	5.6
Batesville, AR	10,913	4,724	7.8
Batesville, IN	7,941	3,285	5.5
Batesville, MS	6,273	2,643	6.3
Bath, NY	6,335	3,264	2.9
Baton Rouge, LA	631,326	273,965	396.3
Battle Creek, MI	75,513	34,049	47.3
Battlement Mesa, CO	6,311	2,571	3.1
Baxley, GA	5,354	2,482	6.3
Bay City, MI	68,472	33,037	39.9
Bay City, TX	19,311	8,683	10.4
Bay Minette, AL	7,685	3,118	7.0
Bayard, NM	4,975	2,485	3.1
Bayside Gardens—Manzanita, OR	2,849	3,052	3.0
Bealeton, VA	6,608	2,257	4.4
Beardstown, IL	6,262	2,505	2.1
Beatrice, NE	12,142	6,011	8.7
Beaufort—Port Royal, SC	52,515	21,456	43.8
Beaumont, TX	146,649	65,409	96.1
Beaver Dam, KY	5,658	2,566	3.4
Beaver Dam, WI	18,824	8,633	9.4
Beckley, WV	57,468	27,981	53.6
Bedford, IN	14,432	6,932	8.5
Bedford, PA	4,392	2,426	3.8
Bedford, VA	7,541	3,587	8.6
Beebe, AR	7,216	2,969	4.5
Beeville, TX	14,230	6,110	6.3
Bel Air—Aberdeen, MD	214,647	86,017	107.2

Urban area	Population	Housing	Land area (square miles)
Belding, MI	5,611	2,285	2.9
Belfair, WA	5,141	3,022	5.3
Belfast, ME	3,754	2,484	3.5
Belgrade, MT	18,534	7,215	13.3
Belle Fourche, SD	5,089	2,375	2.9
Belle Glade, FL	23,009	7,996	7.2
Belle Plaine, MN	7,061	2,629	3.5
Bellefontaine, OH	14,024	6,358	6.2
Bellefonte, PA	15,588	6,424	7.8
Bellevue, OH	8,400	3,759	4.5
Bellingham, WA	128,979	56,420	50.1
Bellows Falls, VT—NH	3,978	2,072	2.4
Beloit, WI—IL	63,073	26,188	31.9
Belterra, TX	8,075	2,807	3.4
Belton, SC	5,301	2,518	4.6
Bemidji, MN	14,849	6,747	14.5
Bend, OR	106,988	47,859	42.4
Bennettsville, SC	9,075	4,618	7.5
Bennington, VT	13,759	6,140	11.6
Benson, AZ	3,830	2,342	2.7
Benton Harbor—Lincoln—St. Joseph, MI	61,888	30,730	52.5
Benton, IL	7,491	3,737	5.0
Benton, KY	4,691	2,114	4.1
Benton, LA	5,591	2,150	4.5
Berea, KY	16,158	6,631	11.5
Berlin, NH	9,658	5,339	4.9
Berlin, WI	5,289	2,495	3.5
Berryville, AR	5,057	2,008	4.2
Bethel, AK	5,097	1,756	15.0
Beverly Hills—Homosassa Springs—Pine Ridge, FL	96,729	50,309	118.8
Big Bear, CA	16,498	20,795	15.9
Big Lake, MN	11,868	4,293	5.4
Big Pine Key, FL	8,441	6,099	8.5
Big Rapids, MI	10,136	5,122	7.3
Big Spring, TX	28,955	11,433	20.6
Big Stone Gap, VA	6,915	2,830	6.6
Billings, MT	128,787	57,343	54.7
Binghamton, NY	155,942	72,333	69.7
Birch Bay, WA	15,833	8,619	13.1
Birdsboro—Amity, PA	16,999	6,533	8.6
Birmingham, AL	774,956	346,732	509.3
Bisbee, AZ	4,637	3,033	3.2
Bishop, CA	11,013	5,104	5.5
Bismarck, ND	98,198	45,189	41.9
Black River Falls, WI	4,415	2,155	3.7
Blackfoot, ID	14,231	5,387	7.5
Blacksburg—Christiansburg, VA	72,400	29,193	34.0
Blackwell, OK	6,017	3,186	3.8
Blair, NE	8,001	3,531	8.2
Blairsville, PA	6,156	3,377	5.2
Bloomfield, NM	7,841	3,151	6.2
Bloomington, IN	110,103	50,119	43.0
Bloomington—Normal, IL	134,100	59,416	50.4
Bloomsburg—Berwick, PA	39,212	17,812	20.7
Blowing Rock, NC	1,412	2,085	3.2
Bluefield, WV—VA	40,750	20,450	38.7
Bluffton East—Hilton Head Island, SC	71,824	43,742	63.2
Bluffton West, SC	31,096	15,069	23.3
Bluffton, IN	10,346	4,758	6.5
Blythe, CA—AZ	11,780	5,054	6.2
Blytheville, AR	15,873	7,845	14.5
Boerne, TX	18,320	7,410	9.7
Bogalusa, LA	11,019	5,759	10.9
Boise City, ID	433,180	177,221	139.2
Bolivar, MO	10,324	4,442	5.9
Bolivar, TN	5,281	2,437	4.7
Bonham, TX	7,799	3,341	5.0
Bonita Springs—Estero, FL	425,675	280,947	243.0
Bonne Terre, MO	6,696	1,946	2.2
Boone, IA	12,357	5,905	7.6
Boone, NC	26,306	10,905	18.2
Booneville, MS	6,438	2,626	6.4
Boonville, IN	6,507	2,961	2.8

Urban area	Population	Housing	Land area (square miles)
Boonville, MO	8,034	3,364	5.8
Boothbay Harbor, ME	3,067	3,797	11.2
Borger, TX	12,848	6,288	9.4
Boston, MA—NH	4,382,009	1,792,967	1,655.9
Boulder City, NV	14,181	7,164	5.7
Boulder, CO	120,828	52,204	25.4
Bowie, TX	5,419	2,490	4.3
Bowling Green, KY	97,814	41,874	52.2
Bowling Green, OH	30,989	12,956	11.3
Box Elder, SD	11,386	4,162	6.1
Boyne City, MI	3,990	2,708	5.3
Bozeman, MT	59,080	26,060	21.4
Bradenton—Sarasota—Venice, FL	779,075	447,842	404.3
Bradford, PA—NY	11,182	4,980	5.7
Brady, TX	4,887	2,528	2.9
Brainerd, MN	20,687	9,316	16.1
Brandon, SD	10,959	4,021	4.7
Branson, MO	28,640	16,198	34.8
Brattleboro, VT	10,285	5,500	5.7
Brawley, CA	26,270	8,559	4.8
Brazil, IN	10,587	4,722	6.6
Breaux Bridge, LA	17,542	7,559	21.3
Breckenridge, CO	8,725	10,276	11.2
Breckenridge, TX	5,455	2,639	4.8
Breese, IL	4,637	2,036	2.3
Bremen, GA	7,327	2,944	7.4
Bremerton, WA	224,449	91,973	146.9
Brenham, TX	17,395	7,340	10.3
Brevard, NC	13,059	6,580	13.8
Brewton, AL	6,371	3,060	6.3
Bridgeport—Stamford, CT—NY	916,408	367,076	397.3
Bridgeton, NJ	35,666	10,832	12.2
Brigham City, UT	25,827	8,992	10.1
Bristol, TN—VA	70,638	34,040	68.7
Broadway—Timberville, VA	7,188	2,960	3.6
Brockport, NY	13,079	5,554	6.4
Brookfield, MO	3,869	2,034	3.2
Brookhaven, MS	10,152	4,815	10.0
Brookings, OR	11,294	5,996	7.1
Brookings, SD	23,674	10,132	11.1
Brooksville, FL	12,128	6,436	8.4
Brookville, OH	6,372	2,960	4.1
Brookville, PA	4,644	2,228	3.6
Brownfield, TX	8,264	3,524	4.4
Browns Mills, NJ	27,234	9,507	17.3
Brownsville, TN	9,621	4,472	7.4
Brownsville, TX	216,444	73,165	62.1
Brownwood, TX	21,562	9,768	13.5
Brunswick, MD	8,269	3,231	3.6
Brunswick, ME	31,361	15,015	26.8
Brunswick—St. Simons, GA	68,750	34,174	59.0
Brush, CO	5,568	2,242	2.5
Bryan, OH	9,238	4,406	5.1
Buchanan, MI	5,640	2,661	4.2
Buckeye North, AZ	6,796	3,928	2.8
Buckeye, AZ	23,897	7,659	7.8
Buckhannon, WV	8,547	3,964	6.5
Bucyrus, OH	11,772	5,827	6.9
Buellton, CA	5,161	2,030	1.6
Buena Vista, CO	5,038	2,075	5.1
Buena Vista, VA	6,603	2,937	4.0
Buffalo, MN	16,439	6,385	8.2
Buffalo, NY	948,864	442,770	340.5
Buffalo, WY	4,516	2,316	3.3
Buies Creek—Lillington, NC	7,391	2,930	7.1
Bullhead City, AZ—NV	54,396	30,618	35.4
Burkburnett, TX	10,449	4,632	6.5
Burley, ID	17,741	6,631	9.5
Burlington, IA—IL	28,447	14,251	21.1
Burlington, NC	145,311	61,970	92.0
Burlington, VT	118,032	52,015	62.0
Burlington, WI	24,086	10,643	12.7
Burnet, TX	5,001	2,223	3.6

Urban area	Population	Housing	Land area (square miles)
Burns, OR	4,169	2,058	3.0
Burnt Store Marina, FL	4,191	3,220	4.3
Bushnell, FL	3,664	2,061	2.8
Butler, PA	37,954	18,787	28.5
Butte-Silver Bow, MT	30,258	15,141	15.3
Byron, IL	5,625	2,301	3.3
Byron, MN	6,341	2,398	3.1
Cadillac, MI	12,208	6,140	10.9
Cairo, GA	10,346	4,422	8.0
Calexico, CA	38,491	10,793	5.4
Calhoun, GA	23,066	9,099	20.4
California—Brownsville, PA	10,185	4,994	6.1
Calistoga, CA	5,173	2,376	2.3
Calumet, MI	5,112	2,927	2.5
Camarillo, CA	76,338	30,143	22.5
Cambria, CA	5,478	3,924	2.7
Cambridge, MD	14,978	7,425	8.7
Cambridge, MN	10,128	4,196	5.9
Cambridge, OH	14,427	7,367	11.0
Camden, AR	9,873	5,192	11.1
Camden, ME	4,660	2,959	4.1
Camden—Lugoff, SC	30,655	13,337	34.6
Camdenton, MO	5,849	3,481	8.9
Cameron, MO	8,450	2,882	4.5
Cameron, TX	5,151	2,221	3.5
Camilla, GA	5,270	2,350	4.7
Camp Verde, AZ	5,759	2,649	5.2
Campbellsville, KY	12,789	5,547	8.5
Canajoharie—Fort Plain, NY	5,278	2,706	4.0
Canandaigua, NY	18,049	9,873	13.1
Canastota, NY	5,616	2,550	3.8
Canby, OR	19,055	7,104	5.9
Cañon City, CO	24,737	11,117	15.9
Canton, IL	13,177	5,828	5.4
Canton, MS	26,257	10,461	23.7
Canton, NC	8,812	4,109	8.9
Canton, NY	6,812	1,815	2.2
Canton, OH	295,319	132,970	180.2
Canyon Lake, TX	7,918	4,615	9.2
Canyon, TX	16,171	6,999	7.3
Cape Coral, FL	599,242	316,907	331.8
Cape Girardeau, MO—IL	55,546	24,822	31.2
Carbondale, CO	7,361	2,887	2.6
Carbondale, IL	31,488	17,666	21.7
Carlinville, IL	5,602	2,533	3.0
Carlsbad, NM	34,442	14,802	19.5
Carmi, IL	5,067	2,539	2.6
Caro, MI	5,383	2,567	4.5
Carrizo Springs, TX	5,615	2,470	4.2
Carroll, IA	10,150	4,769	5.0
Carrollton, GA	38,385	14,836	34.4
Carrollton, KY	5,471	2,398	3.5
Carson City, NV	61,629	26,356	26.2
Cartersville, GA	52,351	20,867	44.4
Carthage, MO	16,260	6,432	8.6
Carthage, NY	5,160	2,551	2.5
Carthage, TX	6,328	2,841	7.5
Caruthersville, MO	5,319	2,582	3.2
Casa Grande, AZ	50,981	22,577	21.5
Casper, WY	67,751	31,193	27.9
Castle Rock, CO	85,350	31,345	35.7
Castroville—Prunedale, CA	12,334	3,180	3.4
Catskill, NY	7,012	3,733	6.4
Cedar City, UT	40,899	14,337	18.3
Cedar Rapids, IA	192,844	86,125	86.0
Cedartown, GA	12,833	5,133	9.6
Celina, OH	12,035	5,519	6.1
Center, TX	5,123	2,271	6.8
Centerville, IA	5,269	2,724	3.5
Central City, KY	5,767	2,242	4.3
Centralia, IL	15,301	7,386	9.8
Centralia, WA	42,338	16,951	30.4
Chadron, NE	4,930	2,213	2.3

Urban area	Population	Housing	Land area (square miles)
Chambersburg, PA	50,094	21,787	34.7
Champaign, IL	147,452	68,225	46.5
Chanute, KS	8,710	4,112	5.8
Chapin, SC	5,701	2,238	6.3
Chardon, OH	6,454	3,062	5.2
Charles City, IA	7,255	3,684	4.1
Charleston, IL	17,415	8,399	7.8
Charleston, SC	684,773	305,541	339.1
Charleston, WV	140,958	71,602	92.9
Charlestown, IN	6,696	2,881	4.0
Charlestown, RI	4,348	3,712	6.3
Charlevoix, MI	3,777	3,092	4.0
Charlotte Amalie, VI	41,534	27,775	23.6
Charlotte, MI	13,026	5,569	8.4
Charlotte, NC—SC	1,379,873	576,259	657.6
Charlottesville, VA	104,191	45,311	36.9
Chatsworth, GA	12,808	5,030	16.1
Chattanooga, TN—GA	398,569	176,961	291.7
Cheboygan, MI	5,142	3,100	6.0
Chelan, WA	6,380	4,637	7.5
Chelsea, MI	5,851	2,661	3.5
Cheney, WA	13,176	5,346	3.3
Cheraw, SC	7,480	3,686	7.4
Cherokee, IA	4,705	2,288	3.1
Cherryville, NC	6,747	3,027	6.2
Chesapeake Beach, MD	16,926	7,005	13.1
Chester, IL	6,338	2,026	4.0
Chester, NY	5,900	2,448	4.6
Chester, SC	8,611	4,093	6.3
Chestertown, MD	7,392	3,337	4.4
Cheyenne, WY	79,250	35,732	33.9
Chicago, IL—IN	8,671,746	3,559,615	2,337.9
Chickasha, OK	15,253	7,017	9.7
Chico, CA	111,411	48,438	33.7
Childress, TX	4,516	2,298	3.2
Chillicothe, MO	9,122	3,910	6.0
Chillicothe, OH	31,727	12,864	16.4
Chincoteague, VA	3,223	4,092	4.1
Chino Valley, AZ	13,317	5,875	13.7
Chisholm, MN	4,586	2,296	2.2
Chittenango, NY	5,054	2,166	2.2
Chowchilla, CA	13,196	4,417	4.8
Christiansted—Frederiksted, VI	38,372	23,713	34.4
Ciales, PR	13,098	5,797	11.6
Cienega Springs, AZ	2,041	2,934	3.2
Cincinnati, OH—KY	1,686,744	727,550	752.3
Circleville, OH	15,679	6,971	7.4
Clanton, AL	6,423	2,847	9.1
Claremont, NH	9,415	4,414	6.0
Claremore, OK	25,415	10,532	15.4
Clarinda, IA	5,213	2,105	2.4
Clarion, PA	5,662	2,746	3.4
Clarksburg, WV	32,882	16,027	21.2
Clarksdale, MS	14,408	6,851	7.4
Clarksville, AR	7,816	3,324	7.8
Clarksville, TN—KY	200,947	76,824	113.1
Clay Center, KS	4,131	2,073	2.5
Clayton, NC	51,898	19,895	36.3
Clayton, NY	2,092	2,089	2.7
Cle Elum, WA	3,846	2,369	4.5
Clear Lake, IA	8,406	5,640	8.6
Clearfield, PA	10,524	5,418	7.1
Clearlake Riviera, CA	5,461	3,439	6.7
Clearlake, CA	17,351	8,262	8.1
Cleburne, TX	43,901	16,854	24.5
Cleveland, MS	14,346	6,405	8.2
Cleveland, OH	1,712,178	808,782	713.8
Cleveland, TN	73,918	30,584	55.0
Cleveland, TX	7,469	3,054	4.5
Clewiston, FL	12,849	4,761	5.5
Clifton Forge, VA	5,127	2,759	4.5
Clifton Springs, NY	6,383	2,900	4.2
Clinton, IL	7,323	3,549	3.6

Urban area	Population	Housing	Land area (square miles)
Clinton, IN	6,484	3,130	3.1
Clinton, MO	8,866	4,370	6.1
Clinton, NC	9,315	4,127	9.1
Clinton, NJ	16,136	6,161	10.5
Clinton, OK	8,022	3,571	4.3
Clinton, SC	9,143	4,046	8.5
Clinton—Fulton, IA—IL	31,126	15,074	19.1
Clintonville, WI	4,530	2,262	2.7
Cloquet, MN	13,213	5,704	9.4
Clover, SC	7,526	2,948	5.2
Cloverdale, CA	9,451	3,718	3.4
Clovis, NM	39,314	17,413	16.1
Clyde, OH	6,549	2,825	4.8
Coal City—Braidwood, IL	15,837	7,007	10.3
Coalinga, CA	13,049	4,655	4.3
Coamo, PR	30,344	14,143	16.3
Cobleskill, NY	5,040	2,359	4.3
Cochran, GA	6,159	2,408	5.5
Cody, WY	9,999	5,060	6.9
Coeur d'Alene, ID	121,831	51,420	46.8
Coffeyville, KS—OK	9,391	4,814	7.4
Colby, KS	5,467	2,479	3.0
Colchester, CT	5,512	2,553	5.0
Cold Spring, MN	5,099	2,211	3.2
Cold Springs, NV	9,686	3,510	3.5
Coldwater, MI	13,721	5,659	10.7
Coleman, TX	3,599	2,129	2.8
College Station—Bryan, TX	206,137	86,504	81.6
Collins, NY	5,448	1,680	2.3
Collinsville, OK	4,706	2,040	3.4
Colonial Beach, VA	3,975	2,539	1.7
Colorado City, TX	5,839	1,807	2.8
Colorado Springs, CO	632,494	254,131	200.4
Columbia City, IN	10,256	4,613	6.0
Columbia Falls, MT	6,589	3,158	4.3
Columbia, KY	5,018	2,036	3.4
Columbia, MO	141,831	62,836	67.2
Columbia, MS	6,236	2,826	6.3
Columbia, SC	590,407	258,608	367.5
Columbia, TN	42,423	18,828	30.1
Columbiana, OH	9,160	4,571	7.0
Columbus, GA—AL	267,746	117,135	142.9
Columbus, IN	60,982	26,694	27.9
Columbus, MS	26,895	12,698	20.1
Columbus, NE	24,838	10,276	13.5
Columbus, OH	1,567,254	672,389	516.2
Columbus, WI	6,977	3,056	4.1
Colusa, CA	6,955	2,677	3.0
Colville, WA	5,058	2,328	3.2
Commerce, GA	7,688	3,196	10.3
Commerce, TX	8,320	3,217	3.3
Concord, NC	278,612	111,573	200.1
Concord, NH	42,549	18,694	26.6
Concordia, KS	5,031	2,511	3.1
Concord—Walnut Creek, CA	538,583	211,815	175.8
Conesus Lake, NY	4,867	3,126	4.8
Conneaut Lakeshore, PA	2,846	2,522	3.8
Conneaut, OH	12,072	5,486	8.3
Connell, WA	5,437	1,021	2.2
Connellsville, PA	30,777	15,316	20.6
Connersville, IN	14,401	7,049	7.5
Conway, AR	66,619	29,045	32.9
Conway, NH	5,272	3,777	8.8
Cookeville, TN	49,089	22,181	45.5
Coolbaugh—Pocono Pines, PA	24,893	13,218	19.7
Coolidge, AZ	12,008	4,486	4.1
Coos Bay, OR	31,688	14,678	14.6
Coquí—Jobos, PR	11,725	5,588	4.4
Coquille, OR	4,373	2,030	3.4
Corcoran, CA	22,377	4,294	6.3
Cordele, GA	10,931	5,224	8.6
Corinth, MS	12,464	6,085	12.8
Corinth, NY	3,870	2,108	3.0

Urban area	Population	Housing	Land area (square miles)
Cornelia—Baldwin, GA	19,489	6,859	19.6
Corning, CA	8,459	3,047	3.0
Corning, NY	19,541	9,909	10.8
Corona de Tucson, AZ	7,866	2,696	3.4
Corpus Christi, TX	339,066	143,128	129.3
Corry, PA	6,224	2,822	4.2
Corsicana, TX	24,380	9,346	15.5
Cortez, CO	8,628	3,914	4.2
Cortland, NY	24,866	10,897	10.3
Corvallis, OR	66,791	28,654	17.5
Corydon, IN	5,696	2,509	3.6
Coshocton, OH	12,334	6,012	7.8
Cottage Grove, OR	11,826	4,816	5.2
Cottonwood (Yavapai County)—Verde Village, AZ	29,121	13,877	16.9
Covington, TN	7,320	3,335	6.0
Covington, VA	7,745	4,051	7.3
Coxsackie, NY	5,384	1,685	3.8
Craig, CO	9,650	4,288	5.5
Crawfordsville, IN	17,863	8,008	9.8
Crawfordville, FL	10,124	3,912	9.7
Creedmoor, NC	7,482	3,022	6.8
Crescent City, CA	15,620	6,674	16.3
Cresson, PA	6,512	3,002	3.9
Crestline, OH	4,597	2,213	3.2
Crestline—Lake Arrowhead, CA	22,272	17,901	16.9
Creston, IA	7,507	3,668	4.5
Crestview, FL	46,816	18,409	39.8
Creswell, OR	6,137	2,358	2.4
Crete, NE	6,959	2,411	2.6
Crisfield, MD	3,509	2,036	2.7
Crockett, TX	5,935	2,826	6.6
Crookston, MN	7,618	3,441	4.6
Crossett, AR	7,184	3,550	9.0
Crossville, TN	19,949	9,868	26.8
Crowley, LA	13,168	6,429	7.1
Crozet, VA	9,378	3,779	4.5
Cruz Bay, VI	2,964	2,681	3.1
Crystal City, TX	6,709	2,670	3.5
Crystal River, FL	7,834	4,847	14.1
Crystal Springs, MS	5,057	2,151	4.0
Cuero, TX	7,619	3,020	4.4
Cullman, AL	21,165	9,371	21.5
Cullowhee, NC	9,134	3,147	6.1
Culpeper, VA	22,563	8,059	9.4
Cumberland, MD—WV—PA	46,296	22,834	31.7
Cushing, OK	6,595	3,332	9.3
Cynthiana, KY	6,393	2,952	3.0
Dade City, FL	20,304	7,856	14.4
Dahlonega, GA	6,508	1,403	3.1
Dalhart, TX	8,352	3,489	3.5
Dallas, OR	17,625	7,189	5.5
Dallas—Fort Worth—Arlington, TX	5,732,354	2,243,270	1,746.9
Dalton, GA	67,830	25,333	57.5
Danbury, CT—NY	171,680	68,643	118.5
Dansville, NY	4,806	2,321	3.2
Danville, IL	40,044	18,786	27.8
Danville, KY	19,814	8,752	13.6
Danville, VA—NC	46,683	24,055	36.3
Danville—Mahoning, PA	9,771	4,698	5.2
Davenport, IA—IL	285,211	130,167	134.9
Davis, CA	77,034	29,345	12.2
Dayton Northeast, NV	6,248	2,375	3.8
Dayton Southwest, NV	7,547	3,184	4.5
Dayton, OH	674,046	308,659	319.9
Dayton, TN	9,688	4,259	9.1
Dayton, TX	6,879	2,908	5.4
Daytona Beach—Palm Coast—Port Orange, FL	402,126	216,962	212.4
De Queen, AR	5,894	2,163	4.8
De Soto, MO	7,649	3,440	4.4
Decatur, AL	60,458	26,455	43.5
Decatur, IL	86,287	42,057	55.1
Decatur, IN	10,441	4,820	6.6
Decatur, TX	6,486	2,608	6.2

Urban area	Population	Housing	Land area (square miles)
Decorah, IA	7,993	3,384	5.2
Dededo—Apotgan—Tamuning, GU	128,164	43,957	55.2
Defiance, OH	17,775	7,987	12.4
DeFuniak Springs, FL	6,977	3,065	7.2
DeKalb, IL	64,736	26,985	25.6
Del Rio, TX	42,680	15,789	18.8
Delano, CA	44,410	11,713	7.4
Delano, MN	6,178	2,307	3.1
Delavan, WI	12,354	6,703	9.1
Delhi, CA	10,274	2,730	2.3
Delphos, OH	7,266	3,242	3.4
Delta, CO	8,190	3,553	6.2
Deltona, FL	210,712	86,104	109.0
Deming, NM	14,913	6,492	8.2
Demopolis, AL	6,227	2,986	4.5
Denison, IA	8,142	3,000	4.5
Denton Southwest, TX	14,105	5,719	7.1
Denton, MD	5,009	1,941	3.3
Denton—Lewisville, TX	429,461	166,497	150.5
Denver—Aurora, CO	2,686,147	1,125,043	644.5
DeRidder, LA	12,126	5,563	14.5
Des Moines, IA	542,486	232,461	224.7
Desert Hot Springs, CA	45,767	18,838	14.1
Detroit Lakes, MN	10,234	5,956	9.2
Detroit, MI	3,776,890	1,647,476	1,284.8
Devils Lake, ND	7,493	3,787	5.1
DeWitt, IA	5,162	2,250	4.0
Dexter, MI	5,285	2,155	2.5
Dexter, MO	9,635	4,675	7.7
Diamondhead, MS	9,044	4,380	5.1
Dickinson, ND	25,674	11,897	12.3
Dickson, TN	16,543	7,239	16.5
Dillon, MT	4,429	2,221	2.7
Dillon, SC	8,484	3,955	6.3
Discovery Bay, CA	15,939	6,271	4.2
Dixon, CA	18,876	6,524	4.4
Dixon, IL	15,987	6,712	7.8
Dodge City, KS	27,702	9,853	10.9
Dodgeville, WI	4,898	2,199	3.3
Donaldsonville, LA	12,461	5,596	15.6
Dos Palos, CA	7,721	2,340	2.3
Dothan, AL	72,423	33,948	55.1
Douglas, AZ	16,582	6,504	5.5
Douglas, GA	14,258	6,099	16.6
Douglas, MI	3,259	2,651	4.2
Douglas, WY	6,498	3,120	3.3
Dover, DE	123,101	48,756	72.3
Dover—Rochester, NH—ME	72,391	33,561	52.3
Dowagiac, MI	5,896	2,689	3.6
Du Quoin, IL	5,933	2,969	4.1
Dublin, GA	20,842	9,337	20.4
DuBois, PA	11,656	5,625	7.2
Dubuque, IA—IL	70,332	31,475	34.2
Duluth, MN—WI	119,411	55,048	66.9
Dumas, AR	4,308	2,143	3.1
Dumas, TX	14,639	5,632	4.9
Duncan, OK	20,353	10,118	13.6
Dundee, MI	5,252	2,314	3.9
Dunkirk—Fredonia, NY	23,410	10,746	12.8
Dunn, NC	13,707	6,504	11.1
Durand, MI	5,056	2,354	3.8
Durango, CO	19,114	9,232	9.5
Durant, OK	19,324	8,259	12.0
Durham, NC	396,118	173,410	183.4
Durham, NH	12,117	2,548	4.0
Duvall, WA	8,165	2,840	2.5
Dyersburg, TN	16,790	7,674	13.0
Eagle Mountain, UT	10,269	2,550	2.0
Eagle Pass, TX	54,083	18,705	21.1
Eagle, CO	7,419	2,640	3.4
Earlimart, CA	7,470	1,883	1.3
East Aurora, NY	8,765	3,997	5.8
East Hampton North—Springs—Northwest Harbor, NY	21,812	15,022	35.9

Urban area	Population	Housing	Land area (square miles)
East Liverpool, OH—WV—PA	21,126	10,424	15.5
East Palestine, OH	4,634	2,085	2.9
East Stroudsburg—Stroudsburg, PA	47,891	19,080	38.9
East Tawas, MI	4,844	3,004	5.0
East Troy, WI	5,309	2,453	4.1
Eastman, GA	6,220	2,778	6.0
Easton, MD	18,033	8,357	11.1
Eaton Rapids, MI	5,076	2,314	2.8
Eaton, CO	5,823	2,174	2.2
Eaton, OH	8,067	3,860	4.5
Eau Claire, WI	105,475	46,055	62.5
Ebensburg, PA	4,880	2,350	2.6
Eden, NC	16,323	8,197	14.2
Edenton, NC	4,329	2,361	3.6
Edgerton, WI	8,360	4,277	6.2
Edinboro, PA	5,730	2,627	2.4
Edna, TX	5,910	2,619	3.7
Edwards—Avon, CO	16,518	11,151	11.6
Effingham, IL	13,990	6,588	13.6
El Campo, TX	13,286	5,171	7.8
El Centro, CA	74,376	24,115	19.4
El Dorado, AR	18,698	8,867	20.3
El Dorado, KS	12,774	5,819	7.4
El Paso de Robles (Paso Robles)—Atascadero, CA	67,804	27,041	30.0
El Paso, TX—NM	854,584	315,198	255.9
El Reno, OK	14,346	6,252	8.7
Elberton, GA	5,700	2,770	5.0
Elburn, IL	6,395	2,334	3.6
Eldersburg, MD	30,486	11,346	18.4
Eldon, MO	4,513	2,168	3.3
Elgin, TX	10,779	3,823	4.8
Elizabeth City, NC	22,834	10,393	16.5
Elizabethtown—Radcliff, KY	76,441	32,896	55.8
Elk City, OK	11,124	5,740	9.0
Elkhart, IN—MI	148,199	59,094	94.9
Elkhorn, WI	11,876	5,034	6.9
Elkins, WV	11,109	5,395	7.1
Elko, NV	21,695	9,136	12.6
Elkton, VA	5,032	2,933	4.8
Ellensburg, WA	21,518	10,092	8.8
Ellenville, NY	7,090	2,648	3.3
Ellijay, GA	6,738	3,738	13.2
Ellwood City, PA	13,155	6,342	7.4
Elmira, NY	62,468	29,533	31.7
Elsa, TX	12,984	4,221	6.3
Elwood, IN	9,199	4,448	4.6
Ely, NV	4,455	2,284	3.1
Emmett, ID	10,173	4,191	5.7
Emporia, KS	24,082	11,224	11.2
Emporia, VA	6,871	3,067	6.5
Enid, OK	50,194	22,482	29.5
Ennis, TX	19,763	7,195	12.4
Enterprise, AL	31,258	13,725	23.7
Ephraim, UT	5,049	1,680	1.7
Ephrata, WA	8,050	3,210	4.3
Erie, PA	187,820	85,013	73.3
Erwin, TN	8,678	4,077	5.9
Escalon, CA	7,480	2,723	2.0
Escanaba, MI	21,159	10,444	18.1
Española, NM	23,931	10,382	20.1
Estacada, OR	5,267	1,992	3.0
Estes Park, CO	7,907	6,112	12.2
Estherville, IA	5,774	2,675	3.5
Etowah, TN	4,513	2,158	4.5
Eudora, KS	6,400	2,419	2.6
Eufaula, AL—GA	9,184	4,482	7.0
Eugene, OR	270,179	116,321	73.5
Eunice, LA	10,510	4,863	7.1
Eureka, CA	45,951	20,603	18.8
Eureka, IL	5,401	2,216	2.5
Eureka, MO	14,027	4,870	9.3
Evanston, WY	11,416	5,057	7.7
Evansville, IN	206,855	94,932	112.8

Urban area	Population	Housing	Land area (square miles)
Evansville, WI	6,321	2,620	2.8
Evergreen, CO	10,218	4,424	9.5
Excelsior Springs, MO	9,840	4,435	5.7
Exeter, CA	10,973	3,909	2.9
Exeter, NH	16,165	7,629	11.7
Fabens, TX	7,094	2,476	1.7
Fairbanks, AK	71,396	30,180	74.3
Fairbury, NE	4,011	2,022	2.4
Fairfield Glade, TN	8,212	5,118	9.6
Fairfield, CA	150,122	50,402	40.8
Fairfield, IA	9,211	4,743	5.4
Fairfield, IL	4,766	2,540	3.3
Fairhope—Daphne, AL	76,807	33,719	59.1
Fairmont, MN	8,387	4,180	3.6
Fairmont, WV	31,694	15,332	20.2
Fajardo, PR	68,587	40,103	34.4
Falcon, CO	21,348	6,627	8.5
Falfurrias, TX	4,497	2,027	2.2
Fallbrook, CA	41,305	14,606	26.0
Fallon, NV	16,753	7,153	14.0
Falls City, NE	4,133	2,148	3.4
Fargo, ND—MN	216,214	98,798	77.7
Faribault, MN	24,013	8,902	10.2
Farmington, MO	32,804	13,603	18.1
Farmington, NM	51,763	20,575	32.6
Farmville, NC	4,380	2,204	2.9
Farmville, VA	7,916	3,005	6.6
Fayetteville, NC	325,008	137,211	195.9
Fayetteville, TN	10,120	4,817	12.4
Fayetteville—Springdale—Rogers, AR—MO	373,687	150,509	198.3
Fenton, MI	38,156	16,869	29.7
Fergus Falls, MN	13,116	6,302	7.6
Fernandina Beach—Yulee, FL	50,805	26,223	50.6
Fernley, NV	19,233	7,298	10.6
Ferriday, LA	5,169	2,213	4.8
Fillmore, CA	16,397	4,726	2.6
Findlay, OH	48,144	22,745	25.6
Fire Island, NY	998	3,990	2.9
Firebaugh, CA	8,117	2,246	2.5
Firestone—Frederick, CO	35,447	12,207	15.2
Fitzgerald, GA	11,281	5,354	8.5
Flagstaff, AZ	79,842	32,500	29.3
Flemington—Raritan, NJ	24,401	9,571	18.4
Flint, MI	298,964	139,045	205.5
Flora, IL	4,793	2,261	3.2
Florence East, AZ	14,049	2,796	2.7
Florence West, AZ	11,636	5,032	5.9
Florence, AL	78,925	38,442	54.6
Florence, OR	11,477	6,674	8.0
Florence, SC	89,436	40,455	68.0
Floresville, TX	6,313	2,449	3.9
Foley—Gulf Shores, AL	40,920	26,434	49.0
Fond du Lac, WI	54,731	24,532	24.7
Fontana-on-Geneva Lake, WI	10,466	7,382	10.3
Forest City—Spindale, NC	20,760	9,937	26.9
Forest Lake, MN	21,882	9,111	14.0
Forney, TX	41,112	13,983	19.7
Forrest City, AR	8,557	4,074	7.0
Forsyth, GA	4,852	2,158	5.2
Forsyth, MO	7,423	3,724	6.6
Fort Atkinson, WI	13,852	6,067	6.9
Fort Bragg, CA	10,668	5,124	9.8
Fort Collins, CO	326,332	138,125	118.0
Fort Dodge, IA	24,699	11,246	13.6
Fort Irwin, CA	8,096	2,462	3.6
Fort Leonard Wood—St. Robert—Waynesville, MO	31,672	9,536	26.2
Fort Lupton, CO	7,856	2,749	2.3
Fort Madison, IA—IL	10,278	5,081	6.0
Fort Meade, FL	4,874	2,381	2.3
Fort Morgan, CO	13,473	5,011	5.5
Fort Payne, AL	8,380	3,335	8.6
Fort Polk South, LA	9,983	3,622	9.5
Fort Rucker—Daleville, AL	7,157	3,126	7.8

Urban area	Population	Housing	Land area (square miles)
Fort Scott, KS	7,439	3,603	5.1
Fort Smith, AR—OK	125,811	55,567	74.0
Fort Stockton, TX	8,551	3,658	6.0
Fort Valley, GA	9,704	4,195	5.8
Fort Wayne, IN	335,934	144,476	163.6
Fortuna, CA	12,784	5,408	5.8
Fostoria, OH	14,295	6,652	8.3
Four Corners, FL	92,396	50,820	84.5
Frankenmuth, MI	5,045	2,475	2.9
Frankfort, IN	16,775	6,650	7.5
Frankfort, KY	37,844	18,234	22.3
Frankfort, MI	2,603	2,627	4.2
Franklin (Venango County), PA	8,500	4,324	5.6
Franklin, KY	11,597	4,976	8.3
Franklin, LA	9,491	4,516	6.2
Franklin, NC	9,358	5,011	14.0
Franklin, NH	6,659	3,080	4.2
Franklin, VA	8,749	4,228	6.4
Fraser, CO	3,178	5,385	4.5
Frederick, MD	176,456	68,467	80.3
Fredericksburg, TX	11,641	6,225	7.8
Fredericksburg, VA	167,679	64,150	89.6
Fredericktown, MO	4,986	2,187	3.3
Freeland, MI	7,412	2,282	8.5
Freeland, PA	5,754	2,753	1.6
Freeland, WA	7,907	5,367	12.1
Freeport, IL	24,135	11,988	10.6
Fremont, MI	5,165	2,426	3.8
Fremont, NE	28,292	11,998	13.8
Fremont, OH	22,175	10,492	13.4
Fresno, CA	717,589	247,152	159.1
Friday Harbor, WA	3,542	2,139	4.4
Frisco, CO	3,463	3,654	2.2
Front Royal, VA	16,193	6,641	10.7
Frostproof, FL	8,092	3,668	7.5
Fulton, KY—TN	4,256	2,224	3.2
Fulton, MO	12,479	4,682	8.7
Fulton, NY	12,788	5,989	5.7
Gadsden, AL	57,975	27,550	61.2
Gaffney, SC	19,042	8,718	15.4
Gainesville, FL	213,748	95,632	87.7
Gainesville, GA	265,218	100,455	251.7
Gainesville, TX	16,544	6,734	9.6
Galax, VA	6,767	3,271	6.6
Galesburg, IL	33,847	15,669	21.9
Galion, OH	11,364	5,541	6.4
Galliano—Larose—Cut Off, LA	20,056	8,765	18.7
Gallup, NM	24,448	9,158	13.7
Galt, CA	26,618	8,744	7.1
Galveston—Texas City, TX	191,863	92,177	109.0
Garapan, MP	36,921	14,519	17.2
Garden City, KS	30,976	11,478	12.7
Gardnerville, NV	21,338	9,599	12.7
Gastonia, NC	176,897	76,009	124.6
Gatesville, TX	15,565	4,000	10.2
Gaylord—Bagley, MI	8,476	4,616	10.3
Geneseo, IL	6,435	3,093	3.8
Geneseo, NY	8,025	2,387	2.4
Geneva, NY	29,572	14,251	16.8
Geneva, OH	7,355	3,480	4.8
Genoa, IL	5,484	2,058	2.2
Georgetown, DE	9,921	2,777	4.9
Georgetown, KY	38,912	15,654	15.1
Georgetown, SC	11,364	5,404	9.2
Germantown, OH	5,577	2,311	2.8
Gettysburg—Cumberland, PA	14,733	6,074	8.3
Gillespie, IL	5,037	2,430	2.8
Gillette, WY	34,422	14,532	19.7
Gilmer, TX	5,084	2,208	4.1
Gilroy—Morgan Hill, CA	114,833	36,785	42.5
Glasgow, KY	14,849	6,973	11.8
Glencoe, MN	5,738	2,478	3.2
Glendive, MT	6,675	3,217	5.4

Urban area	Population	Housing	Land area (square miles)
Glens Falls, NY	71,191	35,410	51.6
Glenwood Springs, CO	10,889	4,602	5.5
Glenwood, IA	5,009	2,078	2.4
Glenwood, MN	4,202	2,464	4.2
Globe, AZ	12,620	6,333	8.1
Gloversville, NY	26,286	13,325	15.5
Gold Canyon, AZ	9,590	6,814	7.9
Goldsboro, NC	54,456	25,498	53.2
Gonzales, CA	8,682	2,105	1.5
Gonzales, TX	6,953	2,902	4.4
Goodland, KS	4,439	2,214	2.8
Goodyear South, AZ	16,042	6,587	9.6
Governors Club, NC	4,967	2,427	3.6
Grafton, WV	4,824	2,380	3.5
Grafton—Port Washington—Cedarburg, WI	44,086	19,802	23.1
Graham, TX	8,585	3,825	4.7
Granbury, TX	29,706	14,236	21.9
Grand Forks, ND—MN	68,160	31,492	26.5
Grand Island, NE	55,099	21,892	29.6
Grand Junction, CO	135,973	58,584	75.6
Grand Lake, CO	1,801	3,048	5.4
Grand Rapids, MI	605,666	245,031	274.4
Grand Rapids, MN	10,348	4,826	10.5
Grandview, WA	11,187	3,353	4.1
Granite Falls, WA	6,349	2,326	3.1
Grants Pass, OR	55,724	24,348	30.4
Grants, NM	9,972	4,544	6.1
Grantsville, UT	9,598	2,958	4.4
Grass Valley, CA	36,720	17,313	29.7
Grayson, KY	5,418	2,397	5.2
Great Bend, KS	14,766	7,127	6.2
Great Falls, MT	67,097	30,776	30.3
Greeley, CO	137,222	50,941	37.3
Green Bay, WI	224,156	95,658	113.7
Green River, WY	11,873	5,057	5.6
Green Valley, AZ	37,315	23,803	20.2
Greencastle, IN	10,190	4,035	4.8
Greendale—Lawrenceburg—Hidden Valley, IN—OH	20,087	8,512	18.8
Greeneville, TN	22,919	10,199	22.0
Greenfield, CA	18,858	4,170	2.1
Greenfield, MA	22,294	11,083	14.3
Greenfield, OH	4,771	2,242	1.7
Greensboro, NC	338,928	148,331	169.3
Greensburg, IN	12,529	5,556	8.7
Greenville, AL	5,823	2,890	5.6
Greenville, IL	6,765	2,262	3.0
Greenville, KY	5,516	2,578	5.5
Greenville, MI	10,265	4,403	6.6
Greenville, MS	29,267	13,687	16.8
Greenville, NC	120,150	58,789	66.4
Greenville, OH	12,983	6,653	6.7
Greenville, PA	10,553	4,866	7.9
Greenville, SC	387,271	171,025	262.2
Greenville, TX	27,054	11,244	17.3
Greenwood, AR	9,077	3,663	6.6
Greenwood, MS	19,475	8,661	10.7
Greenwood, SC	41,998	18,897	35.5
Grenada, MS	10,276	5,021	7.1
Gridley, CA	8,653	3,056	4.0
Griffin, GA	38,311	15,772	27.9
Grinnell, IA	9,486	4,011	4.3
Grissom AFB, IN	6,856	1,598	4.3
Grove City, PA	9,830	3,623	6.1
Grove, OK	7,934	4,342	10.2
Guadalupe, CA	8,046	2,118	1.1
Guánica, PR	6,972	4,607	2.9
Guayama, PR	52,290	27,128	21.8
Gulfport—Biloxi, MS	236,344	106,428	168.6
Gun Barrel City, TX	18,309	10,004	18.4
Gunnison, CO	7,228	3,285	3.7
Gustine, CA	6,128	2,147	1.2
Guthrie, OK	9,312	4,145	6.8
Guymon, OK	12,516	4,629	4.8

Urban area	Population	Housing	Land area (square miles)
Gypsum, CO	8,841	2,825	5.8
Hagerstown, MD—WV—PA—VA	197,557	81,924	120.8
Hailey, ID	12,035	4,877	5.3
Half Moon Bay, CA	21,688	8,713	8.3
Hamburg—Vernon—Highland Lakes, NJ	28,250	13,840	21.8
Hamilton, MT	6,870	3,490	4.0
Hammond, LA	72,526	31,199	76.4
Hammonton, NJ	12,086	4,870	8.3
Hampshire, IL	5,699	2,104	2.7
Hampstead, NC	23,340	16,255	31.4
Hampstead—Manchester, MD	14,542	5,697	7.9
Hanford, CA	66,638	22,595	18.2
Hannibal, MO	17,672	8,097	10.6
Hanover, PA	56,712	24,313	25.7
Harlan, IA	4,713	2,284	2.6
Harlan, KY	6,147	3,073	4.8
Harlingen, TX	118,838	46,951	54.2
Harriman—Kingston—Rockwood, TN	22,348	10,813	30.5
Harrington, DE	4,943	2,152	3.4
Harrisburg, IL	8,283	4,154	5.3
Harrisburg, PA	490,859	212,463	250.2
Harrisburg, SD	6,663	2,369	2.4
Harrison, AR	13,950	6,799	12.4
Harrison, OH—IN	15,007	6,162	7.5
Harrisonburg, VA	73,377	27,080	31.1
Harrisonville, MO	9,423	4,034	6.8
Harrodsburg, KY	9,791	4,489	6.5
Hartford City, IN	6,135	3,054	3.5
Hartford, CT	977,158	425,056	535.9
Hartford, WI	23,757	10,450	14.9
Hartselle, AL	15,596	6,619	13.9
Hartsville, SC	13,946	6,687	12.7
Hartwell, GA	5,963	2,608	6.8
Harvard, IL	9,376	3,278	4.4
Hastings, MI	8,041	3,558	4.7
Hastings, MN	21,635	9,202	7.4
Hastings, NE	24,807	11,175	12.8
Hattiesburg, MS	80,821	35,939	63.6
Havelock, NC	17,101	6,741	15.7
Havre, MT	9,826	4,702	4.1
Hayes, MI	3,796	2,405	3.2
Hays, KS	21,880	9,934	9.7
Hazard, KY	7,808	3,664	7.7
Hazlehurst, GA	4,917	2,179	4.9
Hazleton, PA	50,860	21,110	19.0
Heartland, TX	9,841	3,065	2.8
Heber Springs, AR	6,743	3,841	7.8
Heber, UT	25,059	8,634	13.1
Heber-Overgaard, AZ	3,573	4,832	9.2
Helena, MT	52,380	24,037	31.7
Helena-West Helena, AR	8,599	4,394	6.1
Hemet, CA	173,194	61,575	37.1
Hempstead, TX	4,890	2,095	3.0
Henderson, KY	28,430	13,402	15.3
Henderson, NC	19,894	8,880	16.3
Henderson, TN	5,906	2,120	5.4
Henderson, TX	14,924	4,608	10.5
Henryetta, OK	6,207	2,931	5.2
Hereford, TX	15,520	5,727	6.7
Hermiston, OR	28,938	9,674	15.5
Hibbing, MN	12,035	6,319	6.9
Hickory, NC	201,511	89,412	221.3
Hidden Meadows, CA	4,884	2,417	3.8
Higgins Lake, MI	2,145	3,490	4.5
Higginsville, MO	4,551	2,081	2.1
High Point, NC	167,830	71,478	100.8
Highland, IL	10,267	4,661	5.3
Hillsboro, IL	6,880	2,390	3.9
Hillsboro, OH	6,613	3,243	4.8
Hillsboro, TX	8,068	3,301	5.9
Hillsborough, NC	15,800	6,802	11.0
Hillsdale, MI	10,642	4,606	6.7
Hilo, HI	41,410	16,878	23.4

Urban area	Population	Housing	Land area (square miles)
Hilton, NY	8,057	3,191	4.0
Hinesville, GA	53,107	21,243	37.2
Hobbs, NM	44,157	16,787	26.0
Holden Beach, NC	8,687	9,276	19.6
Holdenville, OK	4,264	2,029	2.5
Holdrege, NE	5,454	2,590	2.9
Holland, MI	107,034	42,839	64.8
Hollister, CA	49,611	15,163	13.2
Holly Springs, MS	5,559	2,143	5.3
Holly, MI	8,934	3,792	5.1
Holts Summit, MO	5,184	2,263	4.7
Holtville, CA	6,230	2,009	1.6
Hondo, TX	6,006	2,403	3.0
Honesdale, PA	5,404	2,960	4.0
Honolulu, HI	853,252	315,727	145.0
Hood River, OR—WA	16,171	7,297	9.3
Hoopeston, IL	4,812	2,356	2.3
Hope, AR	8,855	4,095	7.9
Hopkinsville, KY	31,696	14,731	22.8
Hornell, NY	10,566	5,285	5.8
Hornsby Bend, TX	11,337	3,772	3.8
Horse Cave, KY	4,262	2,167	3.7
Horseshoe Bay, TX	5,583	4,331	8.5
Hot Springs Village, AR	12,755	7,877	20.1
Hot Springs, AR	59,133	31,921	50.3
Houghton Lake, MI	8,521	8,859	10.9
Houghton—Hancock, MI	15,358	5,955	7.9
Houlton, ME	4,281	2,071	2.5
Houma, LA	145,482	61,142	94.9
Houston, TX	5,853,575	2,232,438	1,752.7
Hudson, NY	10,610	5,886	6.4
Hudson, WI—MN	23,743	10,292	13.7
Hugo, OK	4,992	2,508	4.0
Humboldt, IA	5,339	2,518	3.7
Humboldt, TN	7,160	3,661	5.3
Huntingburg, IN	6,117	2,541	3.7
Huntingdon, PA	11,311	3,537	4.1
Huntington, IN	17,555	8,013	9.8
Huntington, WV—KY—OH	200,157	94,530	128.9
Huntsville Southeast, AL	20,165	7,538	10.7
Huntsville, AL	329,066	145,066	214.8
Huntsville, TX	43,415	15,643	17.0
Huron, CA	6,129	1,588	1.3
Huron, SD	14,294	6,215	7.9
Hurricane, UT	19,370	7,645	10.3
Hutchinson, KS	42,475	19,892	24.5
Hutchinson, MN	14,670	6,556	8.1
Idabel, OK	5,523	2,508	4.2
Idaho Falls, ID	105,132	38,357	41.3
Ilion—Herkimer, NY	22,267	10,680	8.1
Immokalee, FL	23,485	6,928	10.6
Incline Village, NV—CA	19,441	19,801	21.1
Independence, IA	6,057	2,833	4.8
Independence, KS	8,477	4,350	4.6
Indian Head, MD	5,556	2,310	3.7
Indianapolis, IN	1,699,881	717,732	722.5
Indiana—White, PA	27,693	12,704	13.8
Indianola, IA	15,344	6,226	8.7
Indianola, MS	9,341	3,810	5.1
Indiantown, FL	5,496	1,618	1.5
Indio—Palm Desert—Palm Springs, CA	361,075	192,446	151.8
Inman, SC	13,269	5,440	13.7
International Falls, MN	6,575	3,656	7.4
Iola, KS	5,845	2,907	4.2
Ione, CA	4,673	2,004	1.7
Ionia, MI	15,168	3,592	4.9
Iowa City, IA	126,810	55,571	50.8
Iowa Falls, IA	5,058	2,421	4.1
Iowa Park, TX	6,454	2,785	3.1
Ipswich, MA	9,380	4,733	6.1
Iron Mountain—Kingsford, MI—WI	18,336	9,164	13.2
Ironwood, MI—WI	7,181	4,375	6.0
Irvine, KY	4,029	2,021	2.8

Urban area	Population	Housing	Land area (square miles)
Isanti, MN	6,621	2,454	3.2
Ishpeming, MI	11,298	5,357	5.8
Ithaca, NY	59,102	25,031	24.6
Jackson, CA	7,781	3,918	4.8
Jackson, GA	5,697	2,234	4.7
Jackson, MI	84,307	36,028	52.0
Jackson, MS	347,693	155,654	237.2
Jackson, OH	6,749	3,307	4.0
Jackson, TN	72,809	32,121	47.7
Jackson, WI	7,962	3,551	3.6
Jackson, WY	10,760	4,930	2.9
Jacksonville, FL	1,247,374	530,649	573.3
Jacksonville, IL	21,003	9,559	12.2
Jacksonville, NC	111,224	40,962	75.7
Jacksonville, TX	13,881	5,546	10.5
Jamestown, ND	15,207	7,464	9.4
Jamestown, NY	44,424	26,313	26.4
Janesville, WI	72,285	31,455	36.7
Jasper, AL	13,274	5,781	16.7
Jasper, GA	6,384	2,657	8.2
Jasper, IN	16,749	7,203	11.5
Jasper, TX	7,000	3,373	8.5
Jayuya, PR	9,987	4,338	8.5
Jeanerette, LA	5,325	2,484	2.8
Jefferson City, MO	50,775	23,952	34.5
Jefferson, GA	11,842	4,160	10.7
Jefferson, WI	7,566	3,329	4.6
Jennings, LA	9,378	4,081	7.7
Jerome, ID	12,405	4,309	5.5
Jersey Shore, PA	10,009	4,469	7.3
Jerseyville, IL	8,641	3,948	4.8
Jesup, GA	12,772	4,971	11.9
Jewett City, CT	4,706	2,210	2.6
Johnson City, TN	128,519	60,019	106.0
Johnson Lane, NV	5,268	2,242	4.1
Johnstown, CO	19,773	6,744	5.7
Johnstown, OH	5,449	2,317	2.8
Johnstown, PA	61,521	32,490	34.7
Jonesboro, AR	73,781	31,507	46.5
Jonesboro, LA	5,245	2,354	5.7
Joplin, MO	86,679	38,706	60.5
Jordan, MN	6,648	2,356	3.0
Joshua Tree, CA	4,370	2,525	3.8
Juana Díaz, PR	65,023	27,385	31.2
Junction City, KS	40,723	15,632	24.0
Junction City, OR	7,312	2,987	2.8
Juneau, AK	24,756	10,960	14.8
Kahului—Wailuku, HI	57,905	18,348	13.5
Kailua (Hawaii County), HI	33,024	15,746	21.3
Kailua (Honolulu County)—Kaneohe, HI	118,092	40,063	29.3
Kalamazoo, MI	204,562	90,906	109.5
Kalispell, MT	36,131	15,698	18.7
Kankakee, IL	66,530	27,634	31.7
Kansas City, MO—KS	1,674,218	729,472	714.1
Kapaa, HI	18,212	7,118	11.3
Kaplan, LA	4,656	2,343	2.5
Kasson, MN	7,649	2,996	3.4
Kaufman, TX	6,127	2,290	3.1
Kearney, MO	10,174	3,941	5.6
Kearney, NE	34,526	14,644	18.2
Keene, NH	22,687	10,393	14.5
Kekaha, HI	5,724	2,092	2.0
Kenai, AK	8,642	3,805	13.0
Kendallville, IN	10,587	4,564	5.7
Kennett, MO	10,560	4,832	6.4
Kennewick—Richland—Pasco, WA	255,401	93,872	112.2
Kenosha, WI	125,865	53,111	56.2
Kenton, OH	8,033	3,835	4.3
Keokuk, IA—IL	12,351	5,929	9.0
Kerman, CA	16,002	4,509	2.8
Kermit, TX	6,381	2,643	2.8
Kerrville, TX	31,844	14,956	21.8
Ketchikan, AK	11,975	5,458	23.7

Urban area	Population	Housing	Land area (square miles)
Ketchum, ID	6,346	6,698	8.0
Kewanee, IL	12,542	5,776	6.0
Key Largo, FL	21,687	16,322	15.0
Key West, FL	32,146	16,779	6.8
Keyser, WV—MD	6,328	3,035	3.4
Keystone Heights, FL	8,218	3,760	10.2
Kihei, HI	26,878	17,408	8.1
Kilgore, TX	16,719	6,776	21.8
Kill Devil Hills—Nags Head, NC	23,851	26,763	33.6
Killeen, TX	257,222	98,214	100.4
Kimberling City, MO	4,467	3,329	9.4
King City, CA	13,760	3,603	3.0
Kingman, AZ	46,953	20,797	22.5
Kings Mountain, NC	12,619	5,513	12.1
Kingsburg, CA	12,602	4,506	3.9
Kingsland, TX	8,093	4,878	10.3
Kingsland—St. Marys, GA	38,567	15,584	30.4
Kingsport, TN—VA	98,411	47,217	94.1
Kingston, NY	50,254	23,955	31.1
Kingstree, SC	5,250	2,590	5.1
Kingsville, TX	24,945	11,291	12.7
Kinross, MI	5,100	951	3.2
Kinston, NC	21,050	10,990	17.9
Kirksville, MO	16,846	7,492	8.6
Kirtland, NM	5,737	2,044	5.9
Kiryas Joel, NY	71,582	19,817	28.8
Kissimmee—St. Cloud, FL	418,404	153,652	161.6
Kittanning—Ford City, PA	14,605	7,455	10.3
Klamath Falls—Altamont, OR	43,208	19,117	23.7
Knoxville, IA	7,561	3,486	3.8
Knoxville, TN	597,257	263,977	431.9
Kodiak—Mill Bay, AK	9,530	3,798	5.0
Kokomo, IN	62,576	30,777	32.5
Kosciusko, MS	6,716	2,870	5.6
Krum, TX	5,876	2,062	3.3
Kuna, ID	23,565	7,813	6.3
Kutztown, PA	8,672	2,793	3.7
La Crosse, WI—MN	98,872	44,018	42.2
La Follette, TN	20,114	9,387	23.8
La Grande, OR	14,954	6,651	6.2
La Grange, KY	24,556	8,138	20.2
La Grange, TX	5,020	2,296	3.8
La Junta, CO	7,792	3,571	3.9
La Plata, MD	10,536	3,920	6.3
LaBelle, FL	13,053	4,759	8.4
Laconia, NH	27,267	17,637	28.4
LaFayette, GA	6,772	3,100	6.4
Lafayette, IN	157,100	66,557	68.7
Lafayette, LA	227,316	102,033	161.2
Lafayette, TN	6,174	2,758	5.3
Lafayette—Erie—Louisville, CO	96,485	37,356	35.0
Lago Vista (Travis County), TX	8,463	4,303	8.4
LaGrange, GA	35,420	14,996	31.5
Lahaina—Napili-Honokowai, HI	21,398	11,642	5.3
Laie—Hauula, HI	12,488	3,443	3.4
Lake Bryant, FL	3,632	2,123	3.0
Lake Charles, LA	162,501	71,250	127.7
Lake City, FL	25,334	11,058	28.6
Lake City, MN	4,912	2,634	2.8
Lake City, SC	6,915	3,161	5.5
Lake Conroe Eastshore, TX	12,188	5,755	7.7
Lake Conroe Westshore, TX	29,322	14,134	19.3
Lake Delton, WI	6,546	3,722	9.4
Lake Erie Beach, NY	7,643	4,254	7.7
Lake Geneva, WI	10,955	6,168	6.3
Lake Havasu City, AZ	59,017	36,876	33.8
Lake Holiday, IL	7,313	3,211	4.3
Lake Isabella, CA	3,698	2,116	2.5
Lake Jackson, TX	56,054	24,765	34.3
Lake Mills, WI	6,857	3,262	4.1
Lake Mohawk, NJ	13,164	5,460	8.2
Lake Monticello, VA	9,825	4,320	6.3
Lake of the Pines, CA	4,261	2,030	2.3

Urban area	Population	Housing	Land area (square miles)
Lake of the Woods, VA	10,902	4,840	7.0
Lake Placid, FL	17,816	10,793	23.6
Lake Placid, NY	3,486	2,869	3.5
Lake Pocotopaug, CT	7,622	3,617	7.7
Lake Royale, NC	2,942	2,237	3.2
Lakeland, FL	277,915	116,354	145.9
Lakeport, CA	8,994	4,352	6.2
Lakes of the Four Seasons, IN	13,113	4,794	5.4
Lamar, CO	7,502	3,386	4.3
Lambertville, NJ—PA	10,167	5,234	5.6
Lamesa, TX	8,731	3,952	4.3
Lamont, CA	15,271	4,112	2.8
Lampasas, TX	6,674	3,004	3.9
Lancaster, OH	43,576	19,625	20.1
Lancaster, SC	22,709	10,207	22.4
Lancaster—Manheim, PA	394,530	162,561	181.5
Lander, WY	6,977	3,216	3.0
Landrum—Tryon, SC—NC	4,518	2,594	5.4
Lansing, MI	318,300	143,060	155.8
Lapeer, MI	12,402	5,383	8.8
Laplace—Lutcher—Gramercy, LA	48,681	20,059	30.8
Laramie, WY	32,261	15,450	15.2
Laredo, TX	251,462	79,974	64.2
Lares, PR	28,615	13,312	30.1
Larned, KS	3,734	2,087	2.1
Las Cruces, NM	139,338	60,572	64.5
Las Vegas, NM	14,530	7,337	7.0
Las Vegas—Henderson—Paradise, NV	2,196,623	884,138	435.3
Laughlin, NV	6,579	4,162	1.5
Laurel, MS	25,201	10,428	20.2
Laurel, MT	8,789	3,736	5.9
Laurens, SC	11,331	5,255	9.7
Laurinburg, NC	16,225	7,385	13.1
Lawrence, KS	94,998	43,472	29.9
Lawrenceburg, KY	13,543	5,697	6.6
Lawrenceburg, TN	11,679	5,267	9.7
Lawrenceville, IL	4,632	2,317	2.6
Lawton, OK	87,464	40,042	46.8
Le Mars, IA	10,138	4,347	5.5
Le Roy, NY	4,645	2,223	3.0
Lead, SD	4,122	2,568	3.9
Leadville, CO	4,538	2,606	2.5
Leavenworth, KS	47,570	17,963	21.7
Lebanon, IN	16,466	7,511	8.4
Lebanon, KY	6,209	2,783	4.9
Lebanon, MO	14,710	6,729	12.4
Lebanon, NH—VT	30,299	13,383	30.2
Lebanon, OR	22,327	9,125	8.5
Lebanon, PA	75,485	31,685	32.7
Lebanon, TN	36,678	15,426	30.3
Lee, MA	8,119	5,415	12.6
Lee's Summit, MO	91,960	36,767	37.6
Leesburg—Eustis—Tavares, FL	151,523	75,939	86.1
Leesville, LA	8,328	4,376	6.9
Lehighton—Palmerton—Jim Thorpe, PA	18,503	8,782	9.9
Leisuretowne, NJ	5,294	2,953	3.3
Leitchfield, KY	6,488	2,981	5.5
Lemoore Station, CA	6,568	1,799	5.1
Lemoore, CA	26,957	9,514	6.7
Leominster—Fitchburg, MA	111,790	48,267	52.9
Leonardtown, MD	6,092	2,397	6.2
Levelland, TX	12,601	5,391	6.4
Lewes—Rehoboth Beach, DE	39,681	33,284	38.3
Lewisburg, TN	11,934	5,207	9.4
Lewisburg, WV	7,227	3,856	7.0
Lewiston, ID—WA	54,798	24,031	27.9
Lewiston, ME	60,743	27,496	31.4
Lewistown, MT	6,024	3,182	2.9
Lewistown, PA	20,999	10,313	12.0
Lexington Park—California—Chesapeake Ranch Estates, MD	62,352	26,209	46.7
Lexington, NE	10,438	3,545	4.7
Lexington, TN	6,357	3,086	6.7
Lexington, VA	9,460	3,499	5.3

Urban area	Population	Housing	Land area (square miles)
Lexington-Fayette, KY	315,631	143,074	84.0
Libby, MT	4,341	2,194	3.5
Liberal, KS	19,843	7,399	10.6
Liberty, NY	5,284	2,472	3.1
Liberty, TX	6,387	2,607	5.4
Lihue, HI	15,885	5,538	7.0
Lima, OH	68,630	31,148	48.7
Lincoln Beach, OR	3,626	3,515	2.9
Lincoln City, OR	10,494	7,831	6.7
Lincoln, IL	13,990	6,756	8.1
Lincoln, NE	291,217	123,888	94.2
Lincoln, NH	2,005	2,751	4.9
Lincolnton, NC	22,657	10,130	28.4
Lindale—Hideaway, TX	11,770	5,046	12.3
Lindsay, CA	13,942	3,936	2.9
Lindstrom—Chisago City, MN	9,152	4,161	6.2
Linton, IN	5,298	2,621	3.0
Litchfield Beach, SC	15,225	10,825	17.0
Litchfield, IL	6,350	3,053	4.9
Litchfield, MN	6,569	2,863	3.9
Little Falls, MN	9,411	4,344	7.4
Little Falls, NY	4,597	2,513	3.4
Little Rock, AR	461,864	215,096	267.8
Littlefield, TX	5,626	2,573	3.0
Littlestown, PA	6,442	2,746	3.5
Live Oak (Sutter County), CA	9,080	2,847	1.7
Live Oak, FL	6,668	2,751	5.3
Livermore—Pleasanton—Dublin, CA	240,381	86,809	65.3
Livingston, CA	14,255	3,734	2.6
Livingston, MT	9,350	4,752	4.5
Livingston, TX	5,592	2,377	6.9
Lock Haven, PA	14,625	6,807	7.9
Lockhart, TX	12,886	5,022	8.3
Lockport, NY	35,958	17,025	17.7
Lodi, CA	73,090	27,282	16.3
Logan, OH	8,209	3,671	4.3
Logan, UT	113,927	37,528	47.7
Logan, WV	8,821	4,389	6.4
Logansport, IN	20,374	8,712	10.5
Loíza—Vieques (Loíza Municipio), PR	15,763	8,518	4.4
Lompoc, CA	54,287	18,212	9.8
London, OH	10,259	4,447	5.1
London—Corbin, KY	36,861	16,540	47.9
Long Beach, WA	3,252	2,613	2.9
Long Neck, DE	20,169	14,343	22.0
Longmont, CO	100,776	42,509	24.2
Longview, TX	107,099	45,766	90.3
Longview, WA—OR	69,841	29,459	35.2
Lorain—Elyria, OH	199,067	91,234	90.6
Los Alamos, NM	13,283	6,086	8.5
Los Angeles—Long Beach—Anaheim, CA	12,237,376	4,354,341	1,636.8
Los Banos, CA	45,533	13,193	8.4
Los Lunas, NM	53,365	21,248	39.4
Los Osos, CA	13,978	6,341	3.8
Louisa, KY—WV	4,582	2,114	3.6
Louisville/Jefferson County, KY—IN	974,397	438,588	400.9
Lovington, NM	11,765	4,266	4.8
Lowell, IN	10,747	4,239	5.3
Lowell, MI	7,530	3,121	5.6
Lubbock, TX	272,280	116,963	106.3
Ludington, MI	11,883	7,235	12.7
Lufkin, TX	41,551	17,728	36.7
Luling, TX	5,391	2,218	2.8
Lumberton, NC	22,256	10,432	20.4
Luray, VA	4,742	2,225	4.1
Luverne, MN	4,808	2,199	2.3
Lynchburg, VA	125,596	54,093	91.6
Lynden, WA	15,995	6,246	5.3
Macclenny, FL	10,881	3,897	8.5
Macomb, IL	15,656	8,002	8.7
Macon, MO	5,359	2,639	5.1
Macon-Bibb County, GA	140,111	65,107	99.3
Madera, CA	81,635	22,331	21.0

Urban area	Population	Housing	Land area (square miles)
Madison, GA	4,709	2,088	4.8
Madison, IN	17,447	7,992	10.8
Madison, SD	6,169	2,931	4.3
Madison, WI	450,305	203,337	149.7
Madisonville, KY	21,328	10,394	16.1
Madisonville, TN	6,070	2,687	7.2
Madras, OR	8,087	3,131	4.7
Magalia, CA	6,900	3,039	5.9
Magnolia, AR	10,403	4,483	8.8
Mahanoy City, PA	3,720	2,318	0.8
Mahomet, IL	11,922	4,713	6.9
Malone, NY	6,885	2,992	3.5
Malvern, AR	8,833	4,218	6.7
Mammoth Lakes, CA	7,045	9,174	3.8
Manchester, IA	4,913	2,313	3.6
Manchester, NH	163,289	69,559	80.6
Manchester, TN	12,953	5,512	10.4
Mandeville—Covington, LA	113,763	47,372	84.3
Manhattan, IL	7,826	2,774	2.9
Manhattan, KS	60,454	27,064	25.8
Manistee, MI	8,093	4,590	9.1
Manitowoc, WI	46,558	22,208	23.5
Mankato, MN	60,206	25,620	25.6
Manning, SC	4,522	2,132	3.9
Manor, TX	17,006	5,733	5.3
Mansfield, LA	5,602	2,620	4.1
Mansfield, OH	73,545	33,119	47.7
Manteca, CA	86,674	28,725	20.5
Manteno, IL	10,437	4,475	6.0
Manteo, NC	6,070	3,300	5.3
Maquoketa, IA	6,098	2,884	3.8
Marana, AZ	10,618	3,623	3.3
Marathon, FL	9,733	6,963	5.5
Marble Falls, TX	7,953	3,692	5.5
Marengo, IL	7,509	3,066	3.8
Marianna, FL	5,560	2,724	4.3
Maricopa, AZ	57,771	20,897	13.2
Marietta, OH—WV	21,723	10,388	13.6
Marinette—Menominee, WI—MI	23,551	12,010	14.8
Marion Oaks, FL	19,077	7,620	16.3
Marion, IN	40,961	19,146	21.9
Marion, NC	12,031	5,734	13.6
Marion, OH	42,688	17,864	18.4
Marion, SC	7,009	3,307	5.4
Marion, VA	7,281	3,707	7.2
Marion—Herrin, IL	39,391	19,639	33.0
Marksville, LA	6,682	3,058	6.4
Marlin, TX	5,396	2,430	4.1
Marquette, MI	24,682	11,592	12.7
Marseilles, IL	4,660	2,212	2.4
Marshall, MI	7,471	3,633	4.6
Marshall, MN	13,508	5,939	8.3
Marshall, MO	13,471	5,261	6.8
Marshall, TX	21,387	8,991	16.2
Marshalltown, IA	27,381	11,219	12.1
Marshfield, MO	7,537	3,204	5.3
Marshfield, WI	19,462	9,721	11.3
Martin, TN	10,518	4,580	8.0
Martinsville, IN	12,556	5,560	6.2
Martinsville, VA	31,273	15,866	39.8
Marysville, OH	25,674	9,395	11.6
Marysville, WA	160,440	58,939	67.8
Maryville, MO	11,212	5,175	5.6
Mascoutah, IL	8,528	3,354	3.2
Mason City, IA	25,954	13,118	14.7
Massena, NY	10,582	5,144	6.2
Mathis, TX	5,253	2,306	3.2
Mattawan, MI	5,721	2,197	6.3
Mattoon, IL	17,111	8,711	8.3
Mauldin—Simpsonville, SC	159,506	64,676	101.2
Mayagüez, PR	91,583	49,990	50.1
Mayfield, KY	12,256	5,494	9.4
Mayodan, NC	4,627	2,554	4.6

Urban area	Population	Housing	Land area (square miles)
Maysville, KY—OH	9,799	5,071	9.0
Maytown—Marietta, PA	7,737	3,179	3.1
Mayville, WI	5,189	2,386	2.7
McAlester, OK	19,542	8,932	15.5
McAllen, TX	779,553	269,683	326.2
McCall, ID	3,695	4,331	6.0
McComb, MS	15,327	7,396	13.1
McCook, NE	7,395	3,670	5.2
McFarland, CA	14,149	3,410	1.9
McGregor, TX	5,139	1,981	2.3
McHenry Northwest—Wonder Lake, IL	5,758	2,622	2.3
McKenzie, TN	5,360	2,305	4.4
McKinleyville, CA	14,981	6,655	7.9
McKinney—Frisco, TX	504,803	181,086	151.6
McMinnville, OR	41,831	15,738	12.8
McMinnville, TN	15,711	7,255	13.2
McPherson, KS	14,039	6,202	8.6
Meadville, PA	20,652	9,614	15.8
Mecca, CA	6,875	1,669	0.6
Mechanicville, NY	11,799	5,504	6.5
Medford, OR	171,640	73,280	63.0
Medford, WI	4,114	2,047	3.0
Medina, NY	6,279	2,930	3.1
Medina, OH	46,109	19,272	27.8
Melissa—Anna, TX	34,516	11,551	16.9
Memphis, TN—MS—AR	1,056,190	452,043	491.3
Mena, AR	5,534	2,789	7.0
Mendota, CA	13,382	2,875	4.3
Mendota, IL	6,918	3,043	2.9
Menomonie, WI	17,022	6,665	10.6
Merced, CA	150,052	47,917	43.1
Meredith, NH	3,411	2,391	4.9
Meridian, MS	33,809	16,621	29.5
Merrill, WI	9,519	4,573	7.5
Mesquite, NV—AZ	19,206	10,498	10.0
Metropolis, IL	5,925	3,004	3.0
Mexia, TX	6,661	2,695	4.5
Mexico, MO	11,351	5,198	6.7
Miami, OK	15,348	6,901	9.2
Miami—Fort Lauderdale, FL	6,077,522	2,622,231	1,244.2
Michigan City—La Porte, IN—MI	71,367	37,009	49.2
Middlebury, VT	6,154	1,939	4.4
Middleport, OH—WV	5,814	3,047	5.5
Middlesborough, KY—TN	13,628	6,579	11.8
Middleton, ID	10,265	3,418	4.5
Middletown, DE	41,851	14,796	24.2
Middletown, NY	61,516	24,531	26.0
Middletown, OH	93,608	37,928	53.6
Midland, MI	52,340	23,885	38.1
Midland, TX	141,997	59,089	68.3
Midlothian, TX	30,908	10,511	24.7
Milan, MI	7,861	2,674	3.4
Milan, TN	7,578	3,420	6.0
Miles City, MT	9,227	4,518	4.6
Milford, DE	17,754	7,450	12.0
Milledgeville, GA	22,441	10,341	19.8
Millersburg, PA	4,375	2,147	1.9
Millington, TN	12,918	5,625	12.7
Millinocket, ME	3,812	2,360	3.3
Millsboro, DE	9,844	4,574	6.6
Milton, PA	28,610	12,335	17.9
Milton, VT	6,417	2,701	5.5
Milton-Freewater, OR	8,131	3,205	3.3
Milwaukee, WI	1,306,795	582,330	463.7
Minden, LA	12,659	6,136	12.9
Mineola, TX	5,699	2,495	5.7
Mineral Wells, TX	14,211	5,987	8.9
Minneapolis—St. Paul, MN	2,914,866	1,198,573	1,014.8
Minot, ND	50,925	24,508	26.7
Minster—New Bremen, OH	6,138	2,459	4.2
Mission Viejo—Lake Forest—Laguna Niguel, CA	646,843	261,622	163.6
Missoula, MT	88,109	41,026	44.3
Mitchell, SD	15,690	7,698	9.1

Urban area	Population	Housing	Land area (square miles)
Moab, UT	7,933	4,167	6.6
Moberly, MO	12,163	5,797	11.4
Mobile, AL	321,907	145,122	220.7
Mocksville, NC	5,971	2,594	6.4
Modesto, CA	357,301	117,353	70.4
Molalla, OR	10,258	3,736	2.5
Monahans, TX	9,162	4,019	7.3
Monessen, PA	49,962	25,911	33.0
Monett, MO	9,391	3,860	5.8
Monmouth, IL	9,189	3,890	4.2
Monmouth—Independence, OR	20,912	7,434	4.9
Monroe, GA	16,650	6,755	13.1
Monroe, LA	119,964	53,099	91.0
Monroe, MI	57,260	24,843	35.3
Monroe, WA	24,635	8,004	11.5
Monroe, WI	10,725	5,149	4.4
Monroeville, AL	4,284	2,229	4.9
Mont Belvieu, TX	12,180	4,061	10.8
Montauk, NY	3,845	3,811	5.9
Montesano—Elma, WA	12,682	5,360	10.0
Montevallo, AL	6,438	2,579	5.1
Montevideo, MN	5,391	2,478	4.1
Montgomery, AL	254,348	115,435	145.1
Monticello, AR	7,974	3,906	7.8
Monticello, IL	5,985	2,605	3.9
Monticello, IN	10,635	7,338	13.1
Monticello, KY	6,681	2,958	6.5
Monticello, MN	15,760	6,112	8.7
Monticello, NY	14,328	7,407	9.9
Montrose, CO	24,513	11,114	19.5
Montrose, MN	5,539	2,102	2.8
Morehead City—Emerald Isle—Atlantic Beach, NC	44,300	37,416	46.9
Morehead, KY	9,375	3,651	8.1
Morgan City, LA	30,236	13,561	19.7
Morgantown, WV	77,620	37,959	40.7
Morrilton, AR	6,340	3,020	5.7
Morris, IL	15,740	6,956	8.6
Morris, MN	5,030	2,297	3.4
Morristown, TN	66,539	28,535	63.9
Morro Bay, CA	13,163	9,002	5.3
Moscow, ID	25,914	11,301	6.4
Moses Lake, WA	38,751	15,228	27.7
Moultrie, GA	19,217	8,379	19.3
Moundsville, WV	11,398	5,613	4.5
Mount Airy, NC	17,354	8,544	20.3
Mount Carmel, IL	6,963	3,435	4.3
Mount Horeb, WI	7,730	3,116	3.0
Mount Pleasant, IA	9,284	3,508	6.9
Mount Pleasant, MI	30,738	13,793	14.8
Mount Pleasant, TX	15,419	5,636	12.7
Mount Plymouth, FL	6,165	2,378	4.0
Mount Shasta, CA	5,203	3,032	6.0
Mount Sterling, KY	13,920	6,211	11.7
Mount Vernon, IA	6,509	2,322	3.4
Mount Vernon, IL	15,288	7,686	12.8
Mount Vernon, IN	6,715	3,164	4.8
Mount Vernon, OH	18,993	8,460	9.5
Mount Vernon, WA	66,825	25,909	30.7
Mount Washington, KY	21,516	8,377	13.0
Mountain Grove, MO	4,219	2,207	3.2
Mountain Home, AR	17,783	9,114	16.1
Mountain Home, ID	17,799	7,378	6.6
Mountain Lake Park, MD	4,548	2,223	4.4
Mountain Top, PA	10,520	4,210	10.2
Mukwonago, WI	15,287	6,230	15.8
Muleshoe, TX	5,159	1,944	2.7
Mullins, SC	4,924	2,532	4.0
Muncie, IN	84,382	39,372	48.2
Muncy, PA	7,544	3,578	5.0
Munds Park, AZ	773	2,140	1.2
Murfreesboro, TN	177,313	71,867	86.1
Murray, KY	18,958	8,635	11.8
Muscatine, IA	25,144	10,949	16.0

Urban area	Population	Housing	Land area (square miles)
Muskegon—Norton Shores, MI	166,414	72,854	112.1
Muskogee, OK	35,798	16,883	30.6
Myrtle Beach—North Myrtle Beach, SC—NC	298,954	193,144	218.9
Mystic Island—Little Egg Harbor, NJ	23,074	12,466	13.0
Nacogdoches, TX	33,732	14,961	25.0
Nampa, ID	177,561	62,411	65.9
Nantucket, MA	12,011	8,520	11.7
Napa, CA	84,619	33,898	20.3
Napoleon, OH	8,868	4,104	6.2
Nappanee, IN	7,250	3,058	4.3
Nashua, NH—MA	242,984	99,686	195.6
Nashville, GA	4,844	2,135	3.6
Nashville-Davidson, TN	1,158,642	496,886	585.0
Natchez, MS—LA	25,902	13,183	22.4
Natchitoches, LA	18,935	8,777	11.1
Navarre—Miramar Beach—Destin, FL	226,213	121,681	119.6
Navasota, TX	7,458	3,021	7.1
Nebraska City, NE	7,020	3,090	4.2
Needles, CA—AZ	6,739	3,911	5.6
Nelsonville, OH	4,709	2,536	3.1
Neosho, MO	12,580	5,231	9.8
Nephi, UT	6,330	2,117	3.5
Nevada, IA	6,881	3,111	3.7
Nevada, MO	8,529	4,054	6.1
New Albany, MS	6,763	3,134	8.2
New Bedford, MA	155,491	68,020	59.3
New Bern, NC	47,988	23,605	41.3
New Boston, TX	4,502	2,138	3.7
New Braunfels, TX	100,736	41,658	50.4
New Carlisle, OH	5,507	2,331	1.5
New Castle, CO	5,844	2,228	2.2
New Castle, IN	18,555	9,020	7.7
New Castle, PA	40,243	19,179	28.6
New Freedom—Shrewsbury, PA	12,094	4,942	6.1
New Haven, CT	561,456	245,569	298.0
New Iberia, LA	37,897	17,163	24.8
New Lexington, OH	4,602	2,039	2.2
New London, WI	7,804	3,535	4.6
New Martinsville, WV—OH	5,608	2,872	3.9
New Orleans, LA	914,531	421,006	239.5
New Paltz, NY	9,969	3,483	4.9
New Philadelphia—Dover, OH	46,776	21,186	23.8
New Prague, MN	8,156	3,187	3.3
New Richmond, WI	9,486	4,114	4.6
New Roads, LA	6,794	4,010	7.3
New Tazewell—Tazewell, TN	5,374	2,509	6.7
New Ulm, MN	13,435	6,091	5.8
New York—Jersey City—Newark, NY—NJ	19,426,449	7,657,903	3,248.1
Newark, NY	13,568	6,590	8.8
Newark, OH	81,223	36,427	44.1
Newberg, OR	30,893	11,645	10.7
Newberry, SC	12,342	5,409	10.4
Newman, CA	12,387	3,751	2.1
Newport, AR	5,947	2,933	4.6
Newport, OR	11,731	6,668	9.4
Newport, TN	11,576	5,520	9.9
Newton Falls, OH	6,604	3,344	4.5
Newton, IA	15,943	7,446	7.1
Newton, KS	20,378	9,015	11.4
Newton, NJ	12,813	5,530	7.9
Nice, CA	8,555	5,133	3.8
Nicholasville, KY	31,434	12,546	12.0
Nipomo, CA	20,303	7,868	10.2
Nogales, AZ	19,168	7,334	12.7
Norfolk, NE	27,407	11,803	12.8
Norman, OK	120,191	52,761	46.0
North Adams, MA	25,432	12,564	16.1
North Bend, WA	11,762	4,626	5.6
North Branch, MN	6,368	2,530	4.3
North East, PA	6,513	3,010	3.5
North Manchester, IN	5,188	2,388	2.8
North Platte, NE	23,582	11,414	13.0
North Vernon, IN	6,936	3,113	5.1

Urban area	Population	Housing	Land area (square miles)
North Windham, ME	10,271	5,183	14.0
Northfield, MN	22,686	7,644	8.9
Norwalk, OH	19,269	8,722	9.9
Norwich, NY	7,740	3,844	3.0
Norwich—New London, CT	167,432	77,980	116.7
Oak Harbor, WA	37,449	15,291	23.7
Oak Island, NC	15,592	14,603	15.4
Oak Ridge, NJ	8,871	3,546	5.4
Oakdale, CA	25,408	9,353	7.4
Oakdale, LA	6,700	2,428	4.8
Oakland, TN	9,389	3,816	7.9
Oberlin, OH	8,176	2,886	2.9
Ocala, FL	182,647	83,908	125.0
Ocean Park, WA	5,411	5,642	9.0
Ocean Pines—Ocean City, MD—DE	37,946	53,372	28.8
Ocean Shores, WA	6,766	5,609	8.4
Ocean View, DE	18,025	22,598	23.5
Odessa, MO	5,529	2,300	2.8
Odessa, TX	154,818	63,127	86.0
Oelwein, IA	6,585	3,342	4.8
Ogallala, NE	4,721	2,399	3.3
Ogden—Layton, UT	608,857	203,545	212.6
Ogdensburg, NY	10,246	4,363	4.9
Oil City, PA	13,666	6,955	8.5
Okeechobee—Taylor Creek, FL	26,670	14,345	23.9
Oklahoma City, OK	982,276	426,593	421.7
Okmulgee, OK	11,016	5,118	7.4
Olean, NY	21,144	9,929	13.2
Olney, IL	8,642	4,154	6.1
Olympia—Lacey, WA	208,157	87,925	106.2
Omaha, NE—IA	819,508	337,786	270.8
Omak, WA	8,165	3,682	6.0
Oneida, NY	12,481	6,046	6.3
Oneonta, AL	5,624	2,285	4.4
Oneonta, NY	16,028	6,335	7.1
Ontario—Payette, OR—ID	27,806	10,959	13.9
Opelousas, LA	23,498	10,611	18.6
Opp, AL	5,325	2,495	5.2
Orange City, IA	7,093	2,585	4.2
Orange Cove, CA	9,716	2,502	1.7
Orange, TX	40,796	18,518	36.7
Orange, VA	4,802	2,149	2.9
Orangeburg, SC	29,072	13,791	26.6
Orangetree, FL	9,791	3,432	9.3
Oregon, WI	11,551	4,598	4.5
Orland, CA	9,422	3,394	4.5
Orlando, FL	1,853,896	746,578	644.6
Oronoko—Berrien Springs, MI	6,725	2,710	3.7
Orosi, CA	12,795	3,262	2.0
Oroville, CA	40,190	15,681	26.4
Orrville, OH	8,703	3,866	5.4
Osage Beach, MO	6,668	7,785	13.3
Osceola, AR	6,244	2,963	4.4
Osceola, IA	5,283	2,297	3.7
Oscoda—Au Sable, MI	8,558	7,258	18.6
Oshkosh, WI	76,190	33,084	32.8
Oskaloosa, IA	12,541	5,642	8.2
Oswego, NY	24,421	10,237	11.3
Othello, WA	10,865	3,219	4.6
Otsego—Plainwell, MI	11,819	5,043	8.4
Ottawa, IL	20,122	9,667	10.0
Ottawa, KS	12,461	5,475	6.3
Ottawa, OH	5,418	2,357	4.8
Ottumwa, IA	25,019	11,060	12.8
Owatonna, MN	26,278	11,106	12.5
Owego, NY	4,365	2,213	3.2
Owensboro, KY	76,433	33,308	36.4
Owosso, MI	22,329	10,344	13.6
Oxford, MS	33,518	17,650	24.3
Oxford, NC	8,925	4,062	6.7
Oxford, OH	23,221	7,262	7.2
Oxford, PA	9,925	3,795	6.6
Oxnard—San Buenaventura (Ventura), CA	376,117	125,620	76.6

Urban area	Population	Housing	Land area (square miles)
Ozark, AL	12,218	5,829	16.7
Pacific, MO	8,522	3,800	6.2
Paducah, KY—IL	50,833	24,494	41.4
Page, AZ	7,022	2,799	7.2
Pagosa Springs, CO	5,632	4,096	6.2
Pahokee, FL	6,683	2,529	4.1
Pahrump, NV	37,498	18,442	52.4
Paintsville, KY	5,717	2,801	4.5
Palatka, FL	20,032	8,830	18.3
Palestine, TX	18,615	7,789	15.2
Palm Bay—Melbourne, FL	510,675	240,941	250.5
Palmdale—Lancaster, CA	359,559	111,858	84.8
Palmyra, NY	4,477	2,099	2.4
Palmyra, PA	3,772	4,385	8.3
Pampa, TX	16,865	8,413	8.3
Pana, IL	5,309	2,757	3.4
Panama City—Panama City Beach, FL	162,060	107,507	119.5
Panther Valley, NJ	4,279	2,087	2.2
Paola, KS	5,553	2,538	3.1
Paragould, AR	25,089	10,612	16.2
Paris, IL	8,316	4,218	4.9
Paris, KY	11,269	5,101	5.6
Paris, TN	10,303	4,999	9.2
Paris, TX	26,292	12,343	17.5
Park City—Snyderville, UT	16,168	12,233	14.9
Parker, AZ—CA	5,329	2,841	4.6
Parkersburg, WV—OH	62,500	30,935	39.9
Parlier, CA	14,522	3,841	1.8
Parsons, KS	9,433	4,715	6.3
Pascagoula—Gautier, MS	51,454	24,371	38.6
Patterson, CA	23,660	6,659	4.4
Pauls Valley, OK	5,608	2,806	3.1
Paw Paw Lake, MI	7,526	4,106	6.8
Paw Paw, MI	5,662	2,675	5.6
Paxton, IL	4,528	2,036	2.1
Payson, AZ	17,022	9,963	13.9
Payson—Santaquin, UT	31,132	9,024	9.4
Pea Ridge, AR	6,026	2,221	3.9
Pearsall, TX	9,063	3,016	5.4
Pecan Plantation, TX	6,831	3,229	8.1
Pecos, TX	13,081	4,232	7.7
Peculiar, MO	5,564	2,227	4.8
Pell City, AL	11,500	5,208	14.0
Pella, IA	10,160	4,169	7.0
Pembroke, NC	5,694	1,682	3.6
Pendleton, OR	17,488	7,120	10.2
Penn Yan, NY	8,399	5,941	6.8
Pennsburg—Upper Hanover—East Greenville, PA	17,239	6,857	8.6
Pensacola, FL—AL	390,172	184,298	262.5
Peoria, AZ	19,593	8,526	7.2
Peoria, IL	259,781	121,278	145.8
Pepperell, MA	6,103	2,579	5.2
Perry, FL	6,531	2,945	5.9
Perry, GA	14,884	6,099	13.8
Perry, IA	7,628	3,137	2.9
Perry, NY	4,066	2,385	2.9
Perry, OK	4,445	2,258	3.0
Perryton, TX	8,391	3,580	4.0
Perryville, MO	8,062	3,531	5.7
Peru, IN	12,458	6,126	6.5
Peru—LaSalle, IL	29,763	14,250	21.5
Petaluma, CA	65,227	26,392	21.0
Petoskey, MI	12,233	8,601	15.4
Philadelphia, MS	7,114	3,326	7.4
Philadelphia, PA—NJ—DE—MD	5,696,125	2,377,924	1,898.2
Philipsburg, PA	9,379	3,886	5.1
Phoenix West—Goodyear—Avondale, AZ	419,946	136,070	127.6
Phoenix—Mesa—Scottsdale, AZ	3,976,313	1,670,745	1,110.5
Picayune, MS	16,301	7,396	15.6
Pickens, SC	5,068	2,213	4.7
Pierre, SD	14,755	7,004	12.0
Pikeville, KY	10,710	4,853	10.2
Pine Bluff, AR	46,683	21,423	44.5

Urban area	Population	Housing	Land area (square miles)
Pinehurst (Montgomery County)—Magnolia, TX	9,667	3,376	8.7
Pinehurst—Southern Pines, NC	50,319	25,063	47.6
Pinetop-Lakeside, AZ	9,393	9,313	14.6
Piqua, OH	20,890	9,451	9.1
Pittsburg, KS	23,120	10,721	11.2
Pittsburgh, PA	1,745,039	831,523	906.6
Pittsfield, MA	50,720	25,125	30.5
Placerville—Diamond Springs, CA	23,291	10,402	18.8
Plainview, TX	22,615	9,073	11.8
Platte City, MO	10,707	4,330	6.0
Platteville, WI	11,838	4,424	4.4
Plattsburgh, NY	28,958	13,647	24.0
Plattsmouth, NE	6,655	2,908	3.0
Pleasant Hill, MO	8,737	3,423	4.8
Pleasanton, TX	13,983	5,668	9.1
Plumas Lake, CA	7,337	2,226	1.9
Plymouth, IN	12,279	5,236	9.6
Plymouth, NH	6,166	2,445	5.8
Plymouth, WI	9,011	4,281	5.3
Pocahontas, AR	7,164	3,141	5.0
Pocatello, ID	72,211	29,266	27.5
Poinciana Southwest, FL	16,966	6,395	11.8
Poinciana, FL	53,267	19,372	23.1
Point Pleasant—Gallipolis, WV—OH	10,544	5,510	9.4
Point Roberts, WA	1,191	2,175	4.9
Pole Ojea, PR	2,521	2,626	3.1
Polk City, IA	5,375	1,941	2.3
Polson, MT	5,564	3,036	4.7
Ponca City, OK	24,990	12,044	18.2
Ponce, PR	118,345	58,865	31.7
Pontiac, IL	11,078	4,910	4.2
Poolesville, MD	5,685	1,910	2.9
Poplar Bluff, MO	20,449	9,497	15.4
Port Angeles, WA	24,445	11,778	16.7
Port Arthur, TX	116,819	47,850	66.5
Port Charlotte—North Port, FL	199,998	105,587	134.7
Port Hadlock-Irondale, WA	5,372	2,851	5.9
Port Huron, MI	82,226	37,996	52.5
Port Isabel—South Padre Island—Laguna Vista, TX	12,413	11,230	7.3
Port Jervis, NY—PA	16,187	7,573	7.6
Port Lavaca, TX	12,055	5,006	10.5
Port St. Lucie, FL	437,745	205,720	224.2
Port Townsend, WA	10,042	5,633	5.9
Portage, PA	5,661	2,721	3.6
Portage, WI	10,555	4,681	5.2
Portales, NM	12,202	5,384	5.3
Porterville, CA	69,862	20,950	16.3
Portland, IN	6,364	3,039	4.2
Portland, ME	205,356	101,206	123.9
Portland, MI	5,263	2,299	4.2
Portland, OR—WA	2,104,238	876,555	519.3
Portland, TN—KY	12,285	4,779	10.9
Portsmouth, NH—ME	95,090	58,308	114.3
Portsmouth, OH—KY	35,346	16,550	21.3
Potala Pastillo, PR	5,671	2,532	1.6
Poteau, OK	7,826	3,293	6.4
Potsdam, NY	8,237	2,703	2.9
Pottsville, PA	29,600	14,976	13.0
Poughkeepsie—Newburgh, NY	314,766	126,555	209.9
Powell, WY	6,485	2,885	2.6
Prairie du Chien, WI—IA	6,119	3,136	5.6
Prairie du Sac—Sauk City, WI	7,846	3,428	2.9
Prairie Grove, AR	5,496	2,260	2.4
Pratt, KS	6,589	3,130	3.7
Prescott Valley East, AZ	7,229	4,225	3.7
Prescott—Prescott Valley, AZ	92,427	45,998	48.8
Presque Isle, ME	5,361	2,805	5.3
Prestonsburg, KY	6,271	3,104	6.5
Price, UT	13,346	5,968	10.1
Princess Anne, MD	6,406	2,711	3.0
Princeton, IL	7,979	3,910	6.2
Princeton, IN	8,343	3,995	4.2
Princeton, KY	6,058	2,985	6.1

Urban area	Population	Housing	Land area (square miles)
Princeton, MN	4,956	2,240	4.1
Princeton, TX	18,184	5,936	8.2
Princeville, HI	2,544	2,740	2.9
Prineville, OR	12,407	5,298	8.2
Prosser, WA	6,589	2,525	4.7
Providence, RI—MA	1,285,806	554,188	544.2
Provincetown, MA	5,698	7,432	12.3
Provo—Orem, UT	588,609	172,501	161.1
Pryor Creek, OK	9,436	4,243	7.2
Pueblo West, CO	25,413	9,795	22.1
Pueblo, CO	120,642	52,608	54.7
Pukalani—Haiku-Pauwela—Makawao, HI	23,305	9,001	16.0
Pulaski, TN	8,158	3,779	5.0
Pulaski, VA	16,588	7,616	15.4
Pullman, WA	32,691	13,588	8.1
Punxsutawney, PA	6,199	3,359	3.8
Pupukea, HI	15,509	6,503	7.8
Purcell, OK	7,327	3,111	4.8
Purcellville, VA	16,475	5,316	7.5
Putnam—Killingly, CT	34,582	15,702	31.0
Quartzsite, AZ	2,280	2,543	3.3
Quincy, FL	8,541	3,584	6.2
Quincy, IL	43,427	20,724	22.7
Quincy, WA	7,846	2,526	5.2
Racine, WI	134,877	58,182	52.3
Radford, VA	19,521	8,268	11.1
Rainbow Springs, FL	4,667	2,540	5.7
Raleigh, NC	1,106,646	455,527	554.8
Ramona, CA	14,837	5,076	6.9
Rancho Calaveras, CA	8,164	3,212	7.2
Ranson—Charles Town, WV	21,569	8,883	11.4
Rantoul, IL	13,654	6,328	9.0
Rapid City, SD	85,679	38,024	50.3
Rathdrum, ID	9,241	3,485	4.0
Raton, NM	5,629	3,204	4.7
Ravena—Bethlehem, NY	9,346	4,435	11.8
Rawlins, WY	7,700	4,067	4.8
Raymond, NH	5,266	2,317	6.1
Raymondville, TX	12,986	3,991	5.6
Rayne, LA	8,493	3,811	4.8
Reading, PA	276,278	110,684	96.1
Red Bluff, CA	19,826	8,274	10.0
Red Oak, IA	5,516	2,757	2.9
Red Wing, MN	14,857	6,869	8.2
Redding, CA	120,602	51,389	67.1
Redmond, OR	33,293	13,308	14.3
Redwood Falls, MN	4,608	2,247	3.3
Reedley—Dinuba, CA	49,614	14,113	9.7
Reedsburg, WI	10,067	4,481	5.7
Reedsport, OR	4,503	2,283	2.1
Reidsville, NC	14,653	7,315	12.8
Reno, NV—CA	446,529	187,560	165.4
Rensselaer, IN	5,509	2,510	3.2
Republic, MO	18,446	7,323	7.5
Rexburg, ID	41,330	10,591	9.4
Rhinelander, WI	9,738	5,016	10.0
Rice Lake, WI	10,156	4,991	8.3
Richfield, UT	8,393	3,020	4.7
Richland Center, WI	4,924	2,452	2.8
Richlands, VA	8,746	4,547	8.3
Richmond, IN—OH	43,130	20,795	24.9
Richmond, KY	42,999	19,014	23.6
Richmond, MI	6,034	2,628	3.0
Richmond, MO	5,857	2,738	4.4
Richmond, VA	1,059,150	447,842	512.3
Ridgecrest, CA	29,307	13,017	14.3
Ridgefield, CT	25,683	10,075	28.8
Ridgefield, WA	10,356	3,714	6.4
Ridgway, PA	4,259	2,132	2.5
Rifle, CO	11,469	4,082	4.0
Rigby, ID	10,283	3,361	7.6
Rincon, GA	14,113	5,514	8.8
Rio Grande City—Roma, TX	47,070	16,204	19.5

Urban area	Population	Housing	Land area (square miles)
Rio Verde, AZ	2,765	2,088	3.1
Rio Vista, CA	9,942	5,187	3.6
Ripley, TN	6,922	3,154	7.5
Ripon, CA	15,829	5,596	4.2
Ripon, WI	8,059	3,581	4.3
Rising Sun, MD	5,788	2,301	5.2
River Falls, WI	16,344	6,005	6.3
Riverhead—Southold, NY	51,120	26,502	52.8
Riverside—San Bernardino, CA	2,276,703	683,675	608.6
Riverton, WY	11,234	5,079	6.9
Roanoke Rapids, NC	23,400	11,171	15.8
Roanoke, VA	217,312	100,135	125.5
Roaring Spring, PA	6,239	2,929	5.6
Robertsdale, AL	7,429	3,003	5.9
Robinson, IL	6,134	3,202	4.5
Robstown, TX	10,775	4,198	3.7
Rochelle, IL	11,013	4,767	9.6
Rochester, IN	7,333	3,706	5.1
Rochester, MN	121,587	53,319	51.6
Rochester, NY	704,327	314,417	291.8
Rock Hill, SC	218,443	89,706	145.1
Rock Springs, WY	25,853	11,777	13.7
Rockaway Beach, OR	1,761	2,552	2.1
Rockdale, TX	5,464	2,537	3.3
Rockford, IL	276,443	119,742	133.8
Rockingham, NC	23,833	11,098	23.1
Rockland, ME	9,868	5,764	13.2
Rockmart, GA	7,743	3,265	8.1
Rockport, TX	16,217	10,898	19.1
Rocky Mount, NC	63,297	30,235	45.0
Rocky Mount, VA	5,411	2,585	6.8
Rogersville, TN	6,154	2,972	6.1
Rolla, MO	20,610	9,555	11.6
Rome, GA	60,403	24,813	44.9
Rome, NY	29,222	14,264	17.3
Roosevelt, UT	6,316	2,361	3.3
Rosamond, CA	17,538	6,395	5.6
Roseburg, OR	43,484	19,020	20.6
Roswell, NM	48,831	20,562	25.1
Round Lake Beach—McHenry—Grayslake, IL—WI	261,835	104,091	127.6
Roxboro, NC	9,500	4,590	8.1
Roxborough Park, CO	9,090	3,299	3.8
Royse City, TX	13,922	4,799	6.1
Ruidoso, NM	11,042	11,251	16.9
Rumford, ME	5,585	3,064	3.1
Running Springs, CA	5,313	3,710	3.6
Rupert, ID	6,534	2,532	2.8
Rushville, IN	6,469	3,009	2.9
Russell, KS	4,066	2,130	2.3
Russells Point, OH	6,451	6,341	6.2
Russellville, AL	9,939	3,847	6.9
Russellville, AR	31,870	13,319	19.5
Russellville, KY	6,641	3,252	6.7
Ruston, LA	28,839	11,814	24.4
Rutland, VT	19,550	10,162	13.7
Sacramento, CA	1,946,618	726,246	467.6
Safford, AZ	18,331	7,461	10.5
Saginaw, MI	116,058	54,759	65.7
Sahuarita, AZ	17,276	5,718	4.8
Salamanca, NY	6,375	3,131	5.0
Salem, IL	7,153	3,350	4.9
Salem, IN	6,617	3,016	4.0
Salem, MO	4,684	2,359	3.2
Salem, NJ	5,927	2,861	3.1
Salem, OH	15,924	7,617	10.6
Salem, OR	268,331	101,688	72.7
Salida, CO	5,953	3,415	2.8
Salina, KS	46,547	20,770	22.5
Salinas, CA	177,532	48,914	29.9
Salinas—Coco, PR	13,938	7,628	5.2
Salisbury, MD—DE	78,075	32,638	48.4
Sallisaw, OK	7,513	3,431	5.4
Salt Lake City, UT	1,178,533	424,925	300.4

Urban area	Population	Housing	Land area (square miles)
San Angelo, TX	99,982	43,410	49.3
San Antonio, TX	1,992,689	789,482	613.4
San Diego Country Estates, CA	7,002	2,450	3.3
San Diego, CA	3,070,300	1,149,240	674.7
San Francisco—Oakland, CA	3,269,385	1,288,912	428.7
San Germán—Cabo Rojo—Sabana Grande, PR	97,241	51,393	70.6
San Jose, CA	1,837,446	658,649	285.5
San Juan, PR	1,844,410	888,356	763.6
San Luis Obispo, CA	56,904	22,210	14.1
San Luis, AZ	24,790	6,634	3.7
San Marcos, TX	70,801	30,583	24.4
San Rafael—Novato, CA	246,548	102,961	85.1
Sandersville, GA	7,097	3,344	8.3
Sandpoint, ID	12,824	6,419	9.3
Sandusky—Port Clinton, OH	61,743	39,351	53.8
Sandy, OR	13,173	4,899	4.2
Sanford, ME	15,067	6,885	6.0
Sanford, NC	36,641	15,279	34.3
Sanger, CA	27,325	7,986	4.8
Sanger, TX	8,279	3,144	4.4
Santa Barbara, CA	202,197	79,353	54.8
Santa Clarita, CA	278,031	93,011	77.8
Santa Cruz, CA	169,038	72,855	60.5
Santa Fe, NM	94,241	47,331	46.8
Santa Isabel, PR	9,742	4,866	3.0
Santa Maria, CA	143,609	42,245	27.1
Santa Paula, CA	30,675	9,189	5.0
Santa Rosa, CA	297,329	116,326	79.4
Saranac Lake, NY	5,163	3,084	3.1
Saratoga Springs, NY	75,684	37,354	55.6
Sauk Centre, MN	4,849	2,256	4.7
Sault Ste. Marie, MI	12,877	6,042	8.2
Savannah, GA	309,466	136,572	205.8
Savannah, MO	5,253	2,301	3.3
Savannah, TN	8,828	4,124	8.9
Sayre—Waverly, PA—NY	17,262	8,295	8.0
Scappoose, OR	9,652	4,025	5.8
Schuyler, NE	6,522	2,031	2.6
Schuylkill Haven—Orwigsburg, PA	14,265	6,482	10.3
Scott City, MO	4,949	2,238	4.7
Scottsbluff, NE	25,104	11,342	14.7
Scottsboro, AL	10,791	5,239	12.3
Scottsburg, IN	7,578	3,510	4.8
Scottsville, KY	4,637	2,192	4.8
Scranton, PA	366,713	172,990	162.2
Seabrook Island, SC	3,371	5,286	8.4
Seaford—Laurel—Bridgeville, DE	29,147	11,999	23.6
Sealy, TX	6,385	2,718	5.7
Searcy, AR	26,652	11,658	21.3
Seaside, OR	9,183	6,525	5.0
Seaside—Monterey—Pacific Grove, CA	123,495	54,906	41.2
Seattle—Tacoma, WA	3,544,011	1,468,039	982.5
Sebastopol, CA	18,734	8,245	15.2
Sebring—Avon Park, FL	63,297	35,215	44.5
Sedalia, MO	26,043	12,068	17.0
Sedona, AZ	9,190	6,317	12.5
Seguin, TX	28,998	12,250	20.0
Selma, AL	21,207	10,472	18.3
Selma, CA	32,546	9,737	9.1
Seminole, OK	6,283	2,870	5.4
Seminole, TX	7,068	2,807	3.4
Senatobia, MS	6,817	2,275	3.9
Seneca, SC	23,105	11,870	31.0
Sequim, WA	24,864	12,889	31.9
Severance, CO	6,408	2,095	1.9
Sevierville, TN	34,032	18,818	46.4
Seward, NE	7,473	2,959	3.5
Seymour, IN	24,247	9,807	14.4
Seymour, TN	15,219	6,297	13.9
Shafter, CA	19,278	5,133	4.8
Shamokin—Mount Carmel, PA	28,461	14,721	7.9
Sharon—Hermitage, PA—OH	42,169	21,194	28.2
Shawano, WI	12,229	6,869	10.7

Urban area	Population	Housing	Land area (square miles)
Shawnee, OK	34,245	14,979	18.9
Sheboygan, WI	74,369	33,437	35.3
Shelby, NC	25,955	12,007	25.5
Shelby, OH	9,317	4,348	5.0
Shelbyville, IL	4,872	2,447	3.1
Shelbyville, IN	21,208	9,460	9.7
Shelbyville, KY	23,143	9,241	11.5
Shelbyville, TN	22,552	8,594	13.2
Sheldon, IA	5,381	2,373	2.8
Shelley, ID	5,109	1,726	2.2
Shelton, WA	14,907	5,704	11.7
Shenandoah, IA	4,872	2,511	3.0
Shenandoah—Frackville, PA	12,025	5,638	2.9
Sheridan, AR	4,710	2,116	4.5
Sheridan, OR	6,464	1,742	1.7
Sheridan, WY	19,430	9,347	13.0
Sherman—Denison, TX	66,691	28,718	38.5
Shinnston, WV	4,361	2,057	4.0
Shippensburg, PA	17,014	7,339	9.9
Shiprock, NM	6,190	1,928	5.2
Show Low, AZ	12,173	8,869	12.6
Shreveport, LA	288,052	133,212	180.8
Sidney, MT	6,522	3,166	7.0
Sidney, NE	6,232	3,154	4.4
Sidney, NY	4,247	2,295	2.8
Sidney, OH	20,734	9,280	10.5
Sierra Vista, AZ	54,274	24,495	28.3
Sikeston, MO	17,683	7,951	13.1
Siler City, NC	8,616	3,228	5.2
Siloam Springs, AR—OK	18,027	6,734	9.5
Silsbee, TX	9,234	4,130	12.1
Silver City, NM	11,817	6,002	10.8
Silver Creek, NY	3,566	2,044	2.5
Silver Lakes, CA	5,908	2,649	2.1
Silverthorne—Keystone, CO	13,867	11,960	11.1
Silverton, OR	10,909	4,306	3.7
Simi Valley, CA	127,364	44,405	31.6
Sinton, TX	5,661	2,203	2.3
Sioux Center, IA	8,222	2,664	5.6
Sioux City, IA—NE—SD	113,066	44,463	55.0
Sioux Falls, SD	194,283	84,183	67.9
Sitka, AK	7,668	3,663	6.6
Skiatook, OK	7,342	2,998	4.2
Skowhegan, ME	4,795	2,437	2.9
Slatington, PA	8,362	3,751	3.9
Slaton, TX	5,678	2,464	2.8
Slidell, LA	91,587	38,048	52.5
Slippery Rock, PA	7,226	2,905	4.5
Smithfield, NC	21,921	9,420	17.0
Smithfield, VA	9,725	4,086	7.1
Smithville, MO	9,684	3,818	6.8
Smithville, TN	4,825	2,062	4.0
Snoqualmie, WA	17,070	5,841	6.8
Snowflake, AZ	5,342	1,929	3.8
Snowmass Village, CO	2,392	2,048	2.2
Snyder, TX	11,547	4,783	7.2
Socorro, NM	8,122	3,894	5.4
Soldotna, AK	4,646	2,405	5.1
Soledad, CA	18,946	4,492	2.4
Solvang—Santa Ynez, CA	10,295	4,330	5.5
Somerset, KY	30,832	14,671	38.9
Somerset, PA	10,098	4,655	6.9
Somerton, AZ	13,847	4,035	2.0
Sonoma, CA	31,479	14,704	14.1
Sonora—Twain Harte, CA	29,013	16,017	29.1
Sonterra, TX	9,024	3,182	3.1
South Bend, IN—MI	278,921	121,637	147.9
South Berwick, ME—NH	5,584	2,319	4.2
South Boston, VA	7,413	3,723	6.2
South Haven, MI	6,357	5,509	9.4
South Hill, VA	5,076	2,469	6.2
South Lake Tahoe, CA—NV	31,363	23,573	19.4
South Lyon—Hamburg—Genoa, MI	145,963	61,107	119.5

Urban area	Population	Housing	Land area (square miles)
South Paris, ME	4,371	2,198	4.1
South Pittsburg—Bridgeport, TN—AL	4,687	2,354	5.5
Southbridge Town, MA	20,789	9,359	11.5
Sparta, MI	5,630	2,382	4.3
Sparta, TN	5,691	2,541	7.1
Sparta, WI	10,185	4,461	5.2
Spartanburg, SC	196,943	82,772	181.0
Spearfish, SD	13,206	6,442	7.9
Spencer, IA	10,967	5,442	6.1
Spencer, MA	8,196	4,097	5.2
Spicer—New London, MN	3,358	2,213	4.3
Spirit Lake, IA	12,956	10,781	14.9
Spokane, WA	447,279	187,977	171.7
Spout Springs, NC	18,281	6,078	12.7
Spring Hill, FL	169,050	75,458	127.2
Spring Hill, KS	7,344	2,691	3.1
Spring Hill, TN	60,309	22,018	23.3
Springfield, IL	159,265	77,296	81.7
Springfield, MA—CT	442,145	186,392	201.8
Springfield, MO	282,651	129,736	134.3
Springfield, OH	82,369	38,075	45.1
Springfield, TN	18,430	7,235	9.0
Springfield, VT	5,140	2,660	4.4
Springhill, LA	5,931	3,103	7.4
St. Albans, VT	11,368	5,232	8.0
St. Augustine, FL	91,786	48,906	57.8
St. Clair, MO	6,303	2,735	3.9
St. Cloud, MN	117,638	48,944	54.0
St. Francis, MN	6,157	2,294	3.9
St. George, UT	134,109	55,868	61.0
St. Helen, MI	2,522	2,342	3.5
St. Helena, CA	6,086	3,050	4.5
St. Helens, OR	19,112	7,794	9.5
St. Ignace, MI	3,457	2,336	5.7
St. James City, FL	2,055	2,000	1.9
St. James, NC	7,029	4,434	9.0
St. Johns, MI	8,370	3,827	4.9
St. Johnsbury, VT	4,883	2,472	3.2
St. Joseph, MO—KS	77,187	35,119	44.3
St. Louis, MO—IL	2,156,323	975,765	910.4
St. Martinville, LA	6,399	3,077	4.1
St. Marys, OH	9,452	4,211	4.8
St. Marys, PA	9,402	4,552	7.2
St. Peter, MN	12,145	4,119	5.0
Stafford Springs, CT	5,107	2,577	5.2
Stansbury Park, UT	12,804	3,586	3.1
Stanwood, WA	7,678	2,983	2.7
Star, ID	10,673	3,894	3.9
Starke, FL	6,486	2,690	5.9
Starkville, MS	32,812	16,188	19.3
State College, PA	83,674	33,591	25.9
Statesboro, GA	44,488	17,978	28.3
Statesville, NC	39,829	17,252	37.5
Staunton, IL	4,866	2,309	3.1
Staunton—Waynesboro, VA	59,065	27,498	39.1
Stayton, OR	11,122	4,366	3.8
Ste. Genevieve, MO	4,988	2,097	3.1
Steamboat Springs, CO	14,455	10,532	10.1
Stephenville, TX	20,852	8,447	9.4
Sterling, CO	12,278	5,658	5.4
Sterling, IL	27,602	13,193	14.6
Steubenville—Weirton, OH—WV—PA	64,981	31,580	46.3
Stevens Point, WI	44,185	19,540	25.1
Stevensville—Chester—Romancoke, MD	18,874	8,258	17.6
Stewartville, MN	6,635	2,685	2.7
Stillwater, MN—WI	31,474	12,975	16.2
Stillwater, OK	48,237	22,072	25.1
Stockton, CA	414,847	129,251	92.5
Storm Lake, IA	11,860	4,117	3.9
Storrs, CT	17,747	3,510	7.9
Stoughton, WI	15,511	7,015	6.7
Strasburg, VA	7,572	3,294	4.1
Streator, IL	16,209	7,821	8.1

Urban area	Population	Housing	Land area (square miles)
Sturgeon Bay, WI	9,429	5,580	6.9
Sturgis, MI	11,943	4,927	6.2
Sturgis, SD	7,076	3,431	4.0
Stuttgart, AR	8,132	4,049	5.9
Suffolk, VA	42,480	17,157	23.8
Sugarmill Woods, FL	12,948	7,100	15.7
Sullivan, IL	4,414	2,043	2.8
Sullivan, IN	4,874	2,446	2.7
Sullivan, MO	7,227	3,384	6.1
Sullivan—Sylvan Beach, NY	3,251	2,348	3.9
Sulphur Springs, TX	14,683	6,547	10.8
Sulphur, OK	4,847	2,174	3.3
Sultan, WA	5,665	2,105	3.1
Summerset, SD	5,325	2,119	3.4
Summerville, GA	10,227	4,185	8.4
Summit Park, UT	7,317	2,901	3.6
Sumter, SC	68,825	30,795	57.7
Sunbury, OH	7,017	2,636	3.3
Sunbury, PA	28,249	12,642	13.7
Sunderland—South Deerfield, MA	5,048	2,540	6.9
Sunnyside, WA	17,140	5,081	5.6
Susanville, CA	8,995	4,233	3.2
Sutherlin, OR	9,656	4,221	5.2
Swainsboro, GA	7,251	3,111	8.0
Swansboro—Cedar Point, NC	20,542	10,284	25.5
Swatara, PA	6,312	2,535	5.0
Sweet Home, OR	10,088	4,128	5.2
Sweetwater, TN	6,468	2,881	7.1
Sweetwater, TX	10,372	5,035	7.5
Sylacauga, AL	16,980	8,382	19.3
Sylva, NC	5,118	2,497	7.2
Sylvester, GA	6,146	2,726	5.9
Syracuse, IN	7,393	4,870	6.7
Syracuse, NY	413,660	183,948	180.5
Taft, CA	15,022	5,294	3.6
Tafuna—Pago Pago, AS	37,652	8,742	15.0
Tahlequah, OK	17,975	8,286	11.8
Talladega, AL	12,609	5,687	10.1
Tallahassee, FL	252,934	116,829	125.5
Tallulah, LA	6,988	3,029	3.7
Tama, IA	5,263	2,161	2.9
Tamaqua, PA	15,158	7,661	2.5
Tampa—St. Petersburg, FL	2,783,045	1,286,258	968.9
Taneytown, MD	7,158	2,813	2.3
Taos, NM	15,665	8,607	18.9
Tarboro, NC	12,059	5,743	8.5
Taylor, TX	15,147	5,969	7.0
Taylorville, IL	11,525	5,784	5.5
Tazewell, VA	4,666	2,295	5.2
Tea, SD	5,595	1,967	3.3
Tecumseh, MI	13,684	5,914	10.1
Tehachapi—Golden Hills, CA	17,298	7,041	8.1
Tell City, IN—KY	9,541	4,754	5.1
Tellico Village, TN	7,156	4,026	6.9
Telluride—Mountain Village, CO	4,587	4,347	6.9
Temecula—Murrieta—Menifee, CA	528,991	174,148	150.5
Temple, TX	114,632	47,995	58.4
Terre Haute, IN	79,862	35,852	46.8
Terrell, TX	16,581	6,180	12.3
Texarkana, TX—AR	78,744	35,054	66.6
The Dalles, OR	17,398	7,216	7.7
The Pinery, CO	14,662	5,025	9.2
The Villages—Lady Lake, FL	161,736	98,242	98.5
The Woodlands—Conroe, TX	402,454	153,788	219.1
Thief River Falls, MN	8,892	4,535	5.3
Thomaston, GA	14,765	6,679	10.4
Thomasville, GA	25,231	11,627	22.3
Thomson, GA	8,788	3,892	8.3
Thousand Oaks, CA	213,986	79,133	80.2
Three Rivers, MI	10,166	4,365	8.7
Thurmont, MD	6,789	2,880	3.8
Tiffin, OH	20,284	9,154	9.2
Tifton, GA	24,580	10,511	18.4

Urban area	Population	Housing	Land area (square miles)
Tillamook, OR	6,166	2,712	2.7
Tiltonsville—Brilliant, OH	4,115	2,163	3.2
Tippecanoe, IN	3,713	3,109	4.1
Tipton, IN	5,668	2,627	2.4
Titusville, FL	62,459	29,966	40.0
Titusville, PA	5,219	2,569	2.2
Toccoa, GA	11,807	5,219	12.6
Toledo, OH—MI	497,952	229,911	240.7
Tomah, WI	9,818	4,560	7.0
Tonganoxie, KS	5,489	2,154	2.7
Tooele, UT	34,892	11,507	11.5
Topeka, KS	148,956	68,882	84.2
Toppenish, WA	10,057	2,823	3.1
Torrington, CT	35,212	17,184	21.8
Torrington, WY	6,436	3,187	3.6
Towanda, PA	4,029	2,069	2.9
Tracy—Mountain House, CA	120,912	36,775	27.1
Traverse City—Garfield, MI	56,890	28,936	52.4
Treasure Lake, PA	4,677	2,735	3.3
Tremonton, UT	11,898	3,904	6.7
Trenton, MO	5,426	2,859	4.3
Trenton, NJ	370,422	144,898	133.1
Tri-City—Myrtle Creek, OR	8,656	3,769	5.0
Trinidad, CO	8,323	4,362	4.8
Troy, AL	14,466	6,857	9.8
Troy, MO	16,669	6,408	9.0
Troy, OH	43,259	18,944	21.6
Truckee, CA	12,756	11,624	19.4
Trumann, AR	7,233	3,143	4.3
Truth or Consequences, NM	7,713	5,603	8.2
Tuba City, AZ	7,942	2,546	5.6
Tucson, AZ	875,441	398,383	357.3
Tucumcari, NM	5,217	2,872	3.8
Tulare, CA	70,628	21,714	17.7
Tullahoma, TN	19,297	8,558	14.8
Tulsa, OK	722,810	314,048	338.3
Tupelo, MS	40,233	18,370	43.3
Tupper Lake, NY	3,683	2,056	2.3
Turlock, CA	79,203	27,325	16.9
Tuscaloosa, AL	156,450	71,635	88.2
Tuscola, IL	4,942	2,344	3.0
Tuskegee, AL	9,003	4,332	8.2
Twentynine Palms North, CA	11,665	1,782	2.8
Twentynine Palms, CA	12,881	6,113	6.8
Twin Falls, ID	58,808	22,844	22.1
Twin Lakes, WI—IL	12,603	6,404	9.5
Tybee Island, GA	3,316	3,121	2.8
Tyler, TX	131,028	55,860	81.5
Tyrone, PA	10,442	4,719	6.1
Ukiah, CA	28,987	11,540	13.2
Ulysses, KS	5,865	2,314	2.8
Union City, IN—OH	5,079	2,465	2.6
Union City, TN	10,605	4,878	8.2
Union Grove, WI	5,899	2,110	3.7
Union, MO	12,019	4,961	7.5
Union, SC	9,729	4,820	9.2
Uniontown, PA	32,560	15,868	27.0
Upper Sandusky, OH	6,628	3,139	4.8
Urbana, MD	12,966	4,093	3.5
Urbana, OH	11,122	5,477	6.5
Utica, NY	119,059	52,462	52.0
Utuado, PR	13,008	6,234	11.3
Uvalde, TX	15,926	6,182	7.4
Vacaville, CA	101,027	35,582	21.6
Vail, AZ	12,835	4,690	5.8
Vail, CO	6,080	8,070	5.1
Valdosta, GA	76,769	32,392	41.3
Vallejo, CA	175,132	63,277	39.6
Valley City, ND	6,547	3,386	3.7
Valley—Lanett, AL—GA	20,466	9,528	18.1
Valparaiso—Shorewood Forest, IN	51,867	22,154	33.6
Van Wert, OH	11,069	5,072	6.2
Vandalia, IL	8,110	2,927	6.5

Urban area	Population	Housing	Land area (square miles)
Veneta, OR	6,987	2,693	4.7
Vermillion, SD	11,659	4,626	4.0
Vernal, UT	19,620	7,748	15.7
Vernon, TX	9,524	4,516	5.8
Vero Beach—Sebastian, FL	174,292	95,595	106.1
Versailles, KY	16,855	7,132	7.9
Vicksburg, MS—LA	25,888	12,760	24.3
Victoria, TX	65,986	28,572	33.6
Victorville—Hesperia—Apple Valley, CA	355,816	110,834	131.8
Vidalia, GA	13,709	6,238	15.4
Vieques (Vieques Municipio), PR	6,530	4,181	5.5
Villa Rica, GA	23,202	8,744	19.2
Village of Four Seasons, MO	7,489	9,467	19.1
Village of Oak Creek (Big Park), AZ	6,128	4,354	5.3
Ville Platte, LA	8,097	3,992	4.9
Vincennes, IN	19,800	9,176	11.8
Vineland, NJ	87,226	35,033	57.0
Vineyard Haven—Edgartown—Oak Bluffs, MA	14,064	11,427	16.6
Vinita, OK	5,068	2,480	4.7
Vinton, IA	4,780	2,187	2.8
Virginia Beach—Norfolk, VA	1,451,578	609,066	481.7
Virginia, MN	12,724	6,916	6.7
Viroqua, WI	3,987	2,063	2.0
Visalia, CA	160,578	53,821	37.7
Wabash, IN	10,254	4,965	6.0
Waco, TX	192,844	79,136	89.9
Waconia, MN	13,048	4,835	4.6
Wadena, MN	4,110	2,043	2.6
Wadesboro, NC	4,903	2,360	6.0
Wagoner, OK	7,470	3,325	5.4
Wahoo, NE	4,782	2,000	2.2
Wahpeton, ND—MN	11,290	5,193	7.1
Waikoloa Village, HI	6,824	3,222	5.9
Walden, NY	15,784	6,127	11.6
Waldorf, MD	118,601	42,930	59.4
Waldport, OR	5,394	4,224	5.5
Wales, WI	5,364	2,126	6.0
Walhalla, SC	5,392	2,415	5.7
Walla Walla, WA—OR	50,013	20,109	23.9
Walnut Ridge, AR	6,540	2,986	5.2
Walterboro, SC	9,229	4,246	8.1
Wamego, KS	4,899	2,079	2.3
Wapakoneta, OH	10,849	4,774	5.6
Wapato, WA	7,071	1,995	2.6
Ware, MA	5,662	2,828	3.2
Warner Robins, GA	141,132	58,015	88.3
Warren, AR	5,278	2,590	6.4
Warren, PA	14,294	7,159	7.8
Warrensburg, MO	19,934	8,557	8.5
Warrenton, MO	9,398	4,018	6.0
Warrenton—New Baltimore, VA	24,437	8,916	17.2
Warsaw, IN	29,904	12,541	23.7
Warwick, NY	7,084	3,394	2.9
Wasco, CA	22,235	6,271	3.4
Waseca, MN	9,211	3,808	3.8
Washington Court House, OH	15,029	6,920	7.3
Washington, IA	6,846	3,035	3.3
Washington, IN	12,920	5,559	6.8
Washington, MO	14,616	6,620	7.9
Washington, NC	16,509	8,268	16.7
Washington, NJ	10,138	4,308	4.1
Washington—Arlington, DC—VA—MD	5,174,759	2,042,623	1,294.5
Wasilla—Knik-Fairview—North Lakes, AK	53,444	20,504	57.6
Waterbury, CT	199,317	83,605	92.4
Waterford, CA	9,746	2,922	2.0
Waterloo, IA	114,139	51,470	63.7
Waterloo, IL	9,933	4,305	5.4
Watertown, NY	51,832	23,084	32.0
Watertown, SD	20,643	9,805	12.4
Watertown, WI	22,712	9,767	10.5
Waterville, ME	25,529	12,264	16.9
Watford City, ND	6,687	3,796	8.3
Watseka, IL	4,671	2,444	2.9

Urban area	Population	Housing	Land area (square miles)
Watsonville, CA	68,668	19,042	14.7
Wauchula, FL	9,790	3,931	6.2
Waupaca, WI	8,293	4,379	8.9
Waupun, WI	11,673	3,889	4.4
Wausau, WI	77,429	34,753	48.7
Wauseon, OH	7,623	3,204	5.1
Waverly, IA	9,159	3,661	5.6
Waverly, OH	4,969	2,683	4.0
Waycross, GA	24,985	11,144	24.9
Wayland, MI	4,957	2,007	3.4
Wayne, NE	5,980	2,325	3.1
Waynesboro, GA	6,103	2,701	5.9
Waynesboro, PA—MD	22,267	10,184	11.0
Waynesburg, PA	8,754	3,117	4.0
Waynesville, NC	24,285	14,359	27.6
Weatherford, OK	12,076	5,519	6.3
Weatherford, TX	48,112	19,274	38.7
Webster City, IA	7,606	3,642	4.4
Weiser, ID—OR	5,599	2,332	2.4
Wellington, CO	11,071	3,936	3.2
Wellington, KS	7,398	3,565	4.4
Wellington, OH	4,783	2,160	2.8
Wellston, OH	5,655	2,604	4.0
Wellsville, NY	5,339	2,667	3.6
Wenatchee, WA	78,142	30,561	32.6
Wendell, NC	8,915	3,358	4.2
West Bend, WI	34,552	15,486	17.1
West Columbia, TX	5,888	2,537	3.7
West Frankfort, IL	7,935	4,110	4.7
West Jefferson—Lake Darby, OH	8,828	3,391	5.1
West Milford, NJ—NY	17,659	8,193	14.2
West Milton, OH	4,646	2,117	2.0
West Plains, MO	11,852	5,579	10.3
West Point, MS	8,134	3,807	6.5
West Point—Highland Falls, NY	12,156	3,256	3.9
West Salem, WI	5,557	2,466	3.2
West Wendover, NV—UT	5,238	1,957	7.4
Westerly, RI—CT	30,955	17,606	25.7
Westminster, MD	40,040	15,792	26.4
Weston, WV	4,430	2,346	2.0
Westville, IN	5,189	1,099	2.1
Wetumpka, AL	6,488	2,510	4.4
Wharton, TX	8,526	3,907	4.7
Wheeling, WV—OH	57,695	30,319	36.8
White House, TN	15,587	6,077	12.9
White Rock, NM	5,169	2,131	2.1
Whitefish, MT	7,898	4,733	6.2
Whitehall, MI	8,678	4,196	8.6
Whitehouse, TX	9,139	3,272	5.2
Whiteman AFB—Knob Noster, MO	5,577	2,264	7.3
Whiteville, NC	5,216	2,613	4.9
Whitewater, WI	14,544	5,300	4.6
Wichita Falls, TX	97,039	42,923	50.8
Wichita, KS	500,231	214,740	226.8
Wickenburg, AZ	4,801	2,826	4.7
Wildwood, FL	13,899	5,717	12.8
Wilkesboro—North Wilkesboro, NC	19,890	9,160	33.3
Willard, MO	6,854	2,604	8.7
Willard, OH	6,666	2,966	3.6
Williams, CA	5,558	1,767	2.0
Williamsburg, KY	6,365	2,395	5.2
Williamsburg, VA	89,585	38,974	69.9
Williamsport, PA	55,344	25,810	27.7
Williamston, MI	4,850	2,181	3.2
Williamston, NC	5,522	2,815	4.8
Williamston, SC	10,350	4,446	10.2
Willimantic, CT	24,332	9,723	12.8
Williston, ND	29,510	14,641	21.9
Willits, CA	7,552	3,162	4.4
Willmar, MN	21,586	8,853	13.2
Willows, CA	7,578	2,960	2.7
Wilmington, IL	6,388	2,836	3.9
Wilmington, NC	255,329	126,576	142.2

Urban area	Population	Housing	Land area (square miles)
Wilmington, OH	12,546	5,625	9.5
Wilmore, KY	5,727	1,861	1.8
Wilson, NC	48,326	22,724	27.7
Winchendon, MA	4,866	2,122	2.3
Winchester, IN	4,797	2,348	2.9
Winchester, KY	26,253	11,608	14.4
Winchester, TN	12,702	6,016	12.9
Winchester, VA	83,377	33,248	42.2
Wind Lake, WI	4,856	2,070	3.5
Winder, GA	50,189	17,820	51.7
Winfield, KS	11,617	5,173	7.0
Winnemucca, NV	10,546	4,664	7.2
Winnfield, LA	4,671	2,341	4.5
Winnsboro, LA	5,142	2,195	3.2
Winnsboro, SC	4,710	2,399	3.9
Winona, MN	29,633	13,461	13.3
Winslow, AZ	7,667	3,320	3.6
Winsted, CT	7,804	4,289	6.1
Winston-Salem, NC	420,924	187,144	310.8
Winter Haven, FL	253,251	112,523	142.7
Winters, CA	7,073	2,528	1.6
Winterset, IA	5,077	2,359	2.3
Wisconsin Rapids, WI	29,550	13,972	21.8
Wise—Norton, VA	8,913	4,452	10.9
Woodburn, OR	27,577	8,921	7.6
Woodlake, CA	7,514	2,263	1.9
Woodland Park, CO	11,548	5,647	9.3
Woodland, CA	61,133	21,666	12.8
Woodland, WA	7,217	2,593	4.4
Woodmont, GA	6,673	2,281	5.2
Woodstock, IL	25,298	10,243	9.3
Woodstock, VA	5,852	2,572	3.9
Woodward, OK	11,458	5,737	9.1
Wooster, OH	32,449	14,287	21.7
Worcester, MA—CT	482,085	196,132	260.3
Worland, WY	4,889	2,525	3.0
World Golf Village, FL	19,679	7,492	13.9
Worthington, MN	13,800	4,710	5.5
Worth—Lexington, MI	3,310	3,668	4.2
Wrightwood, CA	3,927	2,208	1.4
Wynne, AR	7,564	3,383	5.5
Wytheville, VA	7,154	3,784	6.0
Xenia, OH	26,614	11,923	11.4
Yakima, WA	133,145	51,147	55.8
Yankton, SD	16,022	7,072	8.5
Yauco, PR	63,885	30,548	34.9
Yazoo City, MS	15,060	4,931	9.2
Yelm, WA	14,924	5,099	7.7
Yoakum, TX	5,598	2,473	3.2
York, NE	7,968	3,735	4.7
York, PA	238,549	97,643	113.1
York, SC	8,631	3,573	6.5
Youngstown, OH	320,901	153,376	196.0
Yreka, CA	7,617	3,591	5.3
Yuba City, CA	125,706	42,911	30.0
Yucca Valley, CA	18,293	8,224	11.3
Yuma, AZ—CA	135,717	70,358	53.0
Zachary, LA	16,600	6,388	11.4
Zanesville, OH	42,301	20,014	28.3
Zapata—Medina, TX	10,942	4,642	5.0
Zebulon, NC	8,158	3,149	6.1
Zephyrhills, FL	55,133	32,009	34.1
Zimmerman, MN	6,360	2,345	3.3

B. Geographic Products

By the end of 2022, products related to the 2020 Census urban areas will be made available in conjunction with or soon after the publication of this Notice. For more information about the Census Bureau's urban and rural classification and urban area product distribution timeline, see *https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html.*

Clarifications and Additional Information Regarding Published Criteria

This section of the Notice provides clarifications and additional information regarding the 2020 Census

urban area criteria published in the **Federal Register** on March 24, 2022 (87 FR 16706). These clarifications and information are provided in response to questions received after the publication of the 2020 Census urban area criteria and to address necessary issues identified during the process of delineating the 2020 Census urban areas. Some issues identified during the delineation process interactive review conducted by Census Bureau subject matter experts were resolved via the addition, removal, or transfer of census blocks to or from urban areas.

The clarifications and additional information regarding the criteria published in the **Federal Register** on March 24, 2022, *Urban Area Criteria for the 2020 Census—Final Criteria* (87 FR 16706), are as follows:

A. Identification of Initial Urban Cores

1. In Section V, subsection B, when referring to the identification of urban block agglomerations, clarification is necessary to differentiate the term 'agglomerations' as it is used in this section from the Urban Area Agglomerations (UAA) defined in Section V, subsection B.9. This first use of the term 'agglomerations' in Section V, subsection B describes a collection of census blocks representing densely settled territory, whereas the UAA described in Section B, subsection B.9 is a collection of census blocks that qualify as a UAA according to the specific criteria described in Section B, subsection B.9.

2. In Section V, subsection B, the Census Bureau clarifies that urban block agglomerations and cores of noncontiguous urban territory can consist of either a single qualifying census block or a collection of multiple qualifying census blocks when qualifying via criteria based on housing unit density.

3. Section V, subsection B, introduces the 1,275 housing units per square mile (HPSM) minimum threshold to identify the presence of higher-density territory representing an urban nucleus. In addition to this minimum threshold, a high-density nucleus must also meet the additional criteria described in Section V, subsection B.9.

4. In Section V, subsection B.1, the criteria define Eligible Block Aggregations (EBAs). To differentiate these geographic entities from other criteria referring to 'aggregations' or 'agglomerations', the Census Bureau will now refer to EBAs as Eligible Block Areas. This clarification applies to all subsequent references to EBAs in this Notice and the *Urban Area Criteria for the 2020 Census—Final Criteria* (87 FR 16706).

5. Section V, subsection B.1 provides the specific criteria for identifying EBAs based on housing unit density, amount of impervious surface present, census block shape, adjacency, presence of group quarters (GQ), and/or population density. The Census Bureau clarifies that an EBA can consist of a single census block, but only in situations where the census block qualifies via the housing unit density criterion.

6. In Section V, subsection B.1.d, the Census Bureau clarifies that in addition to containing a GQ and having a population density of at least 500 people per square mile (PPSM), the census block must also be adjacent to other census blocks qualifying as an EBA for its inclusion in that EBA.

7. In Section V, subsection B.1 the Census Bureau modifies the criteria to recognize that census blocks qualifying as urban via the impervious surface criteria are added to an initial urban core during the later iterations of the delineation. This addition allows census blocks located on the edge of initial urban cores to be reviewed by Census Bureau subject matter experts to determine whether their classification as urban is appropriate. This review also considers census blocks for removal if they have zero population and zero housing units, do not clearly contain land cover associated with an urban built environment, and are not associated with a potential hop or jump connection. If the census blocks do have the potential to contribute to a hop or jump connection, the census blocks still are eligible for removal if removal would not extend a hop connection beyond 0.5 miles or a jump connection beyond 1.5 miles.

8. In addition, Census Bureau subject matter experts conduct a targeted review of urban census blocks with a significantly disproportionate amount of water compared to its land territory qualifying as belonging to an urban area. The use of land area only in determining the qualifying housing and population density threshold can create conditions in which the census block contains little residential development constrained to a limited amount of land when compared to the much larger amount of water area within the census block and thus may not appropriately qualify as urban. The universe of this review includes census blocks containing more water than land area and qualifying as part of an initial urban core through any of the criteria based on housing units or population. Census Bureau subject matter experts determine the urban status of these census blocks based on the character of the local water feature and/or shoreline as well as the site and situation characteristics with respect to the surrounding urban land cover.

B. Inclusion of Noncontiguous Territory via Hops and Jumps

1. Section V, subsection B.2 describes the eligibility requirements for census blocks to be added to an initial urban core via a hop or jump. The Census Bureau clarifies that remaining EBAs created in Section V, subsection B.1 that do not contain an initial urban core at this step in the delineation, but do contain at least ten housing units or at least one census block that also contains at least one GQ and has a population density of at least 500 PPSM, remain eligible for inclusion in an initial urban core via a hop or jump.

2. In Section V, subsection B.2, the Census Bureau also provides additional clarification for the criteria designed to add noncontiguous territory via hop connections. Specifically, the connection of EBAs via hops is an automated process starting with the EBA with the lowest number of housing units and then continuing in ascending order until all available hop connections are exhausted.

3. In Section V, subsection B.2, the Census Bureau modifies the criteria to include review by Census Bureau subject matter experts in cases where the removal of an EBA to which two other EBAs made either a successful hop or jump results in an intervening distance greater than 1.5 miles. The intent of this review is to determine if retention of the noncontiguous territory is appropriate.

C. Inclusion of Noncontiguous Territory Separated by Exempted Territory

1. Section V, subsection B.3 includes the criteria for the identification of exempted territory (ET) over which hop and jump connections can be extended. The Census Bureau adds that, for any ET to be considered for the extension of a hop or jump connection, open water must exist on both sides of the road/roadbed at some point as depicted in the National Land Cover Database (NLCD), Coastal Change Analysis Program (C–CAP) High Resolution Land Cover, and/or Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) Database (MTDB).

2. In Section V, subsection B.3, the Census Bureau further clarifies that, for the open water criteria used in determining the extension of hops or jumps via ET, the total road connection length over open water between

qualifying urban territory must be an unbroken distance of at least 150 feet.

3. In addition, after the open water requirements are met in determining the eligibility of extended hop or jump connections across ET, other wetland land cover classes provided in the NLCD or C–CAP along the same road connection may be considered for exemption provided that the wetland classes are located on both sides of the road.

4. In Section V, subsection B.3, the Census Bureau acknowledges additional road features, to include multilane roads. To augment the definition, the Census Bureau considers medians between multilane road connections as part of the roadbed if the medians do not include any potentially addressable structures and the total roadbed is less than 500 feet in width, not including ET.

5. In Section V, subsection B.3, the Census Bureau adds that, when determining the location of ET with respect to hop and jump extensions, any potentially addressable structures located between a roadbed and territory classified as open water or other wetlands per the NLCD, C–CAP, or MTDB disqualify the territory containing these structures from being considered ET.

D. Low-Density Fill

1. In Section V, subsection B.4, the Census Bureau clarifies the conditions in which an EBA will be removed from the associated Core EBA after the low-density fill is added to Core EBAs. After the low-density fill is added, any EBA with at least 50 housing units will remain in the associated Core EBA. Additionally, any EBA with at least one census block containing a GQ and with at least 500 PPSM will also remain in the associated Core EBA. All other EBAs will be removed from the associated Core EBA after the low-density fill criteria are complete.

E. Inclusion of Enclaves

1. In Section V, subsection B.6, clarification of the criteria designed for enclaves within an EBA or Core EBA is necessary to indicate that not all coordinate pairings are examined by the delineation software. As a result, Census Bureau subject matter experts may add additional census blocks to fill an enclave where appropriate.

F. Inclusion of Indentations

1. In Section V, subsection B.7, clarification of the criteria designed to include territory that forms an indentation of an EBA or Core EBA is necessary to indicate that not all coordinate pairings are examined by the delineation software. As a result, Census Bureau subject matter experts may add additional census blocks to fill an indentation where appropriate.

G. Merging of Eligible Block Aggregations

1. In Section V, subsection B.8, the Census Bureau adds that the merging of Core EBAs is only possible if at least one Core EBA contains a high-density nucleus and another does not. The full set of criteria for identifying a high-density nucleus is described in Section V, subsection B.9.a, B.9.b, and B.9.c.

H. Identification of Urban Area Agglomerations (UAA)

1. In Section V, subsection B.9, the criteria for identifying high-density nuclei are noted twice. The Census Bureau clarifies the full criteria used to identify high-density nuclei are those described by Section V, subsections B.9.a, B.9.b, and B.9.c in full.

2. In Section V, subsection B.9, additional clarification is necessary to indicate a high-density nucleus can consist of a single census block meeting the criteria described by Section V, subsections B.9.a, B.9.b, and B.9.c.

I. Splitting Large Agglomerations

1. In Section V, subsection B.10, the Census Bureau clarifies that review by Census Bureau subject matter experts is conducted to determine the most appropriate outcome of the use of commuter-based partitions derived from the application of the unsupervised Leiden Algorithm to Longitudinal Employer-Household Dynamics Origin-Destination Employment Statistics (LODES) worker-flow data in determining the boundary between urban areas. This review includes the examination of anomalous noncontiguous urban boundaries as well as newly created urban areas embedded within a previously existing urban area to determine if boundary modification is necessary to ensure territory qualifying as urban is associated with the most appropriate urban area.

J. Assigning Urban Area Titles

1. Section V, subsection B.11 provides the criteria by which urban area titles (names) are defined. The Census Bureau clarifies that the final names are the result of Census Bureau subject matter expert review where the most appropriate urban name is left ambiguous by the stated criteria. The intent of this review is to assign each urban area the most succinct and locatable name based on historical context, familiarity, and best representation of the extent of the urban area.

2. In Section V, subsection B.11, an additional criterion is required to indicate that all population and housing unit requirements for places (incorporated places and census designated places (CDPs)) and Minor Civil Divisions (MCDs) apply to the portion of the entity's housing units and population located within the specific urban area being named.

3. Section V, subsection B.11 requires additional clarification to further define MCDs as governmental MCDs. Additionally, the Census Bureau clarifies that only the MCD housing unit and population counts not located within an incorporated place or CDP are considered in urban area name assignment.

4. In Section V, subsection B.11, the Census Bureau clarifies secondary names are assigned to an urban area after a primary name is determined based on the amount of population of a place of at least 2,500 residing within the high-density nuclei of the urban area.

5. In Section V, subsection B.11, the Census Bureau further clarifies that MCDs are also eligible entities in addition to places when determining secondary names for an urban area. For this purpose, the Census Bureau clarifies that only the housing unit and population counts not located within an incorporated place or CDP are considered.

K. Zero Housing Unit Census Blocks Review

1. The Census Bureau modifies the criteria to include a review by Census Bureau subject matter experts of census blocks with zero housing units that may be associated with an urban area after all activities related to all other steps in the 2020 urban area delineation process have been completed. For this review, remaining zero housing unit census blocks meeting the requirements set forth to fill enclaves (Section V, subsection B.6) and indentations (Section V, subsection B.7) are examined to determine their final designation as urban.

2. Census Bureau subject matter experts conduct a further review of census blocks with zero housing units which are also associated with water features, road medians, or right-of-way passages to determine if their inclusion in an urban area reduces the amount of noncontiguous urban territory without extending or having a significant impact on the general outer boundary of an urban area.

3. Similar to the review of census blocks located on the edge of initial urban cores in Section V, subsection B.1, Census Bureau subject matter experts conduct a review of zero housing unit census blocks for removal. An identified census block is considered for removal from an urban area if the census block does not clearly contain land cover associated with an urban built environment and is not associated with a potential hop or jump connection. If the census block does have the potential to contribute to a hop or jump connection, then the census block still is eligible for removal if removal would not extend a hop connection beyond 0.5 miles or a jump connection beyond 1.5 miles.

L. Final Urban Area Review

1. The Census Bureau modifies the criteria to add that Census Bureau subject matter experts conduct a final review of the census blocks associated with any enclaves (Section V, subsection B.6) or indentations (Section V, subsection B.7) created by edits during all preceding reviews of urban areas throughout the delineation process. During this final review, Census Bureau subject matter experts assess enclaves created solely through the addition of census blocks during previous reviews if the area of the enclave is less than 2.5 square miles. Similarly, in the final review, Census Bureau subject matter experts assess indentations created solely through the addition of census blocks during previous reviews if the area of the indentation is less than 1.5 square miles.

2. During this final review, census blocks with a housing density of at least 150 HPSM located near the edge of an urban area are investigated by Census Bureau subject matter experts to determine if inclusion in an urban area is appropriate based on its size, shape, adjacency, and disposition relative to an urban area or areas, degree of association (accessibility) with an urban area with regard to housing, and presence of new construction.

3. The Census Bureau adds further review by Census Bureau subject matter experts to determine the final urban classification of nonresidential census blocks with a high degree of urban land cover proximate to an urban area. The Census Bureau investigates census blocks that meet the impervious surface criteria described in Section V, subsections B.1.b, B.1.c, are within 0.5 miles of an urban area, are accessible via a road distance no greater than 1.5 miles, and have an area of at least 0.15 square miles. These census blocks are reviewed to determine their final classification as belonging to an urban area based on site and situation characteristics with respect to urban land cover.

4. The Census Bureau adds a final review of census blocks associated with airports by Census Bureau subject matter experts. Census blocks proximate to airports partially qualifying as urban via the criteria described in Section V, subsection B.5 are examined for inclusion in the urban area to which the airport is most closely associated. Additional census blocks containing airports (partially or in whole) not previously identified using the criteria described in Section V, subsection B.5 are also examined by Census Bureau subject matter experts for final urban status determination with respect to proximity and association to an urban area. In all cases, the Census Bureau strives to minimize the partial qualification of airports as urban.

5. The Census Bureau adds a final review of census blocks representing water shorelines and which do not qualify as urban and create gaps in urban areas along bodies of water similar to the water enclaves described by the criteria presented in Section V, subsections B.6.d and B.6.e. Census Bureau subject matter experts investigate these census blocks not previously classified as urban but surrounded partially by water and partially by land classified as urban and whose length of adjacency with water is less than the length of the line of adjacency with land. Once identified, the Census Bureau subject matter experts determine their inclusion in an urban area based on the size of the gap, land cover within the gap, and the amount of shoreline already classified as belonging to the urban area.

6. The Census Bureau clarifies that the final review of urban area shorelines by Census Bureau subject matter experts also includes the targeted examination of census blocks proximate to an urban area within which shoreline facilities are located, but not previously qualified as urban. Determining whether these census blocks are ultimately included in an urban area is based on adjacency and connectivity to surrounding urban territory.

7. The Census Bureau adds in response to instances where a census block on the outer boundary of an urban area is included in the urban area because of high housing unit density, Census Bureau subject matter experts may change its urban designation if the evidence, in comparison to adjacent blocks, is significant enough to merit reclassification.

Robert L. Santos, Director, Census Bureau, approved the publication of this notification in the **Federal Register**.

Dated: December 20, 2022.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2022–28286 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2022]

Foreign-Trade Zone (FTZ) 207—Richmond, Virginia; Authorization of Production Activity; voestalpine High Performance Metals LLC (Tool Steel and Specialty Metals); South Boston, Virginia

On August 25, 2022, voestalpine High Performance Metals LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 207, in South Boston, Virginia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 54190, September 2, 2022). On December 23, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: December 23, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–28329 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810, A–583–815]

Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea and Taiwan: Continuation of Antidumping Duty Orders

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

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty

(AD) orders on welded ASTM A–312 stainless steel pipe (WSSP) from the Republic of Korea (Korea) and Taiwan would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5255.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1992, Commerce published in the **Federal Register** the AD order and clarification of final determination for WSSP from Korea, as well as the amended final determination and AD order for WSSP from Taiwan.[1]

On May 2, 2022, the ITC instituted,[2] and Commerce initiated,[3] the five-year sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.[4] On December 19, 2022, the ITC published its determinations, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

[1] *See Antidumping Duty Order and Clarification of Final Determination: Certain Welded Stainless Steel Pipes from Korea,* 57 FR 62301 (December 30, 1992); *see also Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe from Taiwan,* 57 FR 62300 (December 30, 1992); *Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipes from Taiwan,* 59 FR 6619; and *Notice of Amended Final Determination and Antidumping Duty Order: Certain Welded Stainless Steel Pipe from the Republic of Korea,* 60 FR 10064 (February 23, 1995) (collectively, *Orders*).

[2] *See Certain Welded Stainless Steel Pipe from South Korea and Taiwan; Institution of Five-Year Reviews,* 87 FR 25668 (May 2, 2022).

[3] *See Initiation of Five-Year Sunset Reviews,* 87 FR 25617.

[4] *See Welded ASTM A–312 Stainless Steel Pipe from the Republic of Korea and Taiwan: Final Results of Expedited Fifth Sunset Reviews of the Antidumping Duty Orders,* 87 FR 65572 (October 31, 2022).

[5] *See Certain Welded Stainless Steel Pipe from South Korea and Taiwan,* 87 FR 77636 (December 19, 2022).

Scope of the Orders

The products covered by the *Orders* are shipments of welded stainless steel pipe (WSSP) from Korea and Taiwan that meet the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. WSSP is produced by forming stainless steel flat rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5040, 7306.40.5065 and 7306.40.5085. Although the HTSUS subheadings include both pipes and tubes, the scope of the *Orders* is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or a recurrence of dumping and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: December 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28381 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Final Results of Countervailing Duty Administrative Review; 2020; Correction

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

ACTION: Notice; correction.

SUMMARY: The U.S. Department of Commerce (Commerce) published a notice in the **Federal Register** on December 15, 2022, in which Commerce announced the final results of the administrative review of the countervailing duty (CVD) order on finished carbon steel flanges (flanges) from India covering the period January 1, 2020, through December 31, 2020. This notice corrects the names of three companies not selected for individual examination listed in Appendix II.

DATES: Applicable December 15, 2022.

FOR FURTHER INFORMATION CONTACT: James Hepburn or Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1882 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Corrections

In the **Federal Register** of December 15, 2022, in FR Doc 2022–27223, on

page 76611, in the second column under Appendix II, make the following corrections: (1) revise the company name ''Punjab Steel Works'' to ''Punjab Steel Works (PSW)''; (2) revise the company name ''Raaj Sagar Steels'' to ''Raaj Sagar Steel''; and (3) revise the company name ''Tirupati Forge Pvt. Ltd.'' to ''Tirupati Forge.''

Background

On December 15, 2022, Commerce published in the **Federal Register** the final results of the administrative review of the CVD order on flanges covering the period January 1, 2020, through December 31, 2020.[1] In the notice, Commerce inadvertently included incorrect names of three companies not selected for individual examination. In Appendix II, we incorrectly listed the companies ''Punjab Steel Works (PSW),'' ''Raaj Sagar Steel,'' and ''Tirupati Forge'' as ''Punjab Steel Works,'' ''Raaj Sagar Steels,'' and ''Tirupati Forge Pvt. Ltd.,'' respectively.[2]

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 23, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28405 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Finished Carbon Steel Flanges from India: Final Results of Countervailing Duty Administrative Review; 2020,* 87 FR 76610 (December 15, 2022).

[2] *See* Memorandum, ''Phone Conversation with an Interested Party,'' dated September 13, 2022.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain producers/exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Adam Simons or Paul Gill, 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) 482–6172 or (202) 482–5673, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2022, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on welded line pipe from the Republic of Korea (Korea).[1] The period of review (POR) is December 1, 2020, through November 30, 2021. On August 17, 2022, we extended the preliminary results of this review to no later than December 23, 2022.[2] For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[3]

Scope of the Order

The merchandise subject to the *Order* is welded line pipe.[4] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS subheadings are provided for convenience and for customs purposes, the written product description remains dispositive.

Methodology

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Export price and constructed export price are calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics discussed in the Preliminary Decision Memorandum is attached as Appendix I 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.*

Preliminary Determination of No Shipments

Among the companies under review, HiSteel Co., Ltd. (HiSteel) properly filed a statement that it made no shipments of subject merchandise to the United States during the POR.[5] Based on its certification and our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that HiSteel had no reviewable transactions during the POR.[6] Consistent with our practice, we are not preliminarily rescinding the review with respect to HiSteel. Instead, we will complete the review for HiSteel and issue appropriate instructions to CBP based on the final results of this review.[7]

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period December 1, 2020, through November 30, 2021:

Producer or exporter	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd.	2.56

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 87 FR 6487 (February 4, 2022); *see also Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015) (*Order*).

[2] *See* Memorandum, ''Extension of Deadline for Preliminary Results of 2020–2021 Antidumping Duty Administrative Review,'' dated August 17, 2022.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020–2021 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

[5] *See* HiSteel's Letter, ''No Shipments Letter,'' dated March 7, 2022.

[6] *See* Memorandum, ''Results of No Shipments Inquiry for HiSteel Co., Ltd.,'' dated March 7, 2022.

[7] *See, e.g., Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2019–2020,* 87 FR 928 (January 7, 2022), unchanged in *Welded Line Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 38061 (June 27, 2022).

Producer or exporter	Weighted-average dumping margin (percent)
SeAH Steel Corporation	4.14
Companies Not Selected for Individual Review [8]	3.32

Review-Specific Average Rate for Companies Not Selected for Individual Review

The exporters or producers not selected for individual review are listed in Appendix II.

Assessment Rates

Upon issuing the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), where NEXTEEL Co., Ltd. (NEXTEEL) reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. SeAH Steel Corporation (SeAH) did not report actual entered value for all of its U.S. sales; in such instances, we calculated importer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the weighted average of the cash deposit rates calculated for NEXTEEL and SeAH excluding any which are zero, *de minimis,* or determined entirely on adverse facts available. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by NEXTEEL or SeAH for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, then the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[11] Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the time limit for filing case briefs.[13] 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.[14] Case and rebuttal briefs should be filed using ACCESS.[15] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[16]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS within 30 days after the date of publication of this notice.[17] Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.[18]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[19]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding

[8] Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually examined, excluding any margins that are zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' For these preliminary results, we have preliminarily calculated a weighted-average dumping margin for these companies using the calculated rates of the mandatory respondents, NEXTEEL and SeAH, which are not zero or *de minimis,* or determined entirely on the basis of facts available.

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Order.*

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c).

[13] Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

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

[17] *See* 19 CFR 351.310(c).

[18] *See* 19 CFR 351.310(d).

[19] *See* section 751(a)(3)(A) of the Act.

the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Preliminary Determination of No Shipments
V. Discussion of the Methodology
VI. Recommendation

Appendix II

Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. AJU Besteel Co., Ltd.
2. BDP International, Inc.
3. Daewoo International Corporation
4. Dongbu Incheon Steel Co.
5. Dongbu Steel Co., Ltd.
6. Dongkuk Steel Mill
7. Dong Yang Steel Pipe
8. EEW Korea Co., Ltd.
9. Husteel Co., Ltd.
10. Hyundai RB Co. Ltd.
11. Hyundai Steel Company/Hyundai HYSCO
12. Kelly Pipe Co., LLC
13. Keonwoo Metals Co., Ltd.
14. Kolon Global Corp.
15. Korea Cast Iron Pipe Ind. Co., Ltd.
16. Kurvers Piping Italy S.R.L.
17. Miju Steel MFG Co., Ltd.
18. MSTEEL Co., Ltd.
19. Poongsan Valinox (Valtimet Division)
20. POSCO
21. POSCO Daewoo
22. R&R Trading Co. Ltd.
23. Sam Kang M&T Co., Ltd.
24. Sin Sung Metal Co., Ltd.
25. SK Networks
26. Soon-Hong Trading Company
27. Steel Flower Co., Ltd.
28. TGS Pipe
29. Tokyo Engineering Korea Ltd.

[FR Doc. 2022–28388 Filed 12–28–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–804]

Certain Steel Nails From the United Arab Emirates: Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain steel nails (steel nails) from the United Arab Emirates (UAE) would be likely to lead to the continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Kelsie Hohenberger, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2517.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2012, Commerce published in the **Federal Register** the AD order on steel nails from the UAE.[1] On September 1, 2022, Commerce published the notice of initiation of the second sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On September 13, 2022, Commerce received a notice of intent to participate in this review from Mid Continent Steel & Wire, Inc. (Mid Continent) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Mid Continent claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product in the United States.

On October 3, 2022, Commerce received an adequate substantive response from Mid Continent within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive responses from respondent interested parties. On October 25, 2022, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The products covered by this *Order* are steel nails from the UAE. For a full description of the scope, *see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the accompanying Issues and Decision Memorandum.[7] A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *Order* would likely lead to the continuation or recurrence of dumping and that the magnitude of the margins likely to prevail if the *Order* were revoked is up to 184.41 percent.[8]

Administrative Protective Order (APO)

This notice serves as the only reminder to interested parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials

[1] *See Certain Steel Nails from the United Arab Emirates: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27421 (May 10, 2012) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 53727 (September 1, 2022).

[3] *See* Mid Continent's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated September 13, 2022.

[4] *See* Mid Continent's Letter, ''Substantive Response to Notice of Initiation,'' dated October 3, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on September 1, 2022,'' dated October 25, 2022.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Antidumping Duty Order on Certain Steel Nails from the United Arab Emirates,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[7] *See, generally,* Issues and Decision Memorandum.

[8] *Id.*

or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

Dated: December 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–28389 Filed 12–28–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–863]

Large Diameter Welded Pipe From Canada: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on large diameter welded pipe from Canada to correct ministerial errors. The period of review (POR) is May 1, 2020, through April 30, 2021.

DATES: Applicable December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik or Faris Montgomery, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6905 or (202) 482–1537, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 18, 2022, Commerce disclosed its calculations to interested parties and provided interested parties with the opportunity to submit ministerial error comments.[1] On November 23, 2022, Commerce published its final results of administrative review.[2] On November 25, 2022, Evraz submitted allegations of ministerial errors in the *Final Results.*[3] No other party made an allegation of ministerial errors. On November 30, 2022, the American Line Pipe Producers Association (Domestic Interested Party) rebutted Evraz's ministerial error allegations.[4]

Legal Framework

Section 751(h) of the Tariff Act of 1930, as amended (the Act), defines a ''ministerial error'' as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other unintentional error which the administering authority considers ministerial.'' With respect to final results of administrative reviews, 19 CFR 351.224(e) provides that Commerce ''will analyze any comments received and, if appropriate, correct any ministerial error by amending . . . the final results of review . . . .''

Ministerial Errors

We agree with Evraz that Commerce made ministerial errors in the *Final Results* within the meaning of section 751(h) of the Act and 19 CFR 351.224(f). In the *Final Results,* we made certain revisions to the preliminary results,[5] including revisions to the general and administrative (G&A) expense ratio and the scrap cost adjustment. In its ministerial error comments, Evraz alleged that in revising the basis of the G&A expense rate, Commerce: (1) double-counted certain line items in the G&A expense ratio and the cost data file and also; (2) consequently, double-counted line items which were reported as home market indirect selling expenses.[6] Evraz also alleged that Commerce incorrectly included intra-company transfers in the scrap major input cost adjustment.[7]

Commerce determines that it made ministerial errors in the *Final Results* pursuant to section 751(h) of the Act and 19 CFR 351.224(f) and has amended its calculations with regard to the G&A expense rate and the scrap cost adjustment.

For a complete discussion of the ministerial error allegations, as well as Commerce's analysis, *see* the accompanying Ministerial Error Memorandum.[8] The Ministerial Error Memorandum is a public document and is on file electronically via ACCESS. ACCESS is available to registered users at *https://access.trade.gov.*

Pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to reflect the correction of these ministerial errors in the calculation of the weighted-average dumping margin assigned to Evraz in the *Final Results,* which changes from 36.02 percent to 26.15 percent.

Amended Final Results

As a result of correcting the ministerial errors, Commerce determines that the following weighted-average dumping margin exists for the period May 1, 2020, through April 30, 2021:

Exporter or producer	Weighted-average dumping margin (percent)
Evraz Inc. NA[9]	26.15

Disclosure

We intend to disclose to parties in this proceeding under administrative protective order, the amended final results calculations performed within five days after publication of these

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[1] *See* Memorandum, ''Deadline for Ministerial Error Comments for the Final Results,'' dated November 18, 2022.

[2] *See Large Diameter Welded Pipe from Canada: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 71580 (November 23, 2022) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

[3] *See* Evraz Letter, ''Ministerial Error Comments,'' dated November 25, 2022 (Ministerial Error Allegations). Commerce extended the deadline for parties to file ministerial error allegations. *See* Commerce's Letter, ''Deadline Extension Request for Submitting Ministerial Error Allegations,'' dated November 23, 2022.

[4] *See* Domestic Interested Party's Letter, ''Response to Evraz's Ministerial Error Allegation,'' dated November 30, 2022.

[5] *See Final Results* IDM at 3 and Comments 2, 3, 5, and 6.

[6] *See* Ministerial Error Allegations at 1–4.

[7] *Id.* at 4–5.

[8] *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Large Diameter Welded Pipe from Canada; 2020–2021: Ministerial Error Allegations in the Final Results,'' dated concurrently with this notice Ministerial Error Memorandum).

[9] In the underlying investigation, Commerce treated Evraz Inc. NA, Evraz Inc. NA Canada, and the Canadian National Steel Corporation (collectively, Evraz) as a single entity. *See Large Diameter Welded Pipe from Canada: Antidumping Duty Order,* 84 FR 18775, 18776 (May 2, 2019) (*Order*). There is no information on this record of this review that requires reconsideration of this single entity determination.

amended final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of review. Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the amended final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Evraz for which the company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all- others rate if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Evraz will be equal to the weighted- average dumping margin that is established in the amended final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated or reviewed companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 12.32 percent ad valorem, the all-others rate established in the LTFV investigation.[11]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(h) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: December 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28379 Filed 12–28–22; 8:45 am]

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[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[11] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967, C–570–968]

Aluminum Extrusions From the People's Republic of China: Notice of Court Decisions Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Rulings Pursuant to Court Decisions

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

SUMMARY: On December 16, 2022, the U.S. Court of International Trade (CIT) issued its final judgments in *Worldwide Door Components, Inc.* v. *United States,* Slip Op. 22–143, Court No. 19–00012 (*Worldwide IV*), and *Columbia Aluminum Products, LLC* v. *United States*, Slip Op. 22–144, Court No. 19–00013 (*Columbia IV*), sustaining the U.S. Department of Commerce's (Commerce) third remand redeterminations pertaining to the scope ruling for the antidumping (AD) and countervailing duty (CVD) orders on aluminum extrusions from the People's Republic of China (China). In the redeterminations, Commerce found that certain door thresholds imported by Worldwide Door Components, Inc. (Worldwide) and Columbia Aluminum Products, Inc. (Columbia) are outside the scope of the orders, pursuant to the CIT's remand orders in *Worldwide Door Components, Inc.* v. *United States,* Court No. 19–00012, Slip Op. 22–91 (CIT August 10, 2022) (*Worldwide III*) and *Columbia Aluminum Products, Inc.* v. *United States,* Court No. 19–00013, Slip Op. 22–92 (CIT August 10, 2022) (*Columbia III*). Commerce is notifying the public that the CIT's final judgments are not in harmony with Commerce's final scope ruling, and that Commerce is amending the scope ruling to find that the Worldwide and Columbia door thresholds are outside the scope of the orders.

DATES: Applicable December 26, 2022.

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

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2018, Commerce issued its Final Scope Rulings[1] that

[1] *See* Memorandum, ''Antidumping and Countervailing Duty Order on Aluminum

certain door thresholds imported by Worldwide and Columbia fall within the scope of the antidumping and countervailing duty orders on aluminum extrusions from China.[2] Worldwide and Columbia appealed Commerce's Final Scope Ruling. On December 23, 2020, pursuant to the CIT's first remand orders in *Worldwide I* and *Columbia I,*[3] Commerce issued its *First Final Remand Redeterminations,* in which Commerce continued to find that Worldwide's and Columbia's door thresholds were subassemblies included in the scope of the *Orders* and, therefore, failed to satisfy the requirements for the finished merchandise exclusion.[4]

In *Worldwide II* and *Columbia II,* the CIT determined that Commerce impermissibly based its analysis in the *First Final Remand Redeterminations* on inferences that were contradicted or unsupported by other information on the record.[5] The CIT directed Commerce to reconsider whether Worldwide and Columbia door thresholds required cutting or machining prior to incorporation into another product, and to determine whether Worldwide's and Columbia's door thresholds qualified for the finished merchandise exclusion.[6] On December 13, 2021, Commerce issued its *Second Final Remand Redeterminations,* in which Commerce determined that Worldwide's and Columbia's door thresholds were excluded from the *Orders* as finished merchandise.[7]

In *Worldwide III* and *Columbia III,* the CIT held that Commerce's *Second Final Remand Redeterminations* misconstrued aspects of the CIT's decision in *Worldwide II* and *Columbia II* and were not submitted in a form the CIT could sustain upon judicial review.[8] The CIT directed Commerce to issue a new determination, in a form that would go into effect if sustained upon judicial review, determining whether the extruded aluminum components of Worldwide's and Columbia's door thresholds are within the scope of the *Orders.*[9]

In the *Third Final Remand Redeterminations,* Commerce continued to find, in accordance with the CIT's holdings, that Worldwide's and Columbia's door thresholds are outside the scope of the *Orders* based on the finished merchandise exclusion; Commerce also provided further explanation for the basis of that finding and clarified that Commerce did not intend to issue any other scope ruling or other agency determination subsequent to the CIT's order.[10] The CIT subsequently sustained Commerce's remand redeterminations in *Worldwide III* and *Columbia III.*[11]

Timken Notice

In its decision in *Timken,*[12] as clarified by *Diamond Sawblades,*[13] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 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 16, 2022 judgements constitute final decisions of the CIT that are not in harmony with Commerce's Final Scope Ruling. Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

In accordance with the CIT's December 16, 2022, final judgments, Commerce is amending its Final Scope Ruling and determines that the scope of the *Orders* does not cover Worldwide's and Columbia's door thresholds addressed in the Final Scope Ruling.

Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, the cash deposit rate will be zero percent for entries of Worldwide's and Columbia's door thresholds produced in China. In accordance with the CIT's order sustaining Commerce's third final remand redetermination, Commerce intends to, with the publication of this notice, issue instructions to CBP to lift suspension of liquidation of such entries, and to liquidate entries of the door thresholds without regard to antidumping duties, with consideration for any potential appeal of the CIT's final judgement.

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 23, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28400 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–DS–P

Extrusions from the People's Republic of China: Final Scope Rulings on Worldwide Door Components Inc., MJB Wood Group, Inc. and Columbia Door Thresholds,'' dated December 19, 2018 (Final Scope Rulings).

[2] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011); and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order,* 76 FR 30653 (May 26, 2011) (collectively, the *Orders*).

[3] *See Worldwide Door Components, Inc.* v. *United States,* 466 F. Supp. 3d 1370 (CIT 2020) (*Worldwide I*); and *Columbia Aluminum Products, LLC* v. *United States,* 470 F. Supp. 3d 1353 (CIT 2020) (*Columbia I*).

[4] *See Final Results of Redetermination Pursuant to Court Remand, Aluminum Extrusions from the People's Republic of China, Worldwide Door Components, Inc.* v. *United States,* Court No. 19–00012, Slip Op. 20–128 (CIT August 27, 2020), dated December 23, 2020, available at *https://access.trade.gov/resources/remands/20-128.pdf; Final Results of Redetermination Pursuant to Court Remand, Aluminum Extrusions from the People's Republic of China, Columbia Aluminum Products, LLC* v. *United States,* Court No. 19–00013, Slip Op. 20–129 (CIT August 27, 2020), dated December 23, 2020, available at *https://access.trade.gov/resources/remands/20-129.pdf* (collectively, *First Final Remand Redeterminations*).

[5] *See Worldwide Door Components, Inc.* v. *United States,* 537 F. Supp. 3d 1403, 1404–05, 1408–09 (CIT 2021) (*Worldwide II*); and *Columbia Aluminum Products, LLC* v. *United States,* 536 F. Supp. 3d 1346 (CIT 2021) (*Columbia II*).

[6] *See Worldwide II,* 537 F. Supp. 3d at 1404–05, 1414; and *Columbia II,* 536 F. Supp. 3d at 1354.

[7] *See Final Results of Redetermination Pursuant to Court Remand, Worldwide Door Components, Inc.* v. *United States,* Court No. 19–00012, Slip Op. 21–115 (CIT September 14, 2021), dated December 13, 2021, available at *https://access.trade.gov/resources/remands/21-115.pdf; Final Results of Redetermination Pursuant to Court Remand, Columbia Aluminum Products, LLC.* v. *United States,* Court No. 19–00013, Slip Op. 21–116 (CIT September 14, 2021), dated December 13, 2021, available at *https://access.trade.gov/resources/remands/21-116.pdf* (collectively, *Second Final Remand Redeterminations*).

[8] *See Worldwide III,* 589 F. Supp. 3d 1185, 1192–95 (CIT 2022); and *Columbia III,* 587 F. Supp. 3d 1375, 1382–85 (CIT 2022).

[9] *See Worldwide III,* 589 F. Supp. 3d at 1195; and *Columbia III,* 587 F. Supp. 3d at 1385.

[10] *See Final Results of Redetermination Pursuant to Court Remand, Worldwide Door Components, Inc.* v. *United States,* Court No. 19–00012, Slip Op. 22–91 (CIT August 10, 2022), dated September 8, 2022, available at *https://access.trade.gov/resources/remands//22-91.pdf;* and *Final Results of Redetermination Pursuant to Court Remand, Columbia Aluminum Products, LLC.* v. *United States,* Court No. 19–00013, Slip Op. 22–92 (CIT August 10, 2022), dated September 8, 2022, available at *https://access.trade.gov/resources/remands/22-92.pdf* (collectively, *Third Final Remand Redeterminations*).

[11] *See Worldwide IV,* Slip Op. 22–143 at 6; and *Columbia IV,* Slip Op. 22–144 at 6.

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

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–850]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Japan: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this expedited sunset review, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) order on certain large diameter carbon and alloy seamless standard, line and pressure pipe (large diameter pipe) from Japan would be likely to lead to continuation or recurrence of dumping as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Konrad Ptaszynski, 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) 482–6187.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 2022, Commerce published the notice of initiation of the sunset review of the AD order on large diameter pipe from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), Commerce received a notice of intent to participate in this sunset review from Vallourec Star, L.P. and United States Steel Corporation (collectively, the domestic interested parties) within 15 days after the date of publication of the *Initiation Notice.*[2] The domestic interested parties claimed interested party status under section 771(9)(C) of the Act.

Commerce received adequate substantive responses to the *Initiation Notice* from the domestic interested parties within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[3] Commerce received no substantive responses from any respondent interested parties. In accordance with section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited, *i.e.,* 120-day, sunset review of the *Order.*

Scope of the Order

The products covered by this order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[4]

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum. A list of the issues discussed in the Issues and Decision Memorandum is included as 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/FRNotices/ListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(c) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of dumping and that the magnitude of the margin of dumping likely to prevail would be at a rate up to 107.80 percent.

Administrative Protective Order

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.221(c)(5)(ii).

Dated: December 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. History of the *Order*
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Margin of Dumping Likely to Prevail
VII. Final Results of Expedited Sunset Review
VIII. Recommendation

[FR Doc. 2022–28387 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 59779 (October 3, 2022) (*Initiation Notice*).

[2] *See* Domestic Interested Parties' Letter, ''Notice of Intent to Participate in the Fourth Five-Year Review of the Antidumping Duty Order on Carbon and Alloy Seamless Standard, Line and Pressure Pipe (Over 4 ½ Inches) from Japan,'' dated October 17, 2022.

[3] *See* Domestic Interested Parties' Letter, ''Substantive Response to Notice of Initiation,'' dated November 2, 2022.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Expedited Sunset Review of the Antidumping Duty Order on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–972, A–583–848]

Stilbenic Optical Brightening Agents From People's Republic of China and Taiwan: Final Results of Sunset Reviews and Revocation of Order

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

SUMMARY: On October 3, 2022, the U.S. Department of Commerce (Commerce) initiated the sunset reviews of the antidumping duty (AD) orders on stilbenic optical brightening agents (OBAs) from the People's Republic of China (China) and Taiwan. Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, consistent with section 751(c)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce is revoking these AD orders.

DATES: Applicable December 29, 2022.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/AD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2012, Commerce published the AD orders on OBAs from the China and Taiwan.[1] On November 27, 2017, Commerce published the most recent continuation of the *Orders*.[2] On October 3, 2022, Commerce initiated the current sunset reviews of the *Orders* pursuant to section 751(c) of the Act.[3] Consistent with 19 CFR 351.218(d)(1)(iii)(B), because no domestic interested party filed a *timely* notice of intent to participate in these proceedings,[4] we concluded that ''no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act,'' and ''{notified} the {U.S. International Trade Commission} in writing as such.'' [5]

Scope of the Orders

The OBAs covered by the *Orders* are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4'-bis [1,3,5- triazin-2-yl] [6] amino-2,2'- stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by the *Orders* include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from the *Orders* are all forms of 4,4'-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [7] amino-2,2'-stilbenedisulfonic acid, C40H40N12O8S2 (''Fluorescent Brightener 71''). The *Orders* cover the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Revocation

Pursuant to section 751(c)(3)(A) of the Act, if no domestic interested party responds to a notice of initiation, Commerce shall, within 90 days after the initiation of review, revoke the order. Because no domestic interested party filed a *timely* notice of intent to participate in these proceedings, consistent with 19 CFR 351.218(d)(1)(iii)(B), we concluded that ''no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act.'' Consequently, Commerce is revoking the *Orders.*

Effective Date of Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), Commerce intends to instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to the *Orders* entered, or withdrawn from the warehouse, on or after November 27, 2022, the fifth anniversary of the date of publication of the last continuation notice.[8] Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD deposit requirements. Commerce will complete any pending reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(c) and 777(i)(1) of the Act, and 19 CFR 351.218(f)(4) and 19 CFR 351.222(i)(1)(i).

Dated: December 22, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28380 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Stilbenic Optical Brightening Agents from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27423 (May 10, 2012); and *Certain Stilbenic Optical Brightening Agents from Taiwan: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 77 FR 27419 (May 10, 2012) (collectively, *Orders*).

[2] *See Stilbenic Optical Brightening Agents from the People's Republic of China and Taiwan: Continuation of Antidumping Duty Orders,* 82 FR 55990 (November 27, 2017) (*2017 Continuation Notice*).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 59779 (October 3, 2022).

[4] *See* 19 CFR 351.218(d)(1)(i); *see also* Commerce's Letter, ''Five-Year (''Sunset'') Review of the Antidumping Duty Orders on Stilbenic Optical Brightening Agents from China and Taiwan: Rejection of Notice of Intent to Participate,'' dated October 28, 2022; Commerce's Letter, Five-Year (''Sunset'') Review of the Antidumping Duty Orders on Stilbenic Optical Brightening Agents from China and Taiwan: Rejection of Notice of Intent to Participate,'' dated November 2, 2022; Archroma, U.S. Inc.'s (Archroma) Letter, ''Request for Reconsideration of Denial of Archroma's Request for Leave to File Late Notice of Intent to Appear; Sunset Review of the Antidumping Order on Stilbenic Optical Brightening Agents from China and Taiwan; Institution of Five-Year Reviews,'' dated November 11, 2022; Archroma's Letter, ''Supplement to November 11, 2022 Request for Reconsideration of Denial of Archroma's Request for Leave to File Late Notice of Intent to Appear; Sunset Review of the Antidumping Order on Stilbenic Optical Brightening Agents from China and Taiwan; Institution of Five-Year Reviews,'' dated November 17, 2022; Commerce's Letter, ''Five-Year (''Sunset'') Review of the Antidumping Duty Orders on Stilbenic Optical Brightening Agents from China and Taiwan: Rejection of Request for Reconsideration,'' dated November 30, 2022.

[5] *See* Commerce's Letter, ''Sunset Reviews for October 2022,'' dated October 27, 2022.

[6] The brackets in this sentence are part of the chemical formula and do not constitute business proprietary information.

[7] The brackets in this sentence are part of the chemical formula and do not constitute business proprietary information.

[8] *See 2017 Continuation Notice.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC625]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Thursday, January 12, 2023, at 2 p.m. Webinar

registration URL information: *https://attendee.gotowebinar.com/register/315146848626568541.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda:

The Committee plans on reviewing the Salmon Aquaculture Framework: discuss and suggest revisions to range of alternatives and identify issues that would benefit from an Enforcement Committee review. They also plan to review a rough work plan for other 2023 habitat actions. Other business may be discussed as necessary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the date. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Ngagne Jafnar Gueye,

Acting Director,Office of Sustainable Fisheries,National Marine Fisheries Service.

[FR Doc. 2022–28368 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC619]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) is holding an online meeting, which is open to the public.

DATES: The online meeting will be held on Tuesday, January 10, 2023, from 10 a.m. to 3 p.m. Pacific Time or until business for the day is completed.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org).* You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov)* or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: At this online meeting, the HMSMT will discuss further development of analyses for Council action on high priority protected species hard caps for the California drift gillnet fishery, the review of essential fish habitat designations in the Highly Migratory Species Fishery Management Plan, and other HMSMT assignments in 2023.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28367 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC613]

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Observer Program Standard Ex-Vessel Prices

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of standard ex-vessel prices.

SUMMARY: NMFS publishes standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the North Pacific Observer Program (Observer Program). This notice is intended to provide information to vessel owners, processors, registered buyers, and other Observer Program participants about the standard ex-vessel prices that will be used to calculate the observer fee for landings of groundfish and halibut made in 2023. NMFS will send invoices to processors and registered buyers subject to the fee by January 15, 2024. Fees are due to NMFS on or before February 15, 2024.

DATES: The standard prices are valid on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: For general questions about the observer fee and standard ex-vessel prices, contact Amy Hadfield at (907) 586–7376. For questions about the fee billing process, contact Charmaine Weeks at (907) 586–7231. Additional information about the Observer Program is available on NMFS Alaska Region's website at *https://www.fisheries.noaa.gov/alaska/fisheries-observers/north-pacific-observer-program.*

SUPPLEMENTARY INFORMATION:

Background

Regulations at 50 CFR part 679, subpart E, governing the Observer Program, require the deployment of NMFS-certified observers (observers) and electronic monitoring (EM) systems to collect information necessary for the conservation and management of the Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish and halibut fisheries. Fishery managers use information collected by observers and EM to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected

information for stock assessments and marine ecosystem research.

The Observer Program includes two observer coverage categories: the partial coverage category and the full coverage category. All groundfish and halibut vessels and processors subject to observer coverage are included in one of these two categories. Defined at 50 CFR 679.51, the partial coverage category includes vessels and processors that are not required to have an observer or EM at all times, and the full coverage category includes vessels and processors required to have all of their fishing and processing activity observed. Vessels and processors in the full coverage category arrange and pay for observer services from a permitted observer provider. Observer coverage and EM for the partial coverage category is funded through a system of fees based on the ex-vessel value of groundfish and halibut. Throughout this notice, the term ''processor'' refers to shoreside processors, stationary floating processors, and catcher/processors in the partial coverage category.

Landings Subject to Observer Coverage Fee

Pursuant to section 313 of the Magnuson-Stevens Act, NMFS is authorized to assess a fee on all landings accruing against a Federal total allowable catch (TAC) for groundfish or commercial halibut quota landings made by vessels that are subject to Federal regulations and not included in the full coverage category. A fee is only assessed on landings of groundfish from vessels designated on a Federal Fisheries Permit or from vessels landing individual fishing quota (IFQ) or community development quota (CDQ) halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against an IFQ allocation or a Federal TAC for groundfish are included in the fee assessment. A table with additional information about which landings are subject to the observer fee is at section 679.55(c) and on page 2 of an informational bulletin titled ''Observer Fee Collection'' that can be downloaded from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/resource/document/observer-fee-collection-north-pacific-groundfish-and-halibut-fisheries-observer.*

Fee Determination

A fee equal to 1.65 percent of the ex-vessel value is assessed on the landings of groundfish and halibut subject to the fee. Ex-vessel value is determined by multiplying the standard price for groundfish by the round weight equivalent for each species, gear, and port combination, and the standard price for halibut by the headed and gutted weight equivalent. Standard prices are determined by aggregating prices by species, gear, and area grouping to arrive at an average price per pound for each grouping. NMFS reviews each vessel landing report and determines whether the reported landing is subject to the observer fee and, if so, which groundfish species in the landing are subject to the observer fee. All IFQ or CDQ halibut in a landing subject to the observer fee will be included in the observer fee calculation. For any landed groundfish or halibut subject to the observer fee, NMFS will apply the appropriate standard ex-vessel prices for the species, gear type, and port and calculate the observer fee associated with the landing.

Processors and registered buyers can access the landing-specific, observer fee information through the NMFS Web Application (*https://alaskafisheries.noaa.gov/webapps/efish/login*) or eLandings (*https://elandings.alaska.gov/*). Observer fee information is either available immediately or within 24 hours after a landing report is submitted electronically. A time lag occurs for some landings because NMFS must process each landing report through the catch accounting system to determine which groundfish in a landing accrues against a Federal TAC and are subject to the observer fee.

Under the fee system, catcher vessel owners split the fee with the registered buyers or owners of shoreside or stationary floating processors. While the owners of catcher vessels and processors in the partial coverage category are each responsible for paying their portion of the fee, the owners of shoreside or stationary floating processors and registered buyers are responsible for collecting the fees from catcher vessels, and remitting the full fee to NMFS. Owners of catcher/processors in the partial coverage category are responsible for remitting the full fee to NMFS.

NMFS sends invoices to processors and registered buyers by January 15 of each calendar year. The total fee amount is determined by the sum of the fees reported for each landing at that processor or registered buyer in the prior calendar year. Processors and registered buyers must pay the fees to NMFS using eFISH. Payments are due by February 15 of each year. Processors and registered buyers have access to this system through a User ID and password issued by NMFS. Instructions for electronic payment are provided on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/alaska/commercial-fishing/observer-fee-collection-and-payment-north-pacific-groundfish-and-halibut* and on the observer fee invoice to be mailed to each processor and registered buyer.

Standard Prices

This notification provides the standard ex-vessel prices for groundfish and halibut species subject to the observer fee in 2023. Data sources for ex-vessel prices include the following:

- For groundfish other than sablefish IFQ and sablefish accruing against the fixed gear sablefish CDQ reserve, the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross revenue data, which are based on the Commercial Operator Annual Report (COAR) and Alaska Department of Fish and Game (ADF&G) fish tickets; and
- For halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve, the IFQ Buyer Report that is submitted to NMFS annually by each registered buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish and halibut or CDQ landings of halibut under section 679.5(l)(7)(i).

The standard prices in this notification were calculated using the following procedures for protecting confidentiality of data submitted to or collected by NMFS. NMFS does not publish any price information that would permit the identification of an individual or business. For NMFS to publish a standard price for a particular species-gear-port combination, the price data used to calculate the standard price must represent landings from at least four different vessels to at least three different processors in a port or port group. Price data that are confidential because fewer than four vessels or three processors contributed data to a particular species-gear-port combination have been aggregated.

Groundfish Standard Ex-Vessel Prices

Table 1 shows the groundfish species standard ex-vessel prices that will be used to calculate the fee for 2023. These prices are based on the CFEC gross revenue data, which are based on landings data from ADF&G fish tickets and information from the COAR. The COAR contains statewide buying and production information, and is considered the most complete routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska.

The standard ex-vessel prices for groundfish were calculated by adding

ex-vessel value from the CFEC gross revenue files for 2019, 2020, and 2021 by species, port, and gear category, and adding the volume (round weight equivalent) from the CFEC gross revenue files for 2019, 2020, and 2021 by species, port, and gear category, and then dividing total ex-vessel value over the 3 year period in each category by total volume over the 3 year period in each category. This calculation results in an average ex-vessel price per pound by species, port, and gear category for the 3 year period. Three gear categories were used for the standard ex-vessel prices: (1) non-trawl gear, including hook-and-line, pot, jig, troll, and others (Non-Trawl); (2) non-pelagic trawl gear (NPT); and (3) pelagic trawl gear (PTR).

CFEC ex-vessel value and volume data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than two years old. For the 2023 groundfish standard ex-vessel prices, the most recent ex-vessel value and volume data available are from 2021.

If a particular groundfish species is not listed in Table 1, the standard ex-vessel price for a species group (if it exists in the management area) will be used. If price data for a particular species remained confidential once aggregated to the outside of Alaska (ALL) level, data are aggregated by species group (Flathead Sole; GOA Deep-water Flatfish; GOA Shallow-water Flatfish; GOA Skate, Other; and Other Rockfish). Standard prices for the groundfish species groups are shown in Table 2.

If a port-level price does not meet the confidentiality requirements, the data are aggregated by port group. Port-group data for Southeast Alaska (SEAK) and the Eastern GOA excluding Southeast Alaska (EGOAxSE) also are presented separately when price data are available. Port-group data are aggregated by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA) and by subarea in the BSAI (BS subarea and AI subarea). If confidentiality requirements are still not met by aggregating prices across ports at these levels, the prices are aggregated at the level of BSAI or GOA, then statewide (AK) and ports outside of Alaska (OTAK), and finally all ports, including those outside of Alaska (ALL).

Standard prices are presented separately for non-pelagic trawl and pelagic trawl when non-confidential data are available. NMFS also calculated prices for a ''Pelagic Trawl/Non-pelagic Trawl Combined'' (PTR/NPT) category that can be used when combining trawl price data for landings of a species in a particular port or port group will not violate confidentiality requirements. Creating this standard price category allows NMFS to assess a fee on 2023 landings of some of the species with pelagic trawl gear based on a combined trawl gear price for the port or port group.

If no standard ex-vessel price is listed for a species or species group and gear category combination in Table 1, Table 2, or Table 3, no fee will be assessed on that landing. Volume and value data for that species will be added to the standard ex-vessel prices in future years, if the data become available and display of a standard ex-vessel price meets confidentiality requirements.

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2023 OBSERVER COVERAGE FEE

[Based on volume and value from 2019, 2020, and 2021]

Species (species code) [1 2]	Port/area [3 4]	Non-trawl	NPT	PTR	PTR/NPT
Alaska Plaice Flounder (133)	Kodiak		$0.15		$0.15
Alaska Plaice Flounder (133)	CGOA	—	0.15	—	0.15
Alaska Plaice Flounder (133)	GOA	—	0.14	—	0.14
Alaska Plaice Flounder (133)	AK	—	0.14	—	0.14
Alaska Plaice Flounder (133)	ALL	—	0.14	—	0.14
Arrowtooth Flounder (121)	Kodiak	—	0.06	0.05	—
Arrowtooth Flounder (121)	CGOA	—	0.06	0.05	—
Arrowtooth Flounder (121)	GOA	—	0.06	0.05	—
Arrowtooth Flounder (121)	AK	—	0.06	0.05	—
Arrowtooth Flounder (121)	ALL	—	0.06	0.05	—
Atka Mackerel (193)	Kodiak	—	—	0.11	0.16
Atka Mackerel (193)	CGOA	—	—	0.11	0.16
Atka Mackerel (193)	GOA	—	—	0.11	0.16
Atka Mackerel (193)	AK	—	—	0.11	0.16
Atka Mackerel (193)	ALL	—	—	0.11	0.16
Black Rockfish (142)	AK	0.68	0.15	—	0.15
Bocaccio Rockfish (137)	Sitka	0.43	—	—	—
Bocaccio Rockfish (137)	SEAK	0.48	—	—	—
Bocaccio Rockfish (137)	EGOA	0.40	—	—	—
Bocaccio Rockfish (137)	GOA	0.40	—	—	—
Bocaccio Rockfish (137)	AK	0.40	—	—	—
Bocaccio Rockfish (137)	ALL	0.38	—	—	—
Butter Sole (126)	Kodiak	—	0.12	—	0.12
Butter Sole (126)	CGOA	—	0.12	—	0.12
Butter Sole (126)	GOA	—	0.12	—	0.12
Butter Sole (126)	AK	—	0.12	—	0.12
Butter Sole (126)	ALL	—	0.12	—	0.12
Canary Rockfish (146)	Craig	0.33	—	—	—
Canary Rockfish (146)	Juneau	0.37	—	—	—
Canary Rockfish (146)	Petersburg	0.27	—	—	—
Canary Rockfish (146)	Sitka	0.29	—	—	—
Canary Rockfish (146)	SEAK	0.39	—	—	—
Canary Rockfish (146)	EGOAxSE	0.42	—	—	—
Canary Rockfish (146)	Homer	0.46	—	—	—
Canary Rockfish (146)	Seward	0.44	—	—	—
Canary Rockfish (146)	CGOA	0.44	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2023 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2019, 2020, and 2021]

Species (species code) [1 2]	Port/area [3 4]	Non-trawl	NPT	PTR	PTR/NPT
Canary Rockfish (146)	GOA	0.40	—	—	—
Canary Rockfish (146)	AK	0.40	—	—	—
Canary Rockfish (146)	ALL	0.40	—	—	—
China Rockfish (149)	Juneau	0.24	—	—	—
China Rockfish (149)	Sitka	0.39	—	—	—
China Rockfish (149)	SEAK	0.50	—	—	—
China Rockfish (149)	Cordova	0.44	—	—	—
China Rockfish (149)	EGOAxSE	0.41	—	—	—
China Rockfish (149)	Homer	0.37	—	—	—
China Rockfish (149)	Seward	0.26	—	—	—
China Rockfish (149)	CGOA	0.34	—	—	—
China Rockfish (149)	GOA	0.41	—	—	—
China Rockfish (149)	AK	0.41	—	—	—
China Rockfish (149)	ALL	0.41	—	—	—
Copper Rockfish (138)	Sitka	0.21	—	—	—
Copper Rockfish (138)	SEAK	0.36	—	—	—
Copper Rockfish (138)	Cordova	0.38	—	—	—
Copper Rockfish (138)	EGOAxSE	0.58	—	—	—
Copper Rockfish (138)	Homer	0.57	—	—	—
Copper Rockfish (138)	Seward	0.52	—	—	—
Copper Rockfish (138)	CGOA	0.53	—	—	—
Copper Rockfish (138)	GOA	0.51	—	—	—
Copper Rockfish (138)	AK	0.51	—	—	—
Copper Rockfish (138)	ALL	0.51	—	—	—
Darkblotched Rockfish (159)	ALL	0.16	—	—	—
Dover Sole (124)	Kodiak	—	0.07	—	0.07
Dover Sole (124)	CGOA	—	0.07	—	0.07
Dover Sole (124)	GOA	—	0.07	—	0.07
Dover Sole (124)	AK	—	0.07	—	0.07
Dover Sole (124)	ALL	—	0.07	—	0.07
Dusky Rockfish (172)	Juneau	0.24	—	—	—
Dusky Rockfish (172)	Sitka	0.47	—	—	—
Dusky Rockfish (172)	Cordova	0.40	—	—	—
Dusky Rockfish (172)	SEAK	0.46	—	—	—
Dusky Rockfish (172)	EGOAxSE	0.45	—	—	—
Dusky Rockfish (172)	Homer	0.44	—	—	—
Dusky Rockfish (172)	Kodiak	0.54	0.16	0.14	—
Dusky Rockfish (172)	Seward	0.46	—	—	—
Dusky Rockfish (172)	CGOA	0.52	0.16	0.14	—
Dusky Rockfish (172)	GOA	0.51	0.16	0.14	—
Dusky Rockfish (172)	AK	0.51	0.16	0.14	—
Dusky Rockfish (172)	ALL	0.51	0.16	0.14	—
English Sole (128)	Kodiak	—	0.13	—	0.13
English Sole (128)	CGOA	—	0.13	—	0.13
English Sole (128)	GOA	—	0.13	—	0.13
English Sole (128)	AK	—	0.13	—	0.13
English Sole (128)	ALL	—	0.13	—	0.13
Flathead Sole (122)	Kodiak	—	0.13	0.12	—
Flathead Sole (122)	CGOA	—	0.13	0.12	—
Flathead Sole (122)	GOA	—	0.13	0.12	—
Flathead Sole (122)	AK	—	0.13	0.12	—
Flathead Sole (122)	ALL	—	0.13	0.12	—
Northern Rockfish (136)	Kodiak	—	0.16	—	0.16
Northern Rockfish (136)	CGOA	—	0.16	—	0.16
Northern Rockfish (136)	GOA	—	0.16	—	0.16
Northern Rockfish (136)	AK	—	0.16	—	0.16
Northern Rockfish (136)	ALL	—	0.16	—	0.16
Octopus (870)	Homer	0.78	—	—	—
Octopus (870)	Kodiak	0.55	0.56	—	0.56
Octopus (870)	CGOA	0.57	0.56	—	0.56
Octopus (870)	WGOA	0.60	—	—	—
Octopus (870)	GOA	0.59	0.56	—	0.56
Octopus (870)	Dutch Harbor	0.46	—	—	—
Octopus (870)	BS	0.56	—	—	—
Octopus (870)	BSAI	0.52	—	—	—
Octopus (870)	AK	0.54	0.56	—	0.56
Octopus (870)	ALL	0.54	0.56	—	0.56
Pacific Cod (110)	Craig	0.24	—	—	—
Pacific Cod (110)	Juneau	0.67	—	—	—
Pacific Cod (110)	Ketchikan	0.28	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2023 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2019, 2020, and 2021]

Species (species code) [1 2]	Port/area [3 4]	Non-trawl	NPT	PTR	PTR/NPT
Pacific Cod (110)	Petersburg	0.58	—	—	—
Pacific Cod (110)	Sitka	0.58	—	—	—
Pacific Cod (110)	SEAK	0.64	—	—	—
Pacific Cod (110)	Cordova	0.61	—	—	—
Pacific Cod (110)	Whittier	0.49	—	—	—
Pacific Cod (110)	EGOAxSE	0.52	—	—	—
Pacific Cod (110)	Homer	0.43	—	—	—
Pacific Cod (110)	Kodiak	0.44	0.38	0.37	—
Pacific Cod (110)	Seward	0.40	—	—	—
Pacific Cod (110)	CGOA	0.44	0.38	0.37	—
Pacific Cod (110)	King Cove	0.42	—	—	—
Pacific Cod (110)	WGOA	0.43	0.41	0.30	—
Pacific Cod (110)	GOA	—	0.39	0.33	—
Pacific Cod (110)	Dillingham	0.40	—	—	—
Pacific Cod (110)	Dutch Harbor	0.42	0.41	—	0.41
Pacific Cod (110)	BS	0.43	0.40	0.15	—
Pacific Cod (110)	BSAI	0.42	0.39	0.15	—
Pacific Cod (110)	Stationary Floating Processor	0.40	—	—	—
Pacific Cod (110)	AK	0.42	0.39	0.32	—
Pacific Cod (110)	ALL	0.42	0.39	0.32	—
Pacific Ocean Perch (141)	EGOA	0.30	—	—	—
Pacific Ocean Perch (141)	Kodiak	—	0.16	0.15	—
Pacific Ocean Perch (141)	CGOA	—	0.16	0.15	—
Pacific Ocean Perch (141)	GOA	0.17	0.16	0.15	—
Pacific Ocean Perch (141)	BSAI	—	—	0.11	0.11
Pacific Ocean Perch (141)	AK	0.17	0.16	0.14	—
Pacific Ocean Perch (141)	ALL	0.17	0.16	0.14	—
Pollock (270)	Kodiak	0.06	0.12	0.13	—
Pollock (270)	Seward	0.11	—	—	—
Pollock (270)	CGOA	0.07	0.12	0.13	—
Pollock (270)	WGOA	—	0.14	0.12	—
Pollock (270)	GOA	0.07	0.12	0.13	—
Pollock (270)	Dutch Harbor	—	—	0.16	0.16
Pollock (270)	BS	—	—	0.16	0.16
Pollock (270)	BSAI	—	0.15	0.16	—
Pollock (270)	AK	0.07	0.12	0.13	—
Pollock (270)	ALL	0.07	0.12	0.13	—
Quillback Rockfish (147)	Craig	0.58	—	—	—
Quillback Rockfish (147)	Juneau	0.39	—	—	—
Quillback Rockfish (147)	Ketchikan	0.48	—	—	—
Quillback Rockfish (147)	Petersburg	0.33	—	—	—
Quillback Rockfish (147)	Sitka	0.35	—	—	—
Quillback Rockfish (147)	SEAK	0.44	—	—	—
Quillback Rockfish (147)	Cordova	0.43	—	—	—
Quillback Rockfish (147)	EGOAxSE	0.43	—	—	—
Quillback Rockfish (147)	Homer	0.38	—	—	—
Quillback Rockfish (147)	Kodiak	0.55	—	—	—
Quillback Rockfish (147)	Seward	0.33	—	—	—
Quillback Rockfish (147)	CGOA	0.34	—	—	—
Quillback Rockfish (147)	GOA	0.40	—	—	—
Quillback Rockfish (147)	AK	0.40	—	—	—
Quillback Rockfish (147)	ALL	0.40	—	—	—
Redbanded Rockfish (153)	Juneau	0.31	—	—	—
Redbanded Rockfish (153)	Ketchikan	0.49	—	—	—
Redbanded Rockfish (153)	Petersburg	0.22	—	—	—
Redbanded Rockfish (153)	Sitka	0.41	—	—	—
Redbanded Rockfish (153)	SEAK	0.35	—	—	—
Redbanded Rockfish (153)	Cordova	0.39	—	—	—
Redbanded Rockfish (153)	EGOAxSE	0.29	—	—	—
Redbanded Rockfish (153)	Homer	0.26	—	—	—
Redbanded Rockfish (153)	Kodiak	0.17	0.12	—	0.12
Redbanded Rockfish (153)	Seward	0.33	—	—	—
Redbanded Rockfish (153)	CGOA	0.25	0.12	—	0.12
Redbanded Rockfish (153)	GOA	0.33	0.12	—	0.12
Redbanded Rockfish (153)	AK	0.33	0.12	—	0.12
Redbanded Rockfish (153)	ALL	0.33	0.12	—	0.12
Redstripe Rockfish (158)	SEAK	0.43	—	—	—
Redstripe Rockfish (158)	EGOA	0.44	—	—	—
Redstripe Rockfish (158)	CGOA	0.35	—	—	—
Redstripe Rockfish (158)	GOA	0.44	—	—	—

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2023 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2019, 2020, and 2021]

Species (species code) [1 2]	Port/area [3 4]	Non-trawl	NPT	PTR	PTR/NPT
Redstripe Rockfish (158)	AK	0.44	—	—	—
Redstripe Rockfish (158)	ALL	0.44	—	—	—
Rex Sole (125)	Kodiak	—	0.30	0.15	—
Rex Sole (125)	CGOA	—	0.30	0.15	—
Rex Sole (125)	GOA	—	0.30	0.15	—
Rex Sole (125)	AK	—	0.30	0.13	—
Rex Sole (125)	ALL	—	0.30	0.13	—
Rock Sole (123)	Kodiak	—	0.17	0.17	—
Rock Sole (123)	CGOA	—	0.17	0.17	—
Rock Sole (123)	GOA	—	0.17	0.17	—
Rock Sole (123)	AK	—	0.17	0.17	—
Rock Sole (123)	ALL	—	0.17	0.17	—
Rosethorn Rockfish (150)	SEAK	0.44	—	—	—
Rosethorn Rockfish (150)	EGOA	0.44	—	—	—
Rosethorn Rockfish (150)	Seward	0.34	—	—	—
Rosethorn Rockfish (150)	CGOA	0.34	—	—	—
Rosethorn Rockfish (150)	GOA	0.42	—	—	—
Rosethorn Rockfish (150)	AK	0.42	—	—	—
Rosethorn Rockfish (150)	ALL	0.42	—	—	—
Rougheye Rockfish (151)	Juneau	0.30	—	—	—
Rougheye Rockfish (151)	Ketchikan	0.64	—	—	—
Rougheye Rockfish (151)	Petersburg	0.27	—	—	—
Rougheye Rockfish (151)	Sitka	0.43	—	—	—
Rougheye Rockfish (151)	SEAK	0.38	—	—	—
Rougheye Rockfish (151)	Cordova	0.38	—	—	—
Rougheye Rockfish (151)	Whittier	0.29	—	—	—
Rougheye Rockfish (151)	EGOAxSE	0.28	—	—	—
Rougheye Rockfish (151)	Homer	0.32	—	—	—
Rougheye Rockfish (151)	Kodiak	0.24	0.25	0.20	—
Rougheye Rockfish (151)	Seward	0.36	—	—	—
Rougheye Rockfish (151)	CGOA	0.31	0.25	0.20	—
Rougheye Rockfish (151)	WGOA	0.36	—	—	—
Rougheye Rockfish (151)	GOA	—	0.26	0.20	—
Rougheye Rockfish (151)	BSAI	0.22	—	—	—
Rougheye Rockfish (151)	AK	0.34	0.26	0.20	—
Rougheye Rockfish (151)	Bellingham	0.19	—	—	—
Rougheye Rockfish (151)	OTAK	0.19	—	—	—
Rougheye Rockfish (151)	ALL	0.34	0.26	0.20	—
Sablefish (blackcod) (710)	Kodiak	n/a [5]	1.14	2.73	—
Sablefish (blackcod) (710)	CGOA	n/a [5]	1.14	2.73	—
Sablefish (blackcod) (710)	GOA	n/a [5]	1.15	2.73	—
Sablefish (blackcod) (710)	AK	n/a [5]	1.15	1.50	—
Sablefish (blackcod) (710)	ALL	n/a [5]	1.15	1.50	—
Shortraker Rockfish (152)	Juneau	0.34	—	—	—
Shortraker Rockfish (152)	Ketchikan	0.46	—	—	—
Shortraker Rockfish (152)	Petersburg	0.27	—	—	—
Shortraker Rockfish (152)	Sitka	0.41	—	—	—
Shortraker Rockfish (152)	SEAK	0.38	—	—	—
Shortraker Rockfish (152)	Cordova	0.42	—	—	—
Shortraker Rockfish (152)	Whittier	0.23	—	—	—
Shortraker Rockfish (152)	EGOAxSE	0.30	—	—	—
Shortraker Rockfish (152)	Homer	0.25	—	—	—
Shortraker Rockfish (152)	Kodiak	0.23	0.16	0.19	—
Shortraker Rockfish (152)	Seward	0.36	—	—	—
Shortraker Rockfish (152)	CGOA	0.32	0.16	0.19	—
Shortraker Rockfish (152)	GOA	0.36	0.21	0.19	—
Shortraker Rockfish (152)	AK	0.36	0.21	0.19	—
Shortraker Rockfish (152)	ALL	0.14	—	—	—
Silvergray Rockfish (157)	Craig	0.34	—	—	—
Silvergray Rockfish (157)	Juneau	0.44	—	—	—
Silvergray Rockfish (157)	Petersburg	0.24	—	—	—
Silvergray Rockfish (157)	Sitka	0.42	—	—	—
Silvergray Rockfish (157)	SEAK	0.40	—	—	—
Silvergray Rockfish (157)	Cordova	0.48	—	—	—
Silvergray Rockfish (157)	EGOAxSE	0.30	—	—	—
Silvergray Rockfish (157)	Homer	0.25	—	—	—
Silvergray Rockfish (157)	Kodiak	0.24	0.13	—	0.13
Silvergray Rockfish (157)	Seward	0.35	—	—	—
Silvergray Rockfish (157)	CGOA	0.33	0.13	—	0.13
Silvergray Rockfish (157)	GOA	0.37	0.13	—	0.13

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2023 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2019, 2020, and 2021]

Species (species code) [1 2]	Port/area [3 4]	Non-trawl	NPT	PTR	PTR/NPT
Silvergray Rockfish (157)	AK	0.37	0.13	—	0.13
Silvergray Rockfish (157)	ALL	0.36	0.13	—	0.13
Skate, Big (702)	EGOA	0.40	—	—	—
Skate, Big (702)	Kodiak	0.45	0.44	0.45	—
Skate, Big (702)	Seward	0.29	—	—	—
Skate, Big (702)	CGOA	0.40	0.44	0.45	—
Skate, Big (702)	GOA	0.40	0.44	0.45	—
Skate, Big (702)	AK	0.40	0.44	0.45	—
Skate, Big (702)	ALL	0.40	0.44	0.45	—
Skate, Longnose (701)	SEAK	0.40	—	—	—
Skate, Longnose (701)	EGOA	0.31	—	—	—
Skate, Longnose (701)	Homer	0.15	—	—	—
Skate, Longnose (701)	Kodiak	0.43	0.45	0.45	—
Skate, Longnose (701)	Seward	0.38	—	—	—
Skate, Longnose (701)	CGOA	0.39	0.45	0.45	—
Skate, Longnose (701)	GOA	0.37	0.45	0.45	—
Skate, Longnose (701)	AK	0.37	0.45	0.45	—
Skate, Longnose (701)	ALL	0.35	0.45	0.45	—
Skate, Other (700)	AK	—	0.07	—	0.08
Skate, Other (700)	ALL	—	0.07	—	0.08
Thornyhead Rockfish (Idiots) (143)	Juneau	0.90	—	—	—
Thornyhead Rockfish (Idiots) (143)	Ketchikan	1.03	—	—	—
Thornyhead Rockfish (Idiots) (143)	Petersburg	0.97	—	—	—
Thornyhead Rockfish (Idiots) (143)	Sitka	0.85	—	—	—
Thornyhead Rockfish (Idiots) (143)	SEAK	0.88	—	—	—
Thornyhead Rockfish (Idiots) (143)	Cordova	0.58	—	—	—
Thornyhead Rockfish (Idiots) (143)	Whittier	0.18	—	—	—
Thornyhead Rockfish (Idiots) (143)	EGOAxSE	0.62	—	—	—
Thornyhead Rockfish (Idiots) (143)	Homer	0.67	—	—	—
Thornyhead Rockfish (Idiots) (143)	Kodiak	0.73	0.35	—	0.35
Thornyhead Rockfish (Idiots) (143)	Seward	0.69	—	—	—
Thornyhead Rockfish (Idiots) (143)	CGOA	0.71	0.35	—	0.35
Thornyhead Rockfish (Idiots) (143)	GOA	0.83	—	—	—
Thornyhead Rockfish (Idiots) (143)	BS	—	0.36	—	0.37
Thornyhead Rockfish (Idiots) (143)	BSAI	0.68	—	—	—
Thornyhead Rockfish (Idiots) (143)	AK	0.65	—	—	—
Thornyhead Rockfish (Idiots) (143)	OTAK	0.79	0.36	0.63	—
Thornyhead Rockfish (Idiots) (143)	ALL	0.52	—	—	—
Tiger Rockfish (148)	Juneau	0.30	—	—	—
Tiger Rockfish (148)	Sitka	0.24	—	—	—
Tiger Rockfish (148)	SEAK	0.44	—	—	—
Tiger Rockfish (148)	Cordova	0.38	—	—	—
Tiger Rockfish (148)	EGOAxSE	0.38	—	—	—
Tiger Rockfish (148)	Homer	0.24	—	—	—
Tiger Rockfish (148)	Seward	0.28	—	—	—
Tiger Rockfish (148)	CGOA	0.25	—	—	—
Tiger Rockfish (148)	GOA	0.33	—	—	—
Tiger Rockfish (148)	AK	0.33	—	—	—
Tiger Rockfish (148)	ALL	0.33	—	—	—
Vermilion Rockfish (184)	SEAK	0.60	—	—	—
Vermilion Rockfish (184)	EGOA	0.60	—	—	—
Vermilion Rockfish (184)	GOA	0.60	—	—	—
Vermilion Rockfish (184)	AK	0.60	—	—	—
Vermilion Rockfish (184)	ALL	0.60	—	—	—
Widow Rockfish (156)	GOA	0.64	—	—	—
Widow Rockfish (156)	AK	0.64	—	—	—
Widow Rockfish (156)	ALL	0.64	—	—	—
Yelloweye Rockfish (145)	Craig	1.82	—	—	—
Yelloweye Rockfish (145)	Juneau	0.93	—	—	—
Yelloweye Rockfish (145)	Ketchikan	1.65	—	—	—
Yelloweye Rockfish (145)	Petersburg	1.10	—	—	—
Yelloweye Rockfish (145)	Sitka	1.44	—	—	—
Yelloweye Rockfish (145)	Wrangell	0.86	—	—	—
Yelloweye Rockfish (145)	SEAK	1.36	—	—	—
Yelloweye Rockfish (145)	Cordova	0.68	—	—	—
Yelloweye Rockfish (145)	EGOAxSE	0.60	—	—	—
Yelloweye Rockfish (145)	Homer	0.71	—	—	—
Yelloweye Rockfish (145)	Kodiak	0.31	0.27	—	0.27
Yelloweye Rockfish (145)	Seward	0.64	—	—	—
Yelloweye Rockfish (145)	CGOA	0.61	0.27	—	0.27

TABLE 1—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES FOR 2023 OBSERVER COVERAGE FEE—Continued

[Based on volume and value from 2019, 2020, and 2021]

Species (species code) [1] [2]	Port/area [3] [4]	Non-trawl	NPT	PTR	PTR/NPT
Yelloweye Rockfish (145)	WGOA	0.48	—	—	—
Yelloweye Rockfish (145)	GOA	—	0.27	—	0.27
Yelloweye Rockfish (145)	BSAI	0.21	—	—	—
Yelloweye Rockfish (145)	AK	1.12	0.27	—	0.27
Yelloweye Rockfish (145)	ALL	1.11	0.27	—	0.27
Yellowtail Rockfish (155)	Sitka	0.63	—	—	—
Yellowtail Rockfish (155)	SEAK	0.64	—	—	—
Yellowtail Rockfish (155)	EGOA	0.64	—	—	—
Yellowtail Rockfish (155)	Homer	0.87	—	—	—
Yellowtail Rockfish (155)	CGOA	0.61	—	—	—
Yellowtail Rockfish (155)	GOA	0.62	—	—	—
Yellowtail Rockfish (155)	AK	0.62	—	—	—
Yellowtail Rockfish (155)	ALL	0.57	—	—	—

— = no landings in last 3 years or the data is confidential.

[1] If species is not listed, use price for the species group in Table 2 if it exists in the management area. If no price is available for the species or species group in Table 1, Table 2, or Table 3, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] For species codes, see Table 2a to 50 CFR part 679.

[3] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; BSAI = Bering Sea/Aleutian Islands; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

[4] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination, or see Table 2 or Table 3.

[5] n/a = ex-vessel prices for sablefish landed with hook-and-line, pot, or jig gear are listed in Table 3 with the prices for IFQ and CDQ landings.

TABLE 2—STANDARD EX-VESSEL PRICES FOR GROUNDFISH SPECIES GROUPS FOR 2023 OBSERVER COVERAGE FEE

[Based on volume and value from 2019, 2020, and 2021]

BSAI Skate and GOA Skate, Other (USKT [4]).	EGOA	$0.27	—	—	—
BSAI Skate and GOA Skate, Other (USKT [4]).	GOA	0.31	—	—	—
BSAI Skate and GOA Skate, Other (USKT [4]).	AK	0.31	0.09	—	0.09
Flathead Sole (FSOL [5])	Kodiak	—	0.13	0.12	—
Flathead Sole (FSOL [5])	CGOA	—	0.13	0.12	—
Flathead Sole (FSOL [5])	GOA	—	0.13	0.12	—
Flathead Sole (FSOL [5])	AK	—	0.13	0.12	—
GOA Deep Water Flatfish (DFL [6])	Kodiak	—	0.07	—	0.07
GOA Deep Water Flatfish (DFL [6])	CGOA	—	0.07	—	0.07
GOA Deep Water Flatfish (DFL [6])	GOA	—	0.07	—	0.07
GOA Shallow Water Flatfish (SFL [7])	Kodiak	—	0.16	0.14	—
GOA Shallow Water Flatfish (SFL [7])	CGOA	—	0.16	0.14	—
GOA Shallow Water Flatfish (SFL [7])	GOA	—	0.16	0.14	—
Other Rockfish (ROCK [8])	Craig	0.30	—	—	—
Other Rockfish (ROCK [8])	Juneau	0.44	—	—	—
Other Rockfish (ROCK [8])	Ketchikan	0.52	—	—	—
Other Rockfish (ROCK [8])	Petersburg	0.32	—	—	—
Other Rockfish (ROCK [8])	Sitka	0.43	—	—	—
Other Rockfish (ROCK [8])	SEAK	0.42	—	—	—
Other Rockfish (ROCK [8])	Cordova	0.61	—	—	—
Other Rockfish (ROCK [8])	Whittier	0.43	—	—	—
Other Rockfish (ROCK [8])	EGOAxSE	0.53	—	—	—
Other Rockfish (ROCK [8])	Homer	0.66	—	—	—
Other Rockfish (ROCK [8])	Kodiak	0.29	0.16	—	0.17
Other Rockfish (ROCK [8])	Seward	0.55	—	—	—
Other Rockfish (ROCK [8])	CGOA	0.54	0.16	—	0.17
Other Rockfish (ROCK [8])	WGOA	0.57	—	—	—
Other Rockfish (ROCK [8])	GOA	—	0.16	—	0.17
Other Rockfish (ROCK [9])	BS	0.64	—	—	—
Other Rockfish (ROCK [9])	BSAI	0.59	—	—	—
Other Rockfish (ROCK)	AK	—	0.20	—	0.21

— = no landings in last 3 years or the data is confidential.

[1] If groundfish species is not listed in Table 1, use price for the species group if it exists in the management area. If no price is available for the species or species group in Table 1, Table 2, or Table 3, no fee will be assessed on that landing. That species will come into standard ex-vessel prices in future years.

[2] Regulatory areas are defined at § 679.2. (AI = Aleutian Islands subarea; AK = Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOA = Eastern Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; GOA = Gulf of Alaska; SEAK = Southeast Alaska).

[3] If a price is listed for the species, port, and gear type combination, that price will be applied to the round weight equivalent for groundfish landings. If no price is listed for the port and gear type combination, use port group and gear type combination.

[4] "BSAI Skate and GOA Stake, Other" means all skates with the exception of Raja binoculata (Big), R. rhina (Longnose), Bathyraja aleutica (Aleutian) and B. parmifera (Alaska).

[5] "Flathead sole" includes Hippoglossoides elassodon (flathead sole) and H. robustus (Bering flounder).

[6] "Deep-water flatfish" in the GOA means Dover sole, Greenland turbot, Kamchatka flounder, and deepsea sole.

[7] "Shallow-water flatfish" in the GOA means flatfish not including "deep-water flatfish", flathead sole, rex sole, or arrowtooth flounder.

[8] In the GOA: "Other rockfish (slope rockfish)" means Sebastes aurora (aurora), S. melanostomus (blackgill), S. paucispinis (bocaccio), S. goodei (chilipepper), S. crameri (darkblotch), S. elongatus (greenstriped), S. variegatus (harlequin), S. wilsoni (pygmy), S. babcocki (redbanded), S. proriger (redstripe), S. zacentrus (sharpchin), S. jordani (shortbelly), S. brevispinis (silvergray), S. diploproa (splitnose), S. saxicola (stripetail), S. miniatus (vermilion), S. reedi (yellowmouth), S. entomelas (widow), and S. flavidus (yellowtail). "Demersal shelf rockfish" means Sebastes pinniger (canary), S. nebulosus (china), S. caurinus (copper), S. maliger (quillback), S. helvomaculatus (rosethorn), S. nigrocinctus (tiger), and S. ruberrimus (yelloweye). "Other rockfish" in the Western and Central Regulatory Areas means "other rockfish (slope rockfish)" and demersal shelf rockfish. "Other rockfish" in the West Yakutat District of the EGOA means "other rockfish (slope rockfish)," northern rockfish, S. polyspinous, and demersal shelf rockfish. "Other rockfish" in the SEO District of the GOA (and SEAK for Table 2) means "other rockfish (slope rockfish) and northern rockfish, S. polyspinous.

[9] "Other rockfish" in the BSAI includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

Halibut and Sablefish IFQ and CDQ Standard Ex-Vessel Prices

Table 3 shows the observer fee standard ex-vessel prices for halibut and sablefish. These standard prices are calculated as a single annual average price, by species and port or port group. Volume and ex-vessel value data collected on the 2022 IFQ Buyer Report for landings made from October 15, 2021 through September 30, 2022 were used to calculate the standard ex-vessel prices for the 2023 observer fee for halibut IFQ, halibut CDQ, sablefish IFQ, and sablefish landings that accrue against the fixed gear sablefish CDQ reserve.

TABLE 3—STANDARD EX-VESSEL PRICES FOR HALIBUT IFQ, HALIBUT CDQ, SABLEFISH IFQ, AND SABLEFISH ACCRUING AGAINST THE FIXED GEAR SABLEFISH CDQ RESERVE FOR THE 2023 OBSERVER FEE

[Based on 2022 IFQ Buyer Reports]

Species	Port/area [1]	Price [2]
Halibut (200)	Craig	$7.53
Halibut (200)	Ketchikan	7.87
Halibut (200)	Petersburg	7.48
Halibut (200)	SEAK	7.54
Halibut (200)	EGOAxSE	7.56
Halibut (200)	Homer	7.67
Halibut (200)	Kodiak	7.15
Halibut (200)	Seward	7.69
Halibut (200)	CGOA	7.47
Halibut (200)	GOA	7.48
Halibut (200)	BS	6.86
Halibut (200)	BSAI	6.86
Halibut (200)	AK	7.42
Halibut (200)	ALL	7.42
Sablefish (710)	Petersburg	2.64
Sablefish (710)	SEAK	2.38
Sablefish (710)	EGOAxSE	2.56
Sablefish (710)	Homer	2.39
Sablefish (710)	Kodiak	1.96
Sablefish (710)	Seward	2.17
Sablefish (710)	CGOA	2.08
Sablefish (710)	GOA	2.20
Sablefish (710)	AK	2.18
Sablefish (710)	ALL	2.18

[1] Regulatory areas are defined at § 679.2. (AK = Alaska; ALL = all ports including those outside Alaska; BS = Bering Sea subarea; CGOA = Central Gulf of Alaska; EGOAxSE = Eastern Gulf of Alaska except Southeast Alaska; SEAK = Southeast Alaska; WGOA = Western Gulf of Alaska).

[2] If a price is listed for the species and port combination, that price will be applied to the round weight equivalent for sablefish landings and the headed and gutted weight equivalent for halibut landings. If no price is listed for the port, use port group.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 22, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28262 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC633]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Pile Driving for the Long Beach Cruise Terminal Improvement Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed renewal incidental harassment authorization.

SUMMARY: NMFS received a request from Carnival Corporation & GHD (Carnival) for the renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to pile driving for the Long Beach Cruise Terminal improvement project at the Port of Long Beach, California. These activities are nearly identical to those covered through the current authorization. Pursuant to the Marine Mammal Protection Act, prior to issuing the original IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than January 13, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.cockrell@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act (MMPA) prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1-year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected

species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested renewal, and agency responses will be summarized in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* issuance of an IHA renewal) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

History of Request

On November 19, 2019, NMFS issued an IHA to Carnival to take marine mammals incidental to pile driving for the Long Beach Cruise Terminal improvement project in Long Beach, California (84 FR 64833), effective from November 19, 2019 through November 18, 2020. The original IHA was reissued in 2020 (85 FR 81452) and again in 2021 (86 FR 54943), with the latter of these referred to herein as the ''initial IHA'' for purposes of this proposed renewal IHA. On November 30, 2022, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal IHA, the activities for which incidental take is requested are nearly identical to those covered through the initial authorization. No activity has yet been conducted under any of the issued IHAs and, therefore, there are no monitoring results to report.

Description of the Specified Activities and Anticipated Impacts

Carnival was issued an initial authorization for take of marine mammals incidental to in-water construction activities associated with the Port of Long Beach Cruise Terminal Improvement Project in Long Beach, California. The purpose of the project is to make improvements to its existing berthing facilities at the Long Beach Cruise Terminal at the Queen Mary located at Pier H in the Port of Long Beach, in order to accommodate a new, larger class of cruise ships. As described in detail in the notice of proposed IHA for the original IHA (84 FR 54867), in-water construction would include installation of a maximum of 49 permanent, 36-inch (91.4 centimeters (cm)) steel pipe piles using impact and vibratory pile driving. A minor change to the in-water construction activities was described in the renewal request by Carnival. In addition to the 49 permanent piles, 30 24-inch temporary steel pipe piles would be placed to provide a template for placement of the permanent piles. Vibratory driving and removal will be used for the temporary piles. Pile driving activities were initially expected to occur over a period of approximately 26 days. Including the aforementioned minor change to the proposed construction activities, pile driving activities are likely to occur over a longer total duration. Sounds produced by these activities may result in take, by Level A harassment and Level B harassment, of marine mammals located in Long Beach, California. In addition, related dredging activities would occur for approximately 30 days. No take of marine mammals is anticipated to occur incidental to the planned dredging. No work has been completed under the original IHA or subsequent reissuances.

Incidental takes to the in-water pile driving and removal and dredging in this renewal would be at the same level as authorized in the initial IHA. Five marine mammal species are expected to experience Level B harassment and one species has the potential for Level A harassment (see *Estimated Take*).

All documents related to the original and initial IHAs are available on our website: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-cruise-terminal-improvement-project-port-long-beach-ca.*

Detailed Description of the Activity

A detailed description of the construction activities for which take is proposed here may be found in the Notices of the Proposed and Final IHAs for the original authorization. The location of the activities and the types of equipment planned for use are identical to those described in the previous notices. The only minor change is the addition of vibratory installation and removal of temporary 24-inch steel piles. Sound source levels using vibratory hammers on 24-inch steel piles will create smaller harassment zones than those analyzed in the initial IHA and, therefore, no modifications to the Level A and Level B harassment zones are needed. The addition of pile driving activity associated with the temporary piles is expected to extend the total project duration. However, NMFS has preliminarily determined that the amount of take authorized through the initial IHA remains sufficient to cover the likely effects of the planned activity, and no changes to authorized take numbers are proposed.

The proposed renewal would be effective for a period not exceeding 1-year from the date of expiration of the initial IHA.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notices of the Proposed and Final IHAs for the original authorization. NMFS has reviewed the recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the

supporting documents for the original IHA.

It should be noted that the Final 2021 NMFS' Marine Mammal Stock Assessment Reports (SARs) updated stock abundances for short-beaked common dolphins and long-beaked common dolphins (Carretta *et al.,* 2022). For short-beaked common dolphins the abundance increased slightly from the original IHA stock abundance estimate of 969,861 individuals to 1,056,308 individuals. For long-beaked common dolphins the abundance decreased from the initial IHA stock abundance estimate of 101,305 individuals to 83,379 individuals. None of these population trends impact the findings made in support of the original IHA. Additional information on all stocks affected by this action is available in the NMFS' U.S. Pacific SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the Notices of the Proposed and Final IHAs for the initial authorization. NMFS has reviewed recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of the Proposed and Final IHAs for the original authorization. Specifically, the source levels and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1.

TABLE 1—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK, RESULTING FROM PROPOSED CARNIVAL PROJECT ACTIVITIES

Common name	Stock	Level A take	Total proposed take	Proposed take as Percentage of stock
Short-beaked common dolphin	CA/OR/WA	0	942	0.10
Long-beaked common dolphin	California	0	942	0.92
Common bottlenose dolphin	Coastal California	0	122	26.93
California sea lion	U.S.	0	2,232	0.87
Harbor seal	California	5	984	3.18

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the original IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate. The following standard mitigation measures are proposed for this renewal.

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile driving would shut down immediately if such species are observed within or entering the monitoring zone (*i.e.,* Level B harassment zone); and,
- If take reaches the authorized limit for an authorized species, pile installation would be stopped as these species approach the Level B harassment zone to avoid additional take.

Additional mitigation measures proposed for this renewal are as follows.

- Shutdown zones as specified in the proposed IHA vibratory pile driving would be implemented.
- The use of seven protected species observers (PSO) that would be placed on vessels at entrances to the Port of Long Beach outside the breakwaters to observe marine mammals traveling into the shutdown zones.
- Soft start procedures for impact pile driving consisting of an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period.
- The use of a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) would be implemented by Carnival during impact and vibratory pile driving of all steel pipe piles.
- Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes.
- Carnival would only conduct pile driving activities during daylight hours.

Monitoring and reporting requirements associated with this renewal are as follows.

- A total of seven PSOs will be based on land and vessels would monitor pile driving 30 minutes before, during, and 30 minutes after pile driving activities.
- Observers would be required to use approved data forms.
- A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring. The report would include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days (and associated PSO data sheets).

Comments and Responses

As noted previously, NMFS published a notice of a proposed IHA (84 FR 54867, October 11, 2019) and solicited

public comments on both our proposal to issue the initial IHA for pile driving for the Long Beach Cruise Terminal Improvement Project and on the potential for a renewal IHA, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (84 FR 64833, November 25, 2019). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the renewal of the 2019 IHA.

Comment: The Marine Mammal Commission (Commission) recommended that NMFS refrain from using the proposed renewal process for Carnival's authorization. If NMFS elects to use the renewal process frequently or for authorizations that require a more complex review or for which much new information has been generated, the Commission recommended that NMFS provide the Commission and other reviewers the full 30-day comment period as set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: We appreciate the Commission's input and direct the reader to a response to a similar comment, which can be found at 84 FR 52464 (October 2, 2019).

This renewal request does not present any new information not considered by NMFS during our review. The installation and removal of 30 temporary 24-inch steel piles does not change the analysis in the initial IHA. Therefore, abbreviated additional comment period is sufficient for consideration of this renewal request.

Preliminary Determinations

The construction activities are nearly identical to those analyzed for the original IHA, as are the method of taking and the effects of the action. The addition of the 30 temporary 24-inch steel piles does not increase the size of the Level A and Level B harassment zones. In analyzing the effects of the activities for the original IHA, NMFS determined that the Carnival's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). Although some marine mammal abundances have changed since the original IHA, none of this new information affects NMFS' determinations supporting issuance of the original and initial IHAs. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the original IHA. This includes consideration of the estimated abundance of short-beaked common dolphins and long-beaked common dolphins decreasing/increasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Carnival's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal IHA and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to Carnival for conducting pile driving for the Long Beach Cruise Terminal improvement project, Long Beach, California, effective through December 9, 2023, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: December 23, 2022.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–28382 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC614]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold two public hearings via webinar pertaining to Amendment 53 to the Fishery Management Plan (FMP) for Snapper Grouper Resources in the South Atlantic Region. This amendment addresses a rebuilding plan, catch levels, sector allocations, and changes to commercial and recreational management measures for the South Atlantic stock of gag and modifications to recreational management measures for black grouper.

DATES: The public hearings will be held January 10 and 11, 2023, via webinar beginning at 6 p.m., EDT.

ADDRESSES:

Meeting addresses: The hearings will be held via webinar. Registration is required. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/public-hearings-and-scoping/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: Public hearing documents, an online public comment form, and other materials will be posted to the Council's website at *https://safmc.net/public-hearings-and-scoping/* as they become available. Written comments should be addressed to John Carmichael, Executive Director, SAFMC, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405. Written comments must be received by February 13, 2023, by 5 p.m. During the hearings Council staff will provide an overview of actions being considered in the amendment. Staff will answer clarifying questions on the presented information and the proposed actions. Following the presentation and questions, the public will have the opportunity to provide comments on the amendment.

Amendment 53 to the Snapper Grouper FMP

Amendment 53 would establish a rebuilding plan for the South Atlantic gag based on the most recent stock assessment (SEDAR 71) indicating the stock is overfished and experiencing overfishing. The Amendment also includes modifications to the South Atlantic gag acceptable biological catch, annual catch limit, sector allocations, and commercial and recreational management measures. Catch limits are being adjusted in response to the latest stock assessment. Modifications to South Atlantic black grouper recreational management measures are also being considered in the amendment due to identification issues between the species.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28365 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC616]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management Committee (EBFM) and Advisory Panel Chairs to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Friday, January 6, 2023, at 9:30 a.m. at the Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; phone: (401) 739–3000.

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Ecosystem-Based Fishery Management (EBFM) Committee and Advisory Panel Chairs will meet to review selected pMSE management alternatives. They will discuss the pMSE modeling software and model scenarios, including technical details (pMSE operating models, closed-loop simulation structure, pMSE management alternative implementations, connection of models to pMSE performance metrics).

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 23, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28366 Filed 12–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–691–000]

Hecate Energy Albany 1 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hecate Energy Albany 1 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28394 Filed 12–28–22; 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: EC23–20–000.
Applicants: Buena Vista Energy Center, LLC.
Description: Supplement to November 1, 2022 Application for Authorization Under Section 203 of the Federal Power Act of Buena Vista Energy Center, LLC.
Filed Date: 12/21/22.
Accession Number: 20221221–5320.
Comment Date: 5 p.m. ET 12/27/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–43–000.
Applicants: Remy Jade Generating, LLC.
Description: Remy Jade Generating, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/21/22.
Accession Number: 20221221–5313.
Comment Date: 5 p.m. ET 1/11/23.

Docket Numbers: EG23–44–000.
Applicants: PGR 2022 Lessee 2, LLC.
Description: PGR 2022 Lessee 2, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/22/22.
Accession Number: 20221222–5117.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: EG23–45–000.
Applicants: Cathcart Solar, LLC.
Description: Cathcart Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/22/22.
Accession Number: 20221222–5120.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: EG23–46–000.
Applicants: Fresh Air Energy XXXVII, LLC.
Description: Fresh Air Energy XXXVII, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/22/22.
Accession Number: 20221222–5122.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: EG23–47–000.
Applicants: Thigpen Farms Solar, LLC.
Description: Thigpen Farms Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/22/22.
Accession Number: 20221222–5126.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: EG23–48–000.
Applicants: Fresh Air Energy XXIII, LLC.
Description: Fresh Air Energy XXIII, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 12/22/22.
Accession Number: 20221222–5130.
Comment Date: 5 p.m. ET 1/12/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–38–000.
Applicants: City Water, Light & Power-City of Springfield, IL.
Description: Midcontinent Independent System Operator, Inc. submits Refund Report of The City of Springfield, Illinois, City Water, Light and Power to be effective January 1, 2021.
Filed Date: 12/6/22.
Accession Number: 20221206–5176.
Comment Date: 5 p.m. ET 1/12/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–2442–000.
Applicants: Morgan Stanley Capital Group Inc.
Description: Refund Report: Refund report to be effective N/A.
Filed Date: 12/22/22.
Accession Number: 20221222–5216.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: ER22–80–001.
Applicants: Coyote Ridge Wind, LLC.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report of Coyote Ridge Wind, LLC to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5320.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER22–526–002.
Applicants: Glacier Sands Wind Power, LLC.
Description: Compliance filing: Compliance Filing in Docket ER22–526 to be effective 2/1/2022.
Filed Date: 12/22/22.
Accession Number: 20221222–5104.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: ER22–728–001.
Applicants: Pegasus Wind, LLC.
Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report of Pegasus Wind, LLC to be effective N/A.
Filed Date: 12/16/22.
Accession Number: 20221216–5319.
Comment Date: 5 p.m. ET 1/6/23.

Docket Numbers: ER22–839–003.
Applicants: Copper Mountain Solar 5, LLC.
Description: Compliance filing: Compliance Filing in Docket ER22–839 to be effective 1/20/2022.
Filed Date: 12/22/22.
Accession Number: 20221222–5091.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: ER22–840–003.
Applicants: Battle Mountain SP, LLC.
Description: Compliance filing: Compliance Filing in Docket ER22–840 to be effective 1/20/2022.
Filed Date: 12/22/22.
Accession Number: 20221222–5099.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: ER22–841–003.
Applicants: Spring Valley Wind LLC.
Description: Compliance filing: Compliance Filing for Docket ER22–841 to be effective 1/20/2022.
Filed Date: 12/22/22.
Accession Number: 20221222–5048.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: ER22–2836–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Rochester Public Utilities submits Supplement to September 12, 2022 Filing to Revise Attachment O—Formula Rate.
Filed Date: 12/19/22.
Accession Number: 20221219–5311.
Comment Date: 5 p.m. ET 12/29/22.

Docket Numbers: ER23–366–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Request to Defer Action on Revised ISA, SA No. 2782; Queue No. W3–002 to be effective 12/31/9998.
Filed Date: 12/22/22.
Accession Number: 20221222–5153.
Comment Date: 5 p.m. ET 1/12/23.

Docket Numbers: ER23–442–000.
Applicants: PJM Interconnection, L.L.C.
Description: Motion for Leave to Answer and Answer of PJM Interconnectio, L.L.C.

Filed Date: 12/22/22.
Accession Number: 20221222–5210.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–705–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: ISO–NE/NEPOOL; Revisions to Incorporate Changes Related to the IEP to be effective 2/20/2023.
Filed Date: 12/22/22.
Accession Number: 20221222–5001.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–706–000.
Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO–NYSEG Joint 205: Amended LGIA NYISO, NYSEG, Eight Point Wind SA2452—CEII to be effective 12/9/2022.
Filed Date: 12/22/22.
Accession Number: 20221222–5057.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–707–000.
Applicants: Black Hills Power, Inc.
Description: § 205(d) Rate Filing: Filing of Balancing Authority Agreement to be effective 2/21/2023.
Filed Date: 12/22/22.
Accession Number: 20221222–5073.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–708–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2022–12–22–Trans Formula 205 Filing—OATT Filing to be effective 1/1/2023.
Filed Date: 12/22/22.
Accession Number: 20221222–5088.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–709–000.
Applicants: Mississippi Power Company.
Description: Compliance filing: Petition for Approval of Settlement Agreement.
Filed Date: 12/22/22.
Accession Number: 20221222–5098.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–710–000.
Applicants: Mountrail-Williams Electric Cooperative.
Description: Request for Waiver of Prior Notice Requirement of Mountrail-Williams Electric Cooperative.
Filed Date: 12/20/22.
Accession Number: 20221220–5294.
Comment Date: 5 pm ET 1/10/23.

Docket Numbers: ER23–711–000.
Applicants: Turquoise Nevada LLC.
Description: § 205(d) Rate Filing: Third Amended and Restated Shared Facilities Agreement to be effective 12/23/2022.
Filed Date: 12/22/22.
Accession Number: 20221222–5103.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–712–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT Sch. 12-Appendices re: 2023 RTEP Annual Cost Allocations to be effective 1/1/2023.
Filed Date: 12/22/22.
Accession Number: 20221222–5123.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–713–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: § 205(d) Rate Filing: Filing of Western Consolidated Facilities Agreement to be effective 2/21/2023.
Filed Date: 12/22/22.
Accession Number: 20221222–5124.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–718–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2022 Production Ministerial Filing to be effective 1/1/2023.
Filed Date: 12/22/22.
Accession Number: 20221222–5175.
Comment Date: 5 pm ET 1/12/23.

Docket Numbers: ER23–720–000.
Applicants: DTE Electric Company.
Description: Request for Authorization to Engage in Affiliate Transactions; Request for Waivers; and Request for Privileged and Confidential Treatment of DTE Electric Company.
Filed Date: 12/13/22.
Accession Number: 20221213–5199.
Comment Date: 5 pm ET 1/3/23.

Docket Numbers: ER23–721–000.
Applicants: SunZia Transmission, LLC.
Description: Baseline eTariff Filing: Transmission Service Agreement with SunZia Wind PowerCo LLC to be effective 2/20/2023.
Filed Date: 12/22/22,
Accession Number: 20221222–5199.
Comment Date: 5 pm ET 1/12/23.

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 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28397 Filed 12–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3309–000]

Marlow Hydro, LLC; Notice of Authorization for Continued Project Operation

The license for the Nash Mill Dam Hydroelectric Project No. 3309 was issued for a period ending November 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 3309 is issued to Marlow Hydro, LLC for a period effective December 1, 2022,

through November 30, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Marlow Hydro, LLC is authorized to continue operation of the Nash Mill Dam Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: December 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28398 Filed 12–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. These filings are available for electronic review at the Commission in the Public Reference Room or 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP21–94–000	12/15/2022	FERC Staff.[1]
2. CP17–40–000	12/16/2022	FERC Staff.[2]
3. CP21–94–000	12/16/2022	FERC Staff.[3]
4. P–77–000	12/21/2022	FERC Staff.[4]
5. P–14227–000	12/21/2022	FERC Staff.[5]
6. P–1494–000	12/21/2022	FERC Staff.[6]
7. P–1494–000	12/21/2022	FERC Staff.[7]
8. P–14803–000; P–2082–000	12/21/2022	FERC Staff.[8]
9. CP13–492–000	12/21/2022	FERC Staff.[9]
10. CP16–10–000; CP21–12–000	12/21/2022	FERC Staff.[10]
11. CP17–101–000	12/21/2022	FERC Staff.[11]
12. CP17–101–000	12/21/2022	FERC Staff.[12]
13. CP16–10–000; CP21–12–000	12/21/2022	FERC Staff.[13]
14. PF22–3–000; CP22–503	12/21/2022	FERC Staff.[14]
15. CP21–12–000	12/21/2022	FERC Staff.[15]
Exempt:		
1. CP17–40–000	12/16/2022	U.S. Senator Tammy Duckworth.
2. CP22–2–000	12/20/2022	U.S. Senators Jeffrey A Merkley and Ron Wyden.
3. P–2197–000	12/21/2022	Salisbury, NC Mayor Karen K. Alexander.[16]
4. P–2197–000	12/21/2022	Salisbury, NC Mayor Karen K. Alexander.[17]
5. CP20–493–000	12/21/2022	Borough of Hamburg, NJ.
6. CP17–101–000	12/21/2022	Borough of Keyport, NJ.

[1] Email dated 10/22/2022 from Ciro Scalera.
[2] Email dated 10/16/2022 from Robert Rutkowski.
[3] Email dated 10/22/2022 from William Scharfenberg.
[4] Email dated 4/15/2022 from Sam and Nancy Todd.
[5] Email dated 8/12/2020 from Richard and Joan Becktel.
[6] Email dated 5/19/2021 from Sally Bocanegra.
[7] Email dated 5/22/2021 from Marilyn Power Scott.
[8] Email dated 4/9/2022 from Kevin McDermott.
[9] Email dated 2/12/2021 from Max and Kate Gessert.

[10] Email dated 2/17/2021 from William F. Limpertt.
[11] Email dated 4/6/2021 from an individual.
[12] Email dated 4/6/2021 from Kathy Malone.
[13] Email dated 4/13/2021 from Jim Steitz.
[14] Email dated 3/11/2022 from Shawn Avery.
[15] Email dated 10/22/2022 from Robert M. Jones.
[16] Comments dated 3/5/2020.
[17] Comments dated 1/20/2021.

Dated: December 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28396 Filed 12–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–28–000]

Florida Gas Transmission Company, LLC; Notice of Request under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 15, 2022, Florida Gas Transmission Company, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations and FGT's blanket certificate issued in Docket No. CP82–553–000 for authorization to increase its certificated mainline capacity by 25,000 million British thermal units per day (MMBtu/d) in FGT's Western Division and to make auxiliary facility modifications under Section 2.55(a) of the Commission's regulations on an existing compressor unit and compressor station auxiliary facilities at FGT's Compressor Station (CS) 4 in Matagorda County, Texas. The proposed project will be known as the Brazoria County Project II (the Project). The Project will deliver gas under FGT's existing Rate Schedules FTS–WD and FTS–WD–2 to the Rosharon—Brotman delivery point in Brazoria County, Texas, and to the Denbury Oyster Bayou delivery point in Chambers County, Texas, all as more fully set forth in the application which is on file with the Commission and open to 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://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application should be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, at (713) 989–2605, or fax (713) 989–1205, or via email to *Blair.Lichtenwalter@energytransfer.com*.

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are 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 20, 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,[2] any person[3] 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 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,[4] and must be submitted by the protest deadline, which is

February 20, 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[5] and the regulations under the NGA[6] by the intervention deadline for the project, which is February 20, 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

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

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 20, 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 CP23–28–000 in your submission.

(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''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–28–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., Houston, Texas 77002, or via email to *Blair.Lichtenwalter@energytransfer.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 *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28395 Filed 12–28–22; 8:45 am]

BILLING CODE 6717–01–P

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–692–000]

Hecate Energy Albany 2 LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hecate Energy Albany 2 LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 11, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the

last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: December 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28393 Filed 12–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 96–000]

Pacific Gas and Electric Company; Notice of Authorization for Continued Project Operation

The license for the Kerckhoff Hydroelectric Project No. 96 was issued for a period ending November 30, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 96 is issued to the Pacific Gas and Electric Company for a period effective December 1, 2022, through November 30, 2023, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before November 30, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Pacific Gas and Electric Company is authorized to continue operation of the Kerckhoff Hydroelectric Project under the terms and conditions of the prior license until the issuance of a new license for the project or other disposition under the FPA, whichever comes first.

Dated: December 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–28399 Filed 12–28–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA 01–2022–0056 and 01–2022–0057; FRL–10526–01–R1]

Proposed CERCLA Administrative Settlement Agreement for Removal Action by Prospective Purchaser and Proposed CERCLA Administrative Cost Recovery Settlement: Wells G&H Superfund Site, Woburn, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comments.

SUMMARY: Notice is hereby given by EPA Region 1 of a proposed settlement comprised of two administrative agreements, an administrative Settlement Agreement under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') (''122(h) Agreement''), *In the Matter of: Wells G&H Superfund Site, Woburn, MA: Olympia Nominee Trust et al.,* EPA Region 1, CERCLA Docket No. 01–2022–0057, and an Administrative Settlement Agreement for Removal Action by Prospective Purchaser (''PPA''), *In the Matter of: Wells G&H Superfund Site, Woburn, MA: IV5 60 Oympia Ave LLC et al.,* EPA Region 1, CERCLA Docket No. 01–2022–0056.

DATES: Comments must be submitted by January 30, 2023.

ADDRESSES: Comments should be addressed to RuthAnn Sherman, Senior Enforcement Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (04–2), Boston, MA 02109–3912, (617) 918–1886, *sherman.ruthann@epa.gov,* and should reference the Wells G&H Superfund Site, U.S. EPA Docket Nos: CERCLA 01–2022–0056 and CERCLA 01–2022–0057.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from RuthAnn Sherman, Senior Enforcement Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region I, 5 Post Office Square, Suite 100 (04–2), Boston, MA 02109–3912, telephone number: (617) 918–1886, email address: *sherman.ruthann@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA and the respective nonfederal parties have signed these agreements and the settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice. The settlement is for recovery of response costs and performance of a response action related to two parcels totaling 21.3 acres (the ''Property''), located within the 330-acre Wells G&H Superfund Site, in Woburn, Massachusetts (the ''Site''). Under the 122(h) Agreement, three current and former owners and operators of the Property (collectively, ''Olympia'') will pay $1.2 million in reimbursement of past response costs paid by the United States in connection with an ongoing removal action at the Property, started by Olympia approximately 18 years ago. Under the PPA, two non-liable prospective purchasers will enhance and accelerate the removal action, including the cleanup of trichloroethylene in soils and volatile organic compounds in groundwater, pay 80% of EPA's future oversight costs, and pay 100% of the United States' other future response costs. The prospective purchasers in the PPA are: IV5 60 OLYMPIA AVE LLC and IV5 60 OLYMPIA AVE LAND LLC; and the Settling Parties in the 122(h) Agreement are: Olympia Nominee Trust, Olympia Aberjona, LLC, and Juniper Development Group LLC. The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice. For 30 days following the date of publication of this notice, the United States will receive

written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to this settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Environmental Protection Agency—Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

This proposed settlement comprised of two administrative agreements concerning the Wells G&H Superfund Site, located in Woburn, Middlesex County, Massachusetts, is made in accordance with the authority of the Attorney General to compromise and settle claims of the United States, consistent with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

For 30 days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The Effective Date of the PPA is the date upon which both of the following events have occurred: (a) EPA issues written notice to Purchaser that the public comment period has closed and the United States, after review of and response to any public comments received, has determined not to withhold its consent or seek to modify the Agreement; and (b) Purchaser has executed the Prospective Purchaser Agreement; and (3) Purchaser has closed on the purchase of the property at the Site. Upon the Effective Date of the PPA, the Settling Parties under the 122(h) Agreement shall pay the $1.2 million in past response costs.

Dated: December 22, 2022.

Bryan Olson,

Director, Superfund and Emergency Management Division.

[FR Doc. 2022–28310 Filed 12–28–22; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, January 31, 2023, 10:00 a.m. Eastern Time.

PLACE: Equal Employment Opportunity Commission Headquarters, 131 M St. NE, Washington, DC 20507. The meeting will also be held as a live streamed videoconference, with an option for listen-only audio dial-in by telephone. The public may attend in person, observe the videoconference, or connect to the audio-only dial-in by following the instructions that will be posted on *www.eeoc.gov* at least 24 hours before the meeting. Closed captioning and ASL services will be available.

MATTERS TO BE CONSIDERED:

The following item will be considered at the meeting: Navigating Employment Discrimination in AI and Automated Systems: A New Civil Rights Frontier.

Note: In accordance with the Sunshine Act, the public will be able to observe the Commission's deliberations. (In addition to publishing notices on Commission meetings in the **Federal Register**, the EEOC also provides information about Commission meetings on its website, *www.eeoc.gov,* and provides a recorded announcement at least a week in advance of future Commission meetings.)

Please telephone (202) 921–2750, or email *commissionmeetingcomments@eeoc.gov* at any time for information on this meeting.

CONTACT PERSON FOR MORE INFORMATION: Shelley Kahn, Acting Executive Officer, (202) 921–3061.

Dated: December 16, 2022.

Shelley Kahn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2022–28472 Filed 12–27–22; 4:15 pm]

BILLING CODE 6570–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2022–N–17]

Notice of Annual Adjustment of the Cap on Average Total Assets That Defines Community Financial Institutions

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) has adjusted the cap on average total assets that is used in determining whether a Federal Home Loan Bank (Bank) member qualifies as a ''community financial institution'' (CFI) to $1,417,000,000, based on the annual percentage increase in the Consumer Price Index for all urban consumers (CPI–U), as published by the Department of Labor (DOL). These changes will take effect on January 1, 2023.

FOR FURTHER INFORMATION CONTACT: Janna Bruce, Division of Federal Home Loan Bank Regulation, (202) 649–3202, *Janna.Bruce@fhfa.gov;* or Vickie Olafson, Assistant General Counsel, (202) 649–3025, *Vickie.Olafson@fhfa.gov,* (not tollfree numbers), Federal Housing Finance Agency, Constitution Center, 400 Seventh Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank Act (Bank Act) confers upon insured depository institutions that meet the statutory definition of a CFI certain advantages over non-CFI insured depository institutions in qualifying for Bank membership, and in the purposes for which they may receive long-term advances and the collateral they may pledge to secure advances.[1] Section 2(10)(A) of the Bank Act and § 1263.1 of FHFA's regulations define a CFI as any Bank member the deposits of which are insured by the Federal Deposit Insurance Corporation and that has average total assets below the statutory cap.[2] The Bank Act was amended in 2008 to set the statutory cap at $1 billion and to require FHFA to adjust the cap annually to reflect the percentage increase in the CPI–U, as published by the DOL.[3] For 2022, FHFA set the CFI asset cap at $1,323,000,000, which reflected a 6.8 percent increase over 2021, based upon the increase in the CPI–U between 2020 and 2021.[4]

II. The CFI Asset Cap for 2023

As of January 1, 2023, FHFA will increase the CFI asset cap to $1,417,000,000, which reflects a 7.1 percent increase in the unadjusted CPI–U from November 2021 to November 2022. Consistent with the practice of other Federal agencies, FHFA bases the annual adjustment to the CFI asset cap on the percentage increase in the CPI–U from November of the year prior to the preceding calendar year to November of the preceding calendar year, because the November figures represent the most recent available data as of January 1st of the current calendar year. The new CFI asset cap was obtained by applying the percentage increase in the CPI–U to the unrounded amount for the preceding year and rounding to the nearest million, as has been FHFA's practice for all previous adjustments.

In calculating the CFI asset cap, FHFA uses CPI–U data that have not been

[1] *See* 12 U.S.C. 1424(a), 1430(a).

[2] *See* 12 U.S.C. 1422(10)(A); 12 CFR 1263.1.

[3] *See* 12 U.S.C. 1422(10)(B); 12 CFR 1263.1 (defining the term ''CFI asset cap'').

[4] *See* 87 FR 1147 (Jan. 10, 2022).

seasonally adjusted (*i.e.,* the data have not been adjusted to remove the estimated effect of price changes that normally occur at the same time and in about the same magnitude every year). The DOL encourages use of unadjusted CPI–U data in applying ''escalation'' provisions such as that governing the CFI asset cap, because the factors that are used to seasonally adjust the data are amended annually, and seasonally adjusted data that are published earlier are subject to revision for up to five years following their original release. Unadjusted data are not routinely subject to revision, and previously published unadjusted data are only corrected when significant calculation errors are discovered.

Joshua R. Stallings,

Deputy Director, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency.

[FR Doc. 2022–28331 Filed 12–28–22; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–35]

M.E. DEY & Co., Inc. Complainant v. Hapag-Lloyd (America) LLC, Respondent; Notice of Filing of Complaint and Assignment

SERVED: DECEMBER 23, 2022. Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by M.E. DEY & CO., INC hereinafter ''Complainant,'' against Hapag-Lloyd (America) LLC., (hereinafter ''Respondent.'') Complainant states that it is a Wisconsin company and non-vessel-operating common carrier with a principal place of business in Wisconsin. Complaint identifies the Hapag-Lloyd (America) LLC is a global ocean carrier with an office located in Georgia.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(14) regarding its practices and the billing and payment of charges on the shipments of cargo, including demurrage and rail storage charges and the failure to provide chassis. An answer to the complaint is due to be filed with the Commission within twenty-five (25) days after the date of service. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-35/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by December 26, 2023, and the final decision of the Commission shall be issued by July 10, 2024.

William Cody,

Secretary.

[FR Doc. 2022–28340 Filed 12–28–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201254–002.

Agreement Name: Sealand/CMA CGM West Coast of Central America Slot Charter Agreement.

Parties: Maersk A/S DBA Sealand and CMA CGM S.A.

Filing Party: Wayne Rohde, Cozen O'Connor.

Synopsis: The amendment revises the strings and amount of space being chartered under the Agreement; adds a new Article 5.10, and updates Article 12.

Proposed Effective Date: 2/2/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/10193.

Agreement No.: 201368–001.

Agreement Name: ONE/CMA CGM Slot Exchange Agreement.

Parties: CMA CGM S.A. and Ocean Network Express Pte. Ltd.

Filing Party: Robert Magovern, Cozen O'Connor.

Synopsis: The amendment adds Malaysia, Thailand, and Vietnam to the geographic scope of the Agreement and provides for ONE to receive space on CMA CGM's PRX and JAX service in case of slot exchange imbalance.

Proposed Effective Date: 2/4/2023.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/49505.

Dated: December 22, 2022.

JoAnne O'Bryant,

Program Analyst.

[FR Doc. 2022–28289 Filed 12–28–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

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 question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the 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 13, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Oxford Bank Corporation, Oxford, Michigan;* to indirectly acquire OBHELP, LLC, Oxford, Michigan, and thereby engage in extending credit and servicing loans pursuant to section 225.28(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–28385 Filed 12–28–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the FTC's portion of the information collection requirements contained in the Consumer Financial Protection Bureau's Regulation N (the Mortgage Acts and Practices—Advertising Rule). The FTC generally shares enforcement of Regulation N with the Consumer Financial Protection Bureau (CFPB). The current clearance expires on January 31, 2023.

DATES: Comments must be received by January 30, 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. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Carole L. Reynolds, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–3230.

SUPPLEMENTARY INFORMATION:

Title: Mortgage Acts and Practices—Advertising (Regulation N), 12 CFR part 1014.

OMB Control Number: 3084–0156.

Type of Review: Extension of a currently approved collection.

Abstract: The FTC and the CFPB generally share enforcement authority for Regulation N and thus the two agencies share burden estimates for Regulation N.[1] Regulation N's recordkeeping requirements constitute a ''collection of information'' [2] for purposes of the PRA.[3] The Rule does not impose a disclosure requirement.

Regulation N requires covered persons to retain: (1) Copies of materially different commercial communications and related materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the relevant time period.[4] A failure to keep such records would be an independent violation of the Rule.

Commission staff believes the recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers; real estate brokers and agents; home builders, and advertising agencies.[5] As to these persons, the retention of these documents does not constitute a ''collection of information,'' as defined by OMB's regulations that implement the PRA.[6] Certain other covered persons such as lead generators and rate aggregators may not currently maintain these records in the ordinary course of business.[7] Thus, the recordkeeping requirements for those persons would constitute a ''collection of information.''

The information retained under the Rule's recordkeeping requirements is used by the Commission to substantiate compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions based on violations of the Rule.

Likely Respondents: Lead generators and rate aggregators.

Estimated Annual Hours Burden: 1,500 hours.

- Derived from 1,000 likely respondents × approximately 3 hours for each respondent per year to do these tasks = 3,000 hours.
- Since the FTC shares enforcement authority with the CFPB for Regulation N, the FTC's allotted PRA burden is 1,500 annual hours.

Estimated Annual Labor Cost Burden: $26,550, which is derived from 1,500 hours × $17.70 per hour.[8]

On August 24, 2022, the FTC sought comment on the information collection requirements associated with the Rule. 87 FR 51982. The FTC received no germane comments during the public comment period. Pursuant to OMB

[1] As background, the FTC's Mortgage Acts and Practices—Advertising Rule, 16 CFR pt. 321, was issued by the FTC in July 2011, 76 FR 43826 (July 22, 2011), and became effective on August 19, 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred to the CFPB the Commission's rulemaking authority under section 626 of the 2009 Omnibus Appropriations Act on July 21, 2011. As a result, the CFPB republished the Mortgage Acts and Practices—Advertising Rule, at 12 CFR pt. 1014, which became effective December 30, 2011. 76 FR 78130. Thereafter, the Commission rescinded its Rule, which was effective on April 13, 2012. 77 FR 22200. Under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation N.

[2] Section 1014.5 of the Rule sets forth the recordkeeping requirements.

[3] *See* 44 U.S.C. 3502(3)(A).

[4] Section 1014.5 of the Rule sets forth the recordkeeping requirements.

[5] Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.,* Fla. Stat. 494.00165 (2021); Ind. Code Ann. 23–2.5–8.5 (2021; Kan. Stat. Ann. 9–2208 (2022); Minn. Stat. 58.14 (2021); Wash. Rev. Code 19.146.060 (2021), and WAC 208–660–450 (2022). Many mortgage brokers, lenders (including finance companies), and servicers are subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. *See, e.g.,* Mich. Comp. Laws Serv. 445.1671 (2022); N.Y. Banking Law 597 (Consol. 2021); Tenn. Code Ann. 45–13–206 (2021). Lenders and mortgagees approved by the Federal Housing Administration must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. *See* 24 CFR pt. 202. Various other entities, such as real estate brokers and agents, home builders, and advertising agencies can be indirectly covered by state recordkeeping requirements for mortgage advertisements and/or retain ads to demonstrate compliance with state law. *See, e.g.,* 76 Del. Laws, c. 421, sec. 1.

[6] *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

[7] *See, e.g., United States* v. *Intermundo Media, LLC, dba Delta Prime Refinance,* No. 1:14–cv–2529 (D. Colo. filed Sept. 12, 2014) (D. Colo. Oct. 7, 2014) (stipulated order for permanent injunction and civil penalty judgment), *available at https://www.ftc.gov/system/files/documents/cases/140912deltaprimestiporder.pdf.* The complaint charged this lead generator with numerous violations of Regulation N, including recordkeeping, and of other federal mortgage advertising mandates.

[8] This estimate is based on mean hourly wages for office support file clerks provided by the Bureau of Labor Statistics. See U.S. Bureau of Labor Statistics, Occupational Employment and Wages—May 2021 table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation''), released March 31, 2022, available at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 87 FR 51982.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–28322 Filed 12–28–22; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice and request for comment.

SUMMARY: The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the agency's Used Motor Vehicle Trade Regulation Rule (Used Car Rule or Rule). That clearance expires on January 31, 2023.

DATES: Comments must be received by January 30, 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. The *reginfo.gov* web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

FOR FURTHER INFORMATION CONTACT: Elizabeth Scott, (312) 960–5609, Attorney, Midwest Region, Federal Trade Commission, 230 South Dearborn Street, Suite 3030, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Used Car Rule, 16 CFR part 455.

OMB Control Number: 3084–0108.

Type of Review: Extension without change of currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 3,338,568.

Estimated Annual Labor Costs: $62,598,150.[1]

Non-Labor Costs: $12,242,100.

Abstract: The Used Car Rule promotes informed purchasing decisions by requiring that used car dealers display a form called a ''Buyers Guide'' on each used car offered for sale that, among other things, discloses information about warranty coverage and other information to assist purchasers. The Rule has no recordkeeping or reporting requirements.

On June 3, 2022, the FTC sought comment on the information collection requirements associated with the Rule. 87 FR 33790. The FTC received no germane comments during the public comment period. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized above, see 87 FR 33790.

[1] The mean hourly wage rates for office clerks, general, were updated by the U.S. Department of Labor on March 31, 2022, at *https://www.bls.gov/news.release/ocwage.htm* (''Occupational Employment and Wages—May 2021,'' U.S. Department of Labor, released March 2022, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021'').

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–28320 Filed 12–28–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

DATES: See below for dates of meetings:

1. Healthcare Safety and Quality Improvement Research (HSQR)
   Date: February 1–2, 2023
2. Healthcare Effectiveness and Outcomes Research (HEOR)
   Date: February 8–9, 2023
3. Healthcare Research Training (HCRT)
   Date: February 16–17, 2023
4. Health System and Value Research (HSVR)

Date: February 21–22, 2023

5. Healthcare Information Technology Research (HITR)

Date: February 23–24, 2023

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (to obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.) Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 427–1557.

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). 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.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: December 22, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–28292 Filed 12–28–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Physician-Focused Payment Model Technical Advisory Committee; Meetings

ACTION: Notice of meetings.

SUMMARY: This notice announces the 2023 meetings of the Physician-Focused Payment Model Technical Advisory Committee (PTAC). These meetings include deliberation and voting on proposals for physician-focused payment models (PFPMs) submitted by individuals and stakeholder entities and may include discussions on topics related to current or previously submitted PFPMs. All meetings are open to the public.

DATES: The 2023 PTAC meetings will occur on the following dates:

- Thursday–Friday, March 2–3, 2023, from 9 a.m. to 5 p.m. ET
- Monday–Tuesday, June 12–13, 2023, from 9 a.m. to 5 p.m. ET
- Monday–Tuesday, September 18–19, 2023, from 9 a.m. to 5 p.m. ET
- Monday–Tuesday, December 4–5, 2023, from 9 a.m. to 5 p.m. ET

Please note that times are subject to change. If the times change, the ASPE PTAC website will be updated (*https://aspe.hhs.gov/ptac-physician-focused-payment-model-technical-advisory-committee*) and registrants will be notified directly via email.

ADDRESSES: All PTAC meetings will be held virtually or in the Great Hall of the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Lisa Shats, Designated Federal Officer at *Lisa.Shats@hhs.gov* (202) 875–0938.

SUPPLEMENTARY INFORMATION:

Agenda and Comments. PTAC will hear presentations on proposed PFPMs that have been submitted by individuals and stakeholder entities and/or discussion on topics related to current or previously submitted PFPMs. Regarding proposed PFPMs, following each presentation, PTAC will deliberate on the proposed PFPM. If PTAC completes its deliberation, PTAC will vote on the extent to which the proposed PFPM meets criteria established by the Secretary of Health and Human Services and on an overall recommendation to the Secretary (if applicable). Time will be allocated for public comments. The agenda and other documents will be posted on the PTAC section of the ASPE website, *https://aspe.hhs.gov/ptac-physician-focused-payment-model-technical-advisory-committee,* prior to the meeting. The agenda is subject to change. If the agenda does change, registrants will be notified directly via email, the website will be updated, and notification will be sent out through the PTAC email listserv (*https://list.nih.gov/cgi-bin/wa.exe?A0=PTAC* to subscribe).

Meeting Attendance. These meetings are open to the public and may be hosted in-person or virtually. We intend that in-person meetings will be held in the Great Hall of the Hubert H. Humphrey Building. The public may attend in person, when feasible, via Webex, or view the meeting via livestream at *www.hhs.gov/live.* The Webex link (including a dial-in only option) will be sent to registrants prior to the meeting. Space may be limited, and registration is preferred. For meetings that are held virtually, the public may attend via WebEx link (including a dial-in only option) or view the meeting via livestream at *www.hhs.gov/live.* When registration opens, a link to the registration page will be available at *https://aspe.hhs.gov/collaborations-committees-advisory-groups/ptac/ptac-meetings* prior to the meeting. Registrants will receive a confirmation email shortly after completing the registration process.

Special Accommodations. If sign language interpretation or other reasonable accommodation for a disability is needed, please contact ASPE PTAC staff, no later than two weeks prior to the scheduled meeting. Please submit your requests by email to *PTAC@hhs.gov.*

Authority. 42 U.S.C 1395(ee); Section 101(e)(1) of the Medicare Access and CHIP Reauthorization Act of 2015; Section 51003(b) of the Bipartisan Budget Act of 2018.

PTAC is governed by provisions of the Federal Advisory Committee Act, as amended (5 U.S.C App.), which sets forth standards for the formation and use of federal advisory committees.

Dated: December 21, 2022.

Benjamin Sommers,

Senior Official Performing the Duties of the Assistant Secretary for Planning and Evaluation, Deputy Assistant Secretary for Health Policy.

[FR Doc. 2022–28330 Filed 12–28–22; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance

with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: March 27–28, 2023.

Open: March 27, 2023, 10:00 a.m. to 10:20 a.m.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: March 27, 2023, 10:20 a.m. to 5:40 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Closed: March 28, 2023, 10:00 a.m. to 3:10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michael W. Krause, Ph.D., Scientific Director, NIDDK, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818, (301) 402–4633, *mwkrause@helix.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28370 Filed 12–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify one of the Contact Person(s) listed below in advance of the meeting. The meeting can be accessed from the NIH videocast *https://videocast.nih.gov/* and the CCRHB website *https://ccrhb.od.nih.gov/meetings.html.*

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: February 17, 2023.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC CEO Update of Recent Activities and Organizational Priorities, Status Report on Key CC Strategic Plan Initiatives and other Business of the Clinical Center Research Hospital Board (CCRHB).

Place: National Institutes of Health, Building 31, Conference Room 6C02 A & B, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Persons: Patricia Piringer, RN, MSN (C), National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *ppiringer@cc.nih.gov*, (301) 402–2435, (202) 460–7542 (direct).

Natascha Pointer, Management Analyst, Executive Assistant to Dr. Gilman, Office of the Chief Executive Officer, National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *npointer@cc.nih.gov*, (301) 496–4114, (301) 402–2434 (direct).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person(s) 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.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs and hotel and airport shuttles, will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Additional Health and Safety Guidance: Before attending a meeting at an NIH facility, it is important that visitors review the NIH COVID–19 Safety Plan at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/Pages/default.aspx* for information about requirements and procedures for entering NIH facilities, especially when COVID–19 community levels are medium or high. In addition, the Safer Federal Workforce website has FAQs for visitors at *https://www.saferfederalworkforce.gov/faq/visitors/.* Please note that if an individual has a COVID–19 diagnosis within 10 days of the meeting, that person must attend virtually. (For more information please read NIH's Requirements for Persons after Exposure at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/persons-after-exposure.aspx* and What Happens When Someone Tests Positive at *https://ors.od.nih.gov/sr/dohs/safety/NIH-covid-19-safety-plan/COVID-assessment-testing/Pages/test-positive.aspx.*) Anyone from the public can attend the open portion of the meeting virtually via the NIH Videocasting website (*http://videocast.nih.gov*). Please continue checking these websites, in addition to the committee website listed below, for the most up to date guidance as the meeting date approaches.

Information is also available on the CCRHB website: *https://www.ccrhb.od.nih.gov/* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: December 22, 2022.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28288 Filed 12–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Biorepository Review.

Date: January 12, 2023.
Time: 12:00 P.M. TO 3:00 P.M.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health,
National Institute of Diabetes and Digestive and Kidney Diseases,
Democracy II,
6707 Democracy Blvd.,
Bethesda, MD 20892
(Virtual Meeting).
Contact Person: Michele L. Barnard, Ph.D.,
Scientific Review Officer,
Review Branch, DEA, NIDDK,
National Institutes of Health,
Room 7353, 6707 Democracy Boulevard,
Bethesda, MD 20892–2542,
(301) 594–8898,
barnardm@extra.niddk.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28358 Filed 12–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.
Date: October 12–13, 2023.
Open: October 12, 2023, 10:00 a.m. to 10:20 a.m.
Agenda: Introductions and Overview.
Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Closed: October 12, 2023, 10:20 a.m. to 5:40 p.m.
Agenda: To review and evaluate to review and evaluate to review and evaluate to review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Closed: October 13, 2023, 10:00 a.m. to 3:10 p.m.
Agenda: To review and evaluate to review and evaluate to review and evaluate to review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael W. Krause, Ph.D., Scientific Director, NIDDK, National Institute of Diabetes and Digestive and Kidney Diseases, National Institute of Health, Building 5, Room B104, Bethesda, MD 20892–1818, (301) 402–4633, *mwkrause@helix.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: December 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28373 Filed 12–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Development and Commercialization of Engineered Cell Therapies for the Treatment of Cancer

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Affini-T Therapeutics, Inc. (''Affini-T''), headquartered in Watertown, MA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before January 13, 2023 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive Patent License should be directed to: Andrew Burke, Ph.D., Senior Technology Transfer Manager, NCI Technology Transfer Center, Telephone: (240)–276–5484; Email: *andy.burke@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

1. United States Provisional Patent Application No. 63/185,805 filed May 7, 2021, entitled ''T Cell Receptors Recognizing C135Y, R175H or M237I Mutation in P53'' [HHS Reference No. E–101–2021–0–US–01]; and

2. PCT Application No. PCT/US2022/028066 filed May 6, 2022, entitled ''T Cell Receptors Recognizing C135Y, R175H or M237I Mutation in P53'' [HHS Reference No. E–101–2021–0–PCT–02].

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive license territory may be worldwide, and the field of use may be limited to the following:

''Development, manufacture and commercialization of T or Natural Killer cell therapy products genetically engineered to express the P53 R175H-reactive T cell receptor claimed in the Licensed Patent Rights for the treatment of cancer in humans.''

E–101–2021 patent family is primarily directed to isolated TCRs reactive to certain mutated forms of tumor protein 53 (TP53 or P53), within the context of several human leukocyte antigens. *P53* is the archetypal tumor suppressor gene and the most frequently mutated gene in cancer. Contemporary estimates suggest that >50% of all tumors carry mutations in *P53.* Because of its prevalence in cancer and its restricted expression to precancerous and cancerous cells, this antigen may be targeted on mutant P53-expressing tumors with minimal normal tissue toxicity.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing, and the prospective exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 22, 2022.

Richard U. Rodriguez,

Associate Director,Technology Transfer Center,National Cancer Institute.

[FR Doc. 2022–28357 Filed 12–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Pathway to Independence (K99/R00) Special Emphasis Panel.

Date: March 6, 2023

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Latarsha J. Carithers, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (301) 594–4859, *latarsha.carithers@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: December 23, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–28377 Filed 12–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, SAMHSA will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including leveraging automated data collection techniques or other forms of information technology.

Proposed Project: Community Mental Health Services Block Grant and Substance Abuse Prevention and Treatment Block Grant FY 2024–2025 Plan and Report Guidance and Instructions (OMB No. 0930–0168)

SAMHSA is requesting approval from the Office of Management and Budget (OMB) for an extension of the 2024–2025 Community Mental Health Services Block Grant (MHBG) and Substance Abuse Prevention and Treatment Block Grant (SABG) Application Plan and Report Guidance and Instructions.

Currently, the SABG and the MHBG differ on a number of their practices (*e.g.,* data collection at individual or aggregate levels) and statutory authorities (*e.g.,* method of calculating MOE, stakeholder input requirements for planning, set asides for specific populations or programs, etc.). Historically, the Centers within SAMHSA that administer these block grants have had different approaches to application requirements and reporting. To compound this variation, states have different structures for accepting, planning, and accounting for the block grants and the prevention set aside within the SABG. As a result, how these dollars are spent and what is known about the services and clients that receive these funds varies by block grant and by state.

SAMHSA has conveyed that block grant funds must be directed toward four purposes: (1) to fund priority treatment and support services for individuals without insurance or who cycle in and out of health insurance coverage; (2) to fund those priority treatment and support services not covered by Medicaid, Medicare, or private insurance offered through the exchanges and that demonstrate success in improving outcomes and/or supporting recovery; (3) to fund universal, selective and targeted prevention activities and services; and (4) to collect performance and outcome data to determine the ongoing effectiveness of behavioral health prevention, treatment and recovery support services and to plan the implementation of new services on a nationwide basis. SAMHSA's five priorities (Preventing Overdose; Enhancing Access to Suicide Prevention and Crisis Care; Promoting Resilience and Emotional Health for Children, Youth and Families; Integrating Behavioral and Physical Health Care; and Strengthening the Behavioral Health Workforce) are highlighted and states are encouraged to incorporate

them into their systems improvement efforts.

States will need help to meet future challenges associated with the implementation and management of an integrated physical health, mental health, and addiction service system. SAMHSA has established standards and expectations that will lead to an improved system of care for individuals with or at risk of mental and substance use disorders. Therefore, this application package continues to fully exercise SAMHSA's existing authority regarding states', territories' and the Red Lake Band of the Chippewa Indians' (subsequently referred to as ''states'') use of block grant funds as they fully integrate behavioral health services into the broader health care continuum.

Consistent with previous applications, the FY 2024–2025 application has required sections and other sections where additional information is requested. The FY 2024–2025 application requires states to submit a face sheet, a table of contents, a behavioral health assessment and plan, reports of expenditures and persons served, an executive summary, and funding agreements and certifications. In addition, SAMHSA is requesting information on key areas that are critical to the states' success in addressing health care equity. Therefore, as part of this block grant planning process, states should identify promising or effective strategies as well as technical assistance needed to implement the strategies identified in their plans for FYs 2024 and 2025. A narrative was added to discuss the Bipartisan Safter Communities Act funding for MHBG.

Pursuant to the supplemental funding appropriations for the MHBG and the SABG found in the Consolidated Appropriations Act, 2021 [Pub. L. 116–260] and the American Rescue Plan Act, 2021 [Pub. L. 117–2], SAMHSA has made changes to the Block Grant Plan and Report requirements for FFY 2024 and 2025. These changes are necessary to ensure that funds are spent in an appropriate and timely manner. Adjustments were made to pre-existing tables in the plan and report.

On the SABG narrative portion of the Block Grant Plan document major changes include the removal of words and terms with negative connotations and addition of those that are more appropriate. Examples include changing the word ''abuse'' to ''use'' and ''Medication Assisted Treatment'' to ''Medication for Opioid Use Disorder'' throughout the document. Language is included regarding the promotion of recovery for those who are in recovery, or who are receiving recovery support services, but who may not have participated in treatment in any fashion. The section regarding the Consolidated Appropriations Act (COVID–19) has been removed as it is no longer applicable after FY 2023. Additionally, there is a new narrative section outlining the concept of health equity and how Single State Authorities can work within their states to promote equitable promotion and use of resources. A new section on Harm Reduction efforts was added to illustrate that this work will be instrumental in SUD Prevention and Treatment moving forward. The SABG MOE requirements, Women's MOE requirements, Tuberculosis screening requirements, and restrictions on funding sections have been revamped for a better understanding of program requirements.

For the planning tables, changes were made to tables 10, 14, and a slight change to table 15. Updated information regarding the requesting of waivers under table 10, section 11 was added to reflect relevant sections of the PHS Act. Considerable updates to the narrative in question 14 regarding Medication for Opioid Use disorder reflect not only the new change in terminology but advances in the field. Lastly, table 15 ''Crisis Services'' has been listed as requested for future SABG applications.

On the MHBG report there are changes with the addition of one new table to the performance indicators and accomplishments section (Table 19b on the MHBG). With the addition of this new table, the original MHBG table 19b has been relabeled 19c. All MHBG tables that collect gender and race information have been updated to include transgender, Two-Spirt for the AI/AN population, and Some Other Race. In addition, MHBG tables have been updated to make age groups consistent across all applicable tables (Table 8a/b, 9, 11, 13a/b, 14, 15a, 18, 19, 19a, 19b, 19c, 20, 23a/b, 24 on the MHBG). A column was added to the MHBG tables for the Bipartisan Safter Communities Act funding. The additional tables should not require excessive effort as all data will already be collected by the states for the additional funding efforts.

Similarly, modifications to SABG reports were made to allow for the accurate capture of information for the FY 2024/FY 2025 reporting period and SABG priorities. A new table, 10b, was added to assess the number of persons served by SABG funds who receive recovery support services. The table also captures client characteristics, specifically age and gender. Although SABG reporting will allow for applicable grantees to continue to report data on COVID–19 expenditures and persons served using those funds, reporting requirements were streamlined with the elimination of table 2b. Reports were modified to more capture information on grantees' harm reduction activities. Namely, table 3a was modified to capture SABG expenditures on Narcan and Fentanyl Test Strips. Modifications to table 12 were also made to request the number of persons at risk for HIV/AIDS that were referred for PrEP services. Lastly, minor modifications were made to prior tables to clarify information previously requested or to address a missing category. For example, tables 11a and 11b, were modified to add an ''other self-gender identities' to ensure that individuals who are non-gender conforming would be captured in the estimate of the number of persons served.

While the statutory deadlines and block grant award periods remain unchanged, SAMHSA encourages states to turn in their application as early as possible to allow for a full discussion and review by SAMHSA. Applications for the MHBG-only are due no later than September 1, 2023. The application for SABG-only is due no later than October 1, 2023. A single application for MHBG *and* SABG combined is due no later than September 1, 2023.

Estimates of Annualized Hour Burden

The estimated annualized burden for the uniform application will increase to 33,493 hours to account for recording of the additional supplemental funding efforts (approximately 2 hours per state agency). Burden estimates are broken out in the following tables showing burden separately for Year 1 and Year 2. Year 1 includes the estimates of burden for the uniform application and annual reporting. Year 2 includes the estimates of burden for the recordkeeping and annual reporting. The reporting burden remains constant for both years.

TABLE 1—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 1

Substance Abuse Prevention and Treatment and Community Mental Health Services Block Grants						
Authorizing legislation SABG	Authorizing legislation MHBG	Implementing regulation	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting:						
Standard Form and Content						
42 U.S.C. 300x–32(a)						
SABG:						
Annual Report						11,190
42 U.S.C. 300x–52(a)		45 CFR 96.122(f)	60	1		
42 U.S.C. 300x–30–b			5	1		
42 U.S.C. 300x–30(d)(2)		45 CFR 96.134(d)	60	1		
MHBG:						
Annual Report						11,003
	42 U.S.C. 300x–6(a).		59	1		
	42 U.S.C. 300x–52(a).					
	42 U.S.C. 300x–4(b)(3)B.		59	1		
State Plan (Covers 2 years).						
SABG elements:						
42 U.S.C. 300x–22(b)		45 CFR 96.124(c)(1)	60	1		
42 U.S.C. 300x–23		45 CFR 96.126(f)	60	1		
42 U.S.C. 300x–27		45 CFR 96.131(f)	60	1		
42 U.S.C. 300x–32(b)		45 CFR 96.122(g)	60	1	120	7,230
MHBG elements:	42 U.S.C. 300x–1(b).		59	1	120	7,109
	42 U.S.C. 300x–1(b)(2).		59	1		
	42 U.S.C. 300x–2(a).		59	1		
Waivers						3,240
42 U.S.C. 300x–24(b)(5)(B)			20	1		
42 U.S.C. 300x–28(d)		45 CFR 96.132(d)	5	1		
42 U.S.C. 300x–30(c)		45 CFR 96.134(b)	10	1		
42 U.S.C. 300x–31(c)			1	1		
42 U.S.C. 300x–32(c)			7	1		
42 U.S.C. 300x–32(e)			10			
	42 U.S.C. 300x–2(a)(2).		10			
	42 U.S.C 300x–4(b)(3).		10			
	42 U.S.C 300x–6(b).		7			
Recordkeeping:						
42 U.S.C. 300x–23	42 U.S.C. 300x–3	45 CFR 96.126(c)	60/59	1	20	1,200
42 U.S.C. 300x–25		45 CFR 96.129(a)(13)	10	1	20	200
42 U.S.C 300x–65		42 CFR Part 54	60	1	20	1,200
Combined Burden						42,373

Report:
300x–52(a)—Requirement of Reports and Audits by States—Report.
300x–30(b)—Maintenance of Effort (MOE) Regarding State Expenditures—Exclusion of Certain Funds (SABG).
300x–30(d)(2)—MOE—Noncompliance—Submission of Information to Secretary (SABG).
State Plan—SABG:
300x-22(b)—Allocations for Women.
300x–23—Intravenous Substance Abuse.
300x–27—Priority in Admissions to Treatment.
300x–29—Statewide Assessment of Need.
300x–32(b)—State Plan.
State Plan—MHBG:
42 U.S.C. 300x–1(b)—Criteria for Plan.
42 U.S.C. 300x–1(b)(2)—State Plan for Comprehensive Community Mental Health Services for Certain Individuals—Criteria for Plan—Mental Health System Data and Epidemiology.
42 U.S.C. 300x–2(a)—Certain Agreements—Allocations for Systems Integrated Services for Children.
Waivers—SABG:
300x–24(b)(5)(B)—Human Immunodeficiency Virus—Requirement regarding Rural Areas.
300x–28(d)—Additional Agreements.
300x–30(c)—MOE.
300x–31(c)—Restrictions on Expenditure of Grant—Waiver Regarding Construction of Facilities.
300x–32(c)—Certain Territories.
300x–32(e)—Waiver amendment for 1922, 1923, 1924 and 1927.
Waivers—MHBG:
300x–2(a)(2)—Allocations for Systems Integrated Services for Children.
300x–6(b)—Waiver for Certain Territories.
Recordkeeping:
300x–23—Waiting list.
300x–25—Group Homes for Persons in Recovery from Substance Use Disorders.
300x–65—Charitable Choice.

TABLE 2—ESTIMATES OF APPLICATION AND REPORTING BURDEN FOR YEAR 2

	Number of respondent	Number of responses per year	Number of hours per response	Total hours
Reporting:				
SABG	60	1	187	11,220
MHBG	59	1	187	11,033
Recordkeeping	60/59	1	40	2,360
Combined Burden				24,613

The total annualized burden for the application and reporting is 33,493 hours (42,373 + 24,613 = 66,986/2 years = 33,493).

Link for the application: http://www.samhsa.gov/grants/block-grants.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 *OR* email him a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by February 27, 2023.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2022–28403 Filed 12–28–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0029]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Application for Waiver of Grounds of Inadmissibility

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until February 27, 2023.

ADDRESSES: All submissions received must include the OMB Control Number 1615–0029 in the body of the letter, the agency name and Docket ID USCIS–2007–0042. Submit comments via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0042.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2007–0042 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* Form I–601; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals and households. Form I–601 is necessary for USCIS to determine whether the applicant is eligible for a waiver of inadmissibility under section 212 of the Act. Furthermore, this information collection is used by individuals who are seeking for Temporary Protected Status (TPS).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information

collection Form I–601 is 15,700 and the estimated hour burden per response is 1.65 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 25,905 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $6,064,125

Dated: December 21, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–28294 Filed 12–28–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#-35068; 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 17, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by January 13, 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 17, 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.

ARIZONA

Maricopa County

Knorpp, Walter Wesley, House, 77 East Country Club Dr., Phoenix, SG100008580

Scottsdale North, 5600–5682 North Scottsdale Rd., Scottsdale, SG100008581

ARKANSAS

Columbia County

Greene-Talbot-Talley Halls Historic District, South of North Washington and East Lane Dr. intersection, Magnolia, SG100008558

Dallas County

Gulf Oil Filling Station, (Arkansas Highway History and Architecture MPS), 211 West 4th St., Fordyce, MP100008559

Hot Spring County

Garrett's Grocery Store, (Arkansas Highway History and Architecture MPS), 2450 US 67, Friendship, MP100008561

Johnson County

Cabin Creek Bridge, Red Oak Rd. over Cabin Cr., Lamar vicinity, SG100008562

Lonoke County

Standard Oil Company of Louisiana Oil Depot, (Truscon Buildings in Arkansas, c.1915–1937 MPS), Northwest corner of AR 9 and Mill St., Lonoke, MP100008563

Marion County

Flippin City Jail, Southwest corner of Park and South 2nd Sts., Flippin, SG100008565

Pulaski County

Bragg, Richard, House, 305 East 16th St., Little Rock, SG100008566

Laman Plaza Gazebo, (Arkansas Designs of E. Fay Jones MPS), 2700 Willow St., North Little Rock, MP100008567

Van Buren County

South Side High School Sign, 334 Southside Rd., Bee Branch vicinity, SG100008573

Washington County

Anderson, John and Elisabeth, House, 1611 West Halsell Rd., Fayetteville, SG100008569

Weathers House, 1602 Delaware Pl., Springdale, SG100008570

CALIFORNIA

Humboldt County

Kleiser, James, House, 1022 10th St., Arcata, SG100008586

CONNECTICUT

Middlesex County

YMCA of Northern Middlesex County, 99 Union St., Middletown, SG100008583

MISSOURI

Hickory County

Gerber, Christian and Rosina, Farmstead, 15753 Cty. Rd. 202, Weaubleau vicinity, SG100008571

St. Louis County

Park, George M., House, 440 South Price Rd., Ladue, SG100008572

NEW MEXICO

Taos County

Peñasco High School, 15086 NM 75, Peñasco, SG100008588

NEW YORK

Columbia County

Ichabod Crane Schoolhouse, 2589 NY 9H, Kinderhook vicinity, SG100008574

Harder Knitting Mill, (Hudson MRA), 549 Washington St., Hudson, MP100008575

Suffolk County

Van Scoy Burying Ground, (Cemeteries of the Town of East Hampton MPS), Northwest Rd., Northwest Harbor, MP100008577

SOUTH CAROLINA

Charleston County

Peachtree Plantation, Address Restricted, McClellanville vicinity, SG100008587

TENNESSEE

Henry County

Quinn Chapel A.M.E. Church, (Rural African-American Churches in Tennessee MPS), 216 Church St., Paris, MP100008579

TEXAS

Taylor County

Travis Elementary School and Cafetorium, (Abilene MPS), 1101 South 9th St., Abilene, MP100008557

Wichita County

Indiana Avenue Historic District, 900–1008 Indiana Ave., Wichita Falls, SG100008585

A request for removal has been made for the following resource:

ARKANSAS

Pulaski County

Womack House, (Historically Black Properties in Little Rock's Dunbar School

Neighborhood MPS), 1867 South Ringo St., Little Rock, OT99000546

A request to move has been received for the following resources:

ARKANSAS

Crawford County

Mulberry River Bridge, (Historic Bridges of Arkansas MPS), Cty Rd. 67, Pleasant Hill vicinity, MV06001272

VIRGINIA

Hanover County

Little River UDC Jefferson Davis Highway Marker (UDC Commemorative Highway Markers along the Jefferson Davis Highway in Virginia MPS), 15400 Washington Hwy., Doswell vicinity, MV100002355

Additional documentation has been received for the following resources:

ARIZONA

Maricopa County

Westwood Village and Estates Historic District (Additional Documentation), (Residential Subdivisions and Architecture in Central Phoenix, 1870–1963, MPS), 2107 West Catalina Dr.; 2112 West Pinchot, 2211 Wrest Whitton, and 2230 West Indianola Aves., Phoenix, AD100007166

SOUTH CAROLINA

Kershaw County

Camden Battlefield (Additional Documentation, 1606 Flat Rock Rd,Camden vicinity, AD66000707

Authority: Section 60.13 of 36 CFR part 60

Dated: December 21, 2022.

Lisa Davidson,

Program Manager,National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–28326 Filed 12–28–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Employment And Training Administration

Agency Information Collection Activities; Comment Request; Overpayment Detection and Recovery Activities

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Overpayment Detection and Recovery Activities.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by February 27, 2023.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Ericka Parker by telephone at 202–693–3208 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *parker.ericka@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Frances Perkins Bldg. Room S–4519, Washington, DC 20210; by email at: *parker.ericka@dol.gov;* or by fax at 202–693–3975.

FOR FURTHER INFORMATION CONTACT: Rhonda Cowie by telephone at 202–693–3821 (this is not a toll-free number) or by email: *cowie.rhonda.m@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure 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 can be properly assessed.

Section 303(a)(1) of the Social Security Act (SSA) requires a state's unemployment insurance UI law to include provisions for:

> ''Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due . . .''

Section 303(a)(5) of the SSA further requires a state's UI law to include provisions for:

> ''Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation . . .''

Section 3304(a)(4) of the Internal Revenue Code (IRC) of 1954 provides that:

> ''all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation . . .''

The Secretary of Labor has interpreted the above sections of federal law in Section 7511, Part V, of the Employment Security Manual to further require a state's UI law to include provisions for such methods of administration as are, within reason, calculated to: (1) detect benefits paid through error by the State Workforce Agency (SWA) or through willful misrepresentation or error by the claimant or others; (2) deter claimants from obtaining benefits through willful misrepresentation; and (3) recover benefits overpaid. The Overpayment Detection and Recovery Activities report, referred to as the ETA 227, is used to determine whether SWAs meet these requirements.

The ETA 227 contains data on the number and amounts of fraud and non-fraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions. Each of the 53 SWAs gather this data and report it to DOL following the end of each calendar quarter. The overall effectiveness of SWAs' UI integrity efforts can be determined by examining and analyzing the data. SWA's also use these data as a management tool for effective UI program administration.

Section 303(a)(1) of the Social Security Act (SSA), Section 303(a)(5) of the SSA, Section 3304(a)(4) of the Internal Revenue Code (IRC) of 1954, and Section 7511, Part V, of the Employment Security Manual, authorize this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive

consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention Overpayment Detection and Recovery Activities, OMB control number 1205–0187.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including 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).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Overpayment Detection and Recovery Activities.

Form: ETA 227.

OMB Control Number: 1205–0187.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 212.

Estimated Average Time per Response: 14 hours.

Estimated Total Annual Burden Hours: 2,968 hours.

Total Estimated Annual Other Cost Burden: $0.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–28345 Filed 12–28–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Information Advisory Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Request for nominations for membership on the Workforce Information Advisory Council.

SUMMARY: The Department of Labor invites interested parties to submit nominations for individuals to serve on the Workforce Information Advisory Council (WIAC) and announces the procedures for those nominations. From the nominations received, the Department will fill all 14 slots on the Council. Information regarding the WIAC can be found at *https://www.dol.gov/agencies/eta/wioa/wiac.*

DATES: Nominations for individuals to serve on the WIAC must be submitted (postmarked, if sending by mail; submitted electronically; or received, if hand delivered) by February 27, 2023.

SUPPLEMENTARY INFORMATION: Section 15 of the Wagner-Peyser Act, 29 U.S.C. 49*l*–2, as amended by section 308 of the Workforce Innovation and Opportunity Act of 2014 (WIOA), Public Law 113–128, requires the Secretary of Labor (Secretary) to establish a WIAC.

The statute, as amended, requires the Secretary, acting through the Commissioner of Labor Statistics and the Assistant Secretary for Employment and Training, to formally consult at least twice annually with the WIAC to address: (1) evaluation and improvement of the nationwide workforce and labor market information system established by the Wagner-Peyser Act, and of the statewide systems that comprise the nationwide system, and (2) how the Department of Labor and the States will cooperate in the management of those systems. The Secretary, acting through the Bureau of Labor Statistics (BLS) and the Employment and Training Administration (ETA), and in consultation with the WIAC and appropriate federal agencies, must also develop a two-year plan for management of the labor market information system. The statute generally prescribes how the plan is to be developed and implemented, outlines the contents of the plan, and requires the Secretary to submit the plan to designated authorizing committees in the House and Senate.

By law, the Secretary must ''seek, review, and evaluate'' recommendations from the WIAC, and respond in writing to the Council. The WIAC must make written recommendations to the Secretary on the evaluation and improvement of the workforce and labor market information system, including recommendations for the 2-year plan. The 2-year plan, in turn, must describe WIAC recommendations and the extent to which the plan incorporates them.

The Department anticipates that the WIAC will accomplish its objectives by, for example: (1) studying workforce and labor market information issues; (2) seeking and sharing information on innovative approaches, new technologies, and data to inform employment, skills training, and workforce and economic development decision making and policy; and (3) advising the Secretary on how the workforce and labor market information system can best support workforce development, planning, and program development.

Pertinent information about the WIAC, including recommendations, reports, background information, agendas, and meeting minutes, can be accessed at the WIAC's website located at *https://www.dol.gov/agencies/eta/wioa/wiac/meetings.*

The Wagner-Peyser Act, at section 15(d)(2)(B), requires the WIAC to have 14 members, appointed by the Secretary. Each of the membership categories are explained in the WIAC charter, which can be found at *https://www.dol.gov/agencies/eta/wioa/wiac.* For purposes of this announcement, the Department is soliciting nominations for all membership categories. The categories and requirements are:

(1) Four members who are representatives of lead State agencies with responsibility for workforce investment activities, or State agencies described in Wagner-Peyser Act section 4 (agency designated or authorized by Governor to cooperate with the Secretary of Labor), who have been nominated by such agencies or by a national organization that represents such agencies;

(2) Four members who are representatives of the State workforce and labor market information directors affiliated with the State agencies responsible for the management and oversight of the workforce and labor market information system as described in Wagner-Peyser Act Section 15(e)(2), who have been nominated by the directors;

(3) One member who is a representative of providers of training services under WIOA section 122 (Identification of Eligible Providers of Training Services);

(4) One member who is a representative of economic development entities;

(5) One member who is a representative of businesses, who has been nominated by national business organizations or trade associations;

(6) One member who is a representative of labor organizations, who has been nominated by a national labor federation;

(7) One member who is a representative of local workforce development boards, who has been nominated by a national organization representing such boards; and

(8) One member who is a representative of research entities that use workforce and labor market information.

The Secretary must ensure that the membership of the WIAC is geographically diverse, and that no two members appointed under clauses (1), (2), and (7), above, represent the same State.

Each member will be appointed for a term of three years. The Secretary will not appoint a member for any more than two consecutive terms. Any member whom the Secretary appoints to fill a vacancy occurring before the expiration of the predecessor's term will be appointed only for the remainder of that term. Members of the Council will serve on a voluntary and generally uncompensated basis, but will be reimbursed for travel expenses to attend WIAC meetings, including per diem in lieu of subsistence, as authorized by the Federal travel regulations.

The WIAC is a permanent advisory council and, as such, is not governed by the Federal Advisory Committee Act's (FACA) Section 14, on termination of advisory committees. In other respects, however, WIAC membership will be consistent with the FACA requirement that membership be ''fairly balanced in terms of the points of view represented and the functions to be performed'' (5 U.S.C. App. 5(b)(2)), as specified in Wagner-Peyser section 15(2)(B) & (C), and the requirement that members come from ''a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions'' of the WIAC (41 CFR 102–3.60(b)(3)). Under the FACA regulation, the composition of the WIAC will, therefore, depend upon several factors, including: (i) the WIAC's mission; (ii) the geographic, ethnic, social, economic, or scientific impact of the WIAC's recommendations; (iii) the types of specific perspectives required; (iv) the need to obtain divergent points of view on the issues before the WIAC, such as those of consumers, technical experts, the public at large, academia, business, or other sectors; and (v) the relevance of State, local, or tribal governments to the development of the WIAC's recommendations (41 CFR 102–3, Subpart B, Appendix A.).

To the extent permitted by FACA and other applicable laws, WIAC membership should also be consistent with achieving the greatest impact, scope, and credibility among diverse stakeholders. The diversity in such membership includes, but is not limited to, race, gender, disability, sexual orientation, and gender identity.

Nominations Process: During the nominations period, any interested person or organization may nominate one or more qualified individuals for membership. If you would like to nominate an individual or yourself for appointment to the WIAC, please submit, to one of the addresses listed below, the following information:

- A copy of the nominee's resume or curriculum vitae;
- A cover letter that provides your reason(s) for nominating the individual, the constituency area that they represent (as outlined above in the WIAC membership identification discussion), and their particular expertise for contributing to the national policy discussion on: (1) the evaluation and improvement of the nationwide workforce and labor market information system and statewide systems that comprise the nationwide system, and (2) how the Department of Labor and the States will cooperate in the management of those systems, including programs that produce employment-related statistics and State and local workforce and labor market information; and
- Contact information for the nominee (name, title, business address, business phone, fax number, and business email address).

In addition, the cover letter must state the nomination is being made in response to this **Federal Register** Notice and the nominee (if nominating someone other than oneself) has agreed to be nominated and is willing to serve on the WIAC. Nominees will be appointed based on their qualifications, professional experience, and demonstrated knowledge of issues related to the purpose and scope of the WIAC, as well as diversity considerations. The Department will publish a list of the new WIAC members on the WIAC's website at *https://www.dol.gov/agencies/eta/wioa/wiac/members.*

ADDRESSES: You may submit nominations and supporting materials described in this **Federal Register** Notice by any one of the following methods:

Electronically: Submit nominations, including attachments, by email using the following address: *WIAC@dol.gov* (use subject line ''Nomination—Workforce Information Advisory Council'').

Mail, express delivery, hand delivery, messenger, or courier service: Submit one copy of the nominations and supporting materials to the following address: Workforce Information Advisory Council Nominations, Office of Workforce Investment, U.S. Department of Labor, 200 Constitution Ave. NW, Room C–4526, Washington, DC 20210. Deliveries by hand, express mail, messenger, and courier service are accepted by the Office of Workforce Investment during the hours of 9 a.m.–5 p.m., EST, Monday through Friday. Due to security-related procedures, submissions by regular mail may experience significant delays.

Facsimile: The Department will not accept nominations submitted by fax.

FOR FURTHER INFORMATION CONTACT: Steve Rietzke, Division of National Programs, Tools, and Technical Assistance, Office of Workforce Investment (address above); use email address for the WIAC, *WIAC@dol.gov.*

Authority: Pursuant to the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. 49 *et seq.;* Workforce Innovation and Opportunity Act, Pub. L. 113–128; Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–28344 Filed 12–28–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Trade Adjustment Assistance Efforts To Improve Outcomes

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before January 30, 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: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection is authorized under Section 248 of the Trade Act of 1974, as amended, and further codified in the Governor-Secretary Agreements with states authorized under Section 239(a) of the Trade Act. Regulations at 20 CFR 618.864(a)(3) contain the information collection requirement on the states to provide a description of efforts made to improve outcomes for workers under the Trade Adjustment Assistance (TAA) Program that promote efficient and effective program performance. This ICR will be used by ETA staff to identify and highlight successful state practices, including the use of case management funds and innovative outreach strategies. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 6, 2022 (87 FR 60712).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–ETA.

Title of Collection: Trade Adjustment Assistance Efforts to Improve Outcomes.

OMB Control Number: 1205–0392.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 52.

Total Estimated Number of Responses: 208.

Total Estimated Annual Time Burden: 104 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: December 22, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–28323 Filed 12–28–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO): Meeting

AGENCY: Veterans' Employment and Training Service (VETS), Department of Labor (DOL).

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the ACVETEO. The ACVETEO will discuss the DOL core programs and services that assist veterans seeking employment and raise employer awareness as to the advantages of hiring veterans. There will be an opportunity for individuals or organizations to address the committee. Any individual or organization that wishes to do so should contact Mr. Gregory Green at *ACVETEO@dol.gov.* Additional information regarding the Committee, including its charter, current membership list, annual reports, meeting minutes, and meeting updates may be found at *https://www.dol.gov/agencies/vets/about/advisorycommittee.* This notice also describes the functions of the ACVETEO. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES: Wednesday, January 25, 2023 beginning at 9 a.m. and ending at approximately 4 p.m.(EDT).

ADDRESSES: The meeting will take place at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210, Conference Room 6 C5320. Members of the public are encouraged to arrive early to allow for security clearance into the Frances Perkins Building. Security Instructions: Meeting participants should use the visitor's entrance to access the Frances Perkins Building, one block north of Constitution Avenue at 3rd and C Streets NW. For security purposes meeting participants must:

1. Present a valid photo ID to receive a visitor badge.

2. Know the name of the event being attended: The meeting event is the Advisory Committee on Veterans' Employment, Training and Employer Outreach (ACVETEO).

3. Visitor badges are issued by the security officer at the Visitor Entrance located at 3rd and C Streets NW. When receiving a visitor badge, the security officer will retain the visitor's photo ID until the visitor badge is returned to the security desk.

4. Laptops and other electronic devices may be inspected and logged for identification purposes.

5. Due to limited parking options, Metro's Judiciary Square station is the easiest way to access the Frances Perkins Building.

Notice of Intent To Attend the Meeting: All meeting participants should submit a notice of intent to attend by Friday, January 13, 2023, via email to Mr. Gregory Green at *ACVETEO@dol.gov,* subject line ''January 2023 ACVETEO Meeting.''

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, January 13, 2023 by contacting Mr. Gregory Green at *ACVETEO@dol.gov.* Requests made after this date will be reviewed, but availability of the requested accommodations cannot be guaranteed.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Green, Designated Federal Official for the ACVETEO, *ACVETEO@dol.gov,* (202) 693–4734.

SUPPLEMENTARY INFORMATION: The ACVETEO is a Congressionally mandated advisory committee authorized under Title 38, U.S. Code, Section 4110 and subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended. The ACVETEO is responsible for: assessing employment and training needs of veterans; determining the extent to which the programs and activities of the U.S. Department of Labor meet these needs; assisting to conduct outreach to employers seeking to hire veterans; making recommendations to the Secretary, through the Assistant Secretary for Veterans' Employment and Training Service, with respect to outreach activities and employment and training needs of veterans; and carrying out such other activities necessary to make required reports and recommendations. The ACVETEO meets at least quarterly.

Agenda

9 a.m. Welcome and remarks, James D. Rodriguez, Assistant Secretary, Veterans' Employment and Training Service
9:10 a.m. Administrative Business, Gregory Green, Designated Federal Official
9:15 a.m. Briefing on Fiscal Year 2023 DOL/VETS Priorities
10 a.m. Briefing on VETS Data Integrity Project
10:45 a.m. Break
11 a.m. Briefing on Office of Disability Employment Policy
12 a.m. Lunch
1 p.m. Subcommittees Meetings
3:45 p.m. Public Forum, Gregory Green, Designated Federal Official
4:15 p.m. Adjourn

Signed in Washington, DC.

James D. Rodriguez,

Assistant Secretary, Veterans' Employment and Training Service.

[FR Doc. 2022–28346 Filed 12–28–22; 8:45 am]

BILLING CODE 4510–79–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Institutional Advancement Committee of the Legal Services Corporation Board of Directors will meet virtually on January 11, 2023. The meeting will commence at 3:30 p.m. EST, and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meetings*

LSC will conduct the January 11, 2023 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Committee meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Session:

January 11, 2023

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/82497571722?pwd=a01nOVVCd2pzUXRLdEpmSnFTTjJHZz09&from=addon*

Meeting ID: 824 9757 1722
  - Passcode: 181403
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,82497571722# US (Washington DC)
  - +16468769923,,82497571722# US (New York)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington DC)
  - +1 646 876 9923 US (New York)
  - +1 312 626 6799 US (Chicago)
  - +1 669 900 6833 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - +1 346 248 7799 US (Houston)
  - Meeting ID: 824 9757 1722
  - Passcode: 181403

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Institutional Advancement Committee's Open Session Meeting on October 20, 2022
3. Discussion of the Committee' Self-Evaluation for 2022 and Goals for 2023
4. Update on Leaders Council and Emerging Leaders Council
   - *John G. Levi, Chairman of the Board*
5. Development Report
   - *Nadia Elguindy, Director of Institutional Advancement*
6. Update on Opioid and Veterans Task Forces
   - *Stefanie Davis, Senior Assistant General Counsel*
7. Update on Housing Task Force
   - *Helen Guyton, Senior Assistant General Counsel*
8. Update on Rural Justice Task Force
   - *Jessica Wechter, Special Assistant to the President*
9. Update on the Eviction Study
   - *Lynn Jennings, Vice President for Grants Management*
10. Public Comment
11. Consider and Act on Other Business
12. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on October 20, 2022
2. Development Activities Report
   - *Nadia Elguindy, Director of Institutional Advancement*
3. Update on LSC's 50th Anniversary Fundraising Campaign
   - *Nadia Elguindy, Director of Institutional Advancement*
   - *Leo Latz, Latz & Company*
4. Consider and Act on Motion to Approve Leaders Council and Emerging Leaders Council Invitees
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov*.

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: December 23, 2022.

Jessica Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2022–28420 Filed 12–27–22; 11:15 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet virtually on January 13, 2023. The meeting will commence at 11:30 a.m. EST, and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meetings.*

LSC will conduct the January 13, 2023 meeting via Zoom.

Public Observation: Unless otherwise noted herein, the Committee meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Session:

January 11, 2023

- To join the Zoom meeting by computer, please use this link.
  - *https://lsc-gov.zoom.us/j/87378592593?pwd=TGJVcWN5TmU5TXZhaXJoeDZHcnJKUT09&from=addon*
  - Meeting ID: 873 7859 2593
  - Passcode: 187707
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,87378592593# US (Washington DC)
  - +13126266799,,87378592593# US (Chicago)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington DC)
  - +1 312 626 6799 US (Chicago)
  - +1 646 876 9923 US (New York)
  - +1 408 638 0968 US (San Jose)
  - +1 669 900 6833 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - +1 346 248 7799 US (Houston)
  - Meeting ID: 873 7859 2593
  - Passcode: 187707

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

STATUS: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on October 4, 2022
3. Discussion of Committee's Self-Evaluation for 2022 and Goals for 2023
4. Discussion of Management's Report on Implementation of LSC's Strategic Plan for 2021–2024
   - *Ron Flagg, President*
5. Public Comment
6. Consider and Act on Other Business
7. Consider and Act on Adjournment of Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: December 23, 2022.

Jessica Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2022–28421 Filed 12–27–22; 11:15 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Committee to Explore Options for LSC Office Space (Office Space Committee) of the Legal Services Corporation Board of Directors will meet virtually on January 10, 2023. The meeting will commence at 3:00 p.m. EST, and will continue until the conclusion of the Committee's agenda.

PLACE: *Public Notice of Virtual Meetings.*

LSC will conduct the January 10, 2023 meeting via Zoom.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

CLOSED SESSION

1. Approval of Agenda
2. Consider and Act on Recommendation for Future LSC Office Space
3. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Jessica Wechter, Special Assistant to the President, at (202) 295–1626. Questions may also be sent by electronic mail to *wechterj@lsc.gov.*

Non-Confidential Meeting Materials: Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: December 23, 2022.

Jessica Wechter,

Special Assistant to the President, Legal Services Corporation.

[FR Doc. 2022–28422 Filed 12–27–22; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–102]

Notice of Intent To Grant an Exclusive, Co-Exclusive or Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant exclusive, co-exclusive or partially exclusive patent license.

SUMMARY: NASA hereby gives notice of its intent to grant an exclusive, co-exclusive or partially exclusive patent license to practice the inventions described and claimed in the patents and/or patent applications listed in **SUPPLEMENTARY INFORMATION** below.

DATES: The prospective exclusive, co-exclusive or partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than January 13, 2023 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing regulations. Competing applications completed and received by NASA no later than January 13, 2023 will also be treated as objections to the grant of the contemplated exclusive, co-exclusive or partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

Objections and Further Information: Written objections relating to the prospective license or requests for further information may be submitted to Agency Counsel for Intellectual Property, NASA Headquarters at Email: *hq-patentoffice@mail.nasa.gov.* Questions may be directed to Phone: (202) 358–3437.

SUPPLEMENTARY INFORMATION: NASA intends to grant an exclusive, co-exclusive, or partially exclusive patent license in the United States to practice the inventions described and claimed in: U.S. Patent No. 11,078,984 titled ''Structure Movement Damping System Using Tension Element,'' U.S. Patent Application No. 17/936,064, titled

''Motion Damping System for Tank of Liquid'', and U.S. Patent No. 10,584,762, titled ''Disruptive Tuned Mass System and Method'' to Kent Houston Offshore Engineering having its principal place of business in Houston, Texas. The fields of use may be limited. NASA has not yet made a final determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

This notice of intent to grant an exclusive, co-exclusive or partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

Helen M. Galus,

Agency Counsel for Intellectual Property.

[FR Doc. 2022–28308 Filed 12–28–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 22–104]

Name of Information Collection: NASA International Space Apps Challenge 2023 Navigator and Collaborator Applications

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of new information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by February 27, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information supports NASA's International Space Apps Challenge, an international hackathon for coders, scientists, designers, storytellers, makers, builders, technologists, and others, where teams can engage with NASA's free and open data to address challenges we face on Earth and in space. This collection will consist of two applications, one for Navigators and one for Collaborators.

Navigators are Space Apps community members who have demonstrated excellence in the program or excellence in relevant fields including, but not limited to: science, data, technology, and space. By recognizing these exemplary community members as Navigators, the hackathon connects the tens of thousands of Space Apps participants with community expertise that can enhance participant problem solving. To be eligible to be a Navigator, applicants must have participated in Space Apps in some way (*e.g.,* participant or Local Lead) at least 5 times, or demonstrated equivalent relevant experience in another NASA program.

Each year organizations around the world come forth to engage with NASA's International Space Apps Challenge. We collaborate with a selection of these organizations, called Space Apps Collaborators, to:

- Increase awareness of NASA's International Space Apps Challenge
- Attract a diversity of participants to NASA's International Space Apps Challenge
- Provide participants with optional tools and resources that enable the creation of solutions in NASA's International Space Apps Challenge

This information will be used by the Space Apps Global Organizing Team during the Navigator and Collaborator selection process (approx. 3 months), to gain insight into the applicants' background, experience, and interest in the program. Additionally, this information will be used by NASA's Office of General Counsel (OGC) and NASA's Office of International and Interagency Relations (OIIR) in their review of applicants.

II. Methods of Collection

Electronic.

III. Data

Title: NASA International Space Apps Challenge 2023 Navigator Application.

OMB Number:

Type of review: New.

Affected Public: Individuals.

Estimated Annual Number of Activities: 2.

Estimated Number of Respondents per Activity: 50.

Annual Responses: 100.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 33.

Estimated Total Annual Cost: $21,000.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–28342 Filed 12–28–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 22–103]

Name of Information Collection: Financial Assistance Awards/Grants and Cooperative Agreements

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection renewal.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by February 27, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Find this particular information collection by selecting ''Currently under 60-day Review-Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, call 757–864–3292, or email *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request to renew OMB control number 2700–0092. This collection is required to ensure proper accounting of Federal funds and property provided under financial assistance awards (grants and cooperative agreements) per 2 CFR 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. 2 CFR 200, Subparts A through F, applies to all NASA award recipients except for for-profit organizations. Only Subparts A through D of 2 CFR 200 apply to for-profit organizations. Reporting and recordkeeping are prescribed at 2 CFR part 1800—Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. The requirements in 2 CFR part 1800 are applicable to awards that NASA issues to non-Federal entities, government, for-profit organization, and foreign organizations as allowed by 2 CFR 200.101, Applicability.

II. Methods of Collection

Grant and cooperative agreement proposals are submitted electronically through the NASA Solicitation and Proposal Integrated Review and Evaluation System (NSPIRES) or *Grants.gov*. The use of these systems reduces the need for proposers to submit multiple copies to the agency. Proposers may submit multiple proposals and notices of intent to different funding announcements without registering in NSPIRES each time.

Basis of Estimate

Approximately 7000 NASA financial assistance awards are open at any one time. It is estimated that out of the 9,900 proposals received each year, NASA awards approximately 1,977 new awards. The period of performance for each financial assistance award is usually three to five years. Performance reports are filed annually, and historical records indicate that, on average, 1,625 changes to these reports are submitted annually. The total number of respondents is based on the average number of proposals that are received each year and the average number of active grants and cooperative agreements that are managed each year. The total number of hours spent on each task was estimated through historical records and experience of former recipients. Using past calculations, the total cost was estimated using the average salary (wages and benefits) for a GS–12 step 5.

III. Data

Title: Financial Assistance Awards/Grants and Cooperative Agreements.

OMB Number: 2700–0092.

Type of review: Renewal of a previously approved information collection.

Affected Public: Non-profits, institutions of higher educations, government, and for-profit entities.

Estimated Annual Number of Activities: 300.

Estimated Number of Respondents per Activity: 36.

Annual Responses: 10,800.

Estimated Time per Response: 120 hours.

Estimated Total Annual Burden Hours: 1,296,000 hours.

Estimated Total Annual Cost: $47,952,000.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and 4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–28347 Filed 12–28–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 22–101]

Name of Information Collection: NASA STEM Gateway (Universal Registration and Data Management System)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—Extension of a currently approved collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by January 30, 2023.

ADDRESSES: Written comments and recommendations for this 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: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, call 757–864–3292, or email *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Based on user feedback provided during the initial release of the NASA STEM Gateway (Universal Registration and Data Management System), NASA plans to develop updates/enhancements to improve information collected and the overall user experience in the NASA STEM Gateway. The NASA STEM Gateway (Universal Registration and Data Management System) is a

comprehensive tool designed to allow learners (*i.e.,* students, educators, and awardee principal investigators) to apply to NASA STEM engagement opportunities (*e.g.,* internships, fellowships, challenges, educator professional development, experiential learning activities, etc.) in a single location. NASA personnel manage the selection of applicants and implementation of engagement opportunities within the NASA STEM Gateway. The information collected will be used by the NASA Office of STEM Engagement (OSTEM) and other NASA offices to review applications for participation in NASA STEM engagement opportunities. The information is reviewed by OSTEM project and activity managers, as well as NASA mentors who would be hosting students. This information collection will consist of student-level data such as demographic information submitted as part of the application. In addition to supporting student selection, student-level data will enable NASA OSTEM to fulfill federally mandated reporting on its STEM engagement activities and report relevant demographic information as needed for Agency performance goals and success criteria (annual performance indicators).

II. Methods of Collection:

Online/Web-based.

III. Data

Title: NASA STEM Gateway (Universal Registration and Data Management System).

OMB Number: 2700–0180.

Type of review: Renewal of a previously approved information collection.

Affected Public: Individuals. Eligible students or educators, and/or awardee principal investigators may voluntarily apply for an internship or fellowship experience at a NASA facility, or register for a STEM engagement opportunity (*e.g.,* challenges, educator professional development, experiential learning activities, etc.). Parents/caregivers of eligible student applicants (at least 16 years of age but under the age of 18) may voluntarily provide consent for their eligible student applicants to apply.

Estimated Annual Number of Activities: 40

Estimated Number of Respondents per Activity: 4,125

Annual Responses: 165,000

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 82,500.

Estimated Total Annual Cost: $1,015,207.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility;(2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and 4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Cheryl Parker,

Federal Register Liaison Officer.

[FR Doc. 2022–28348 Filed 12–28–22; 8:45 am]

BILLING CODE 7510–13–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96568; File No. 4–698]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove an Amendment to the National Market System Plan Governing the Consolidated Audit Trail

Dated: December 22, 2022.

I. Introduction

On September 8, 2022, the Operating Committee for Consolidated Audit Trail, LLC (''CAT LLC''), on behalf of the following parties to the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan''): [1] BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MEMX LLC, MIAX Emerald, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'' or ''SROs'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A(a)(3) of the Exchange Act,[2] and Rule 608 thereunder,[3] a proposed amendment (''Proposed Amendment'') to the CAT NMS Plan that would authorize CAT LLC to revise the Consolidated Audit Trail Reporter Agreement (''Reporter Agreement'') and the Consolidated Audit Trail Reporter Agent Agreement (collectively with the Reporter Agreement, the ''Reporter Agreements'') by: (1) removing the arbitration provision from each agreement and replacing it with a forum selection provision (the ''Forum Selection Provision'') which would require that any dispute regarding CAT reporting be filed in a United States District Court for the Southern District of New York (the ''SDNY''), or, in the absence of federal subject matter jurisdiction, a New York State Supreme Court within the First Judicial Department; and (2) revising the existing choice of law clause to provide that any dispute will be governed by federal law (in addition to New York law).[4] The proposed plan amendment was published for comment in the **Federal Register** on September 28, 2022.[5]

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,[6] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate.

[1] The CAT NMS Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Securities Exchange Act of 1934 (''Exchange Act'') and the rules and regulations thereunder. *See* Securities Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016). The CAT NMS Plan functions as the limited liability company agreement of the jointly owned limited liability company (''CAT LLC'') formed under Delaware state law through which the Participants conduct the activities of the consolidated audit trail. On August 29, 2019, the Participants replaced the CAT NMS Plan in its entirety with the limited liability company agreement of a new limited liability company named Consolidated Audit Trail, LLC. The latest version of the CAT NMS Plan is available at *https://catnmsplan.com/about-cat/cat-nms-plan.*

[2] 15 U.S.C 78k–1(a)(3).

[3] 17 CFR 242.608.

[4] *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Sept. 8, 2022).

[5] *See* Securities Exchange Act Release No. 95874 (Sept. 22, 2022), 87 FR 58876 (Sept. 28, 2022) (''Notice''). The Commission received no comments on the Proposed Amendment.

[6] 17 CFR 242.608(b)(2)(i).

II. Background

On July 11, 2012, the Commission adopted Rule 613 of Regulation NMS, which required the SROs to submit a national market system (''NMS'') plan to create, implement and maintain a consolidated audit trail (the ''CAT'' or ''CAT System'') that would capture customer and order event information for orders in NMS securities.[7] On November 15, 2016, the Commission approved the CAT NMS Plan.[8] On August 29, 2019, the Operating Committee for CAT LLC approved Reporter Agreements that would limit the total liability of CAT LLC, the Participants and the Plan Processor[9] to a CAT Reporter[10] for any calendar year to the lesser of the total of fees paid by the CAT Reporter to CAT LLC for the calendar year in which the claim arose or five hundred dollars. The Reporter Agreements also included a mandatory arbitration provision. The Participants required each Industry Member[11] to execute a CAT Reporter Agreement prior to reporting data to the CAT.

On April 22, 2020, prior to the commencement of initial equities reporting for Industry Members, the Securities Industry and Financial Markets Association (''SIFMA'') filed, pursuant to Sections 19(d) and 19(f) of the Exchange Act, an application for review of actions taken by CAT LLC and the Participants (the ''Administrative Proceedings''). SIFMA alleged that by requiring Industry Members to execute the Reporter Agreement as a prerequisite to submitting data to the CAT, the Participants improperly prohibited or limited SIFMA members with respect to access to the CAT System in violation of the Exchange Act. On May 13, 2020, the Participants and SIFMA reached a settlement and terminated the Administrative Proceedings, allowing Industry Members to report data to the CAT pursuant to Reporter Agreements that do not contain a limitation of liability provision. Since that time, Industry Members have been transmitting data to the CAT.[12]

On December 18, 2020, the Participants proposed to amend the CAT NMS Plan to authorize CAT LLC to revise the Reporter Agreements to insert limitation of liability provisions that would: (1) provide that CAT Reporters and CAT reporting agents accept sole responsibility for their access to and use of the CAT System, and that CAT LLC makes no representations or warranties regarding the CAT System or any other matter; (2) limit the liability of CAT LLC, the Participants, and their respective representatives to any individual CAT Reporter or CAT reporting agent to the lesser of the fees actually paid to CAT for the calendar year or five hundred dollars; (3) exclude all direct and indirect damages; and (4) provide that CAT LLC, the Participants, and their respective representatives shall not be liable for the loss or corruption of any data submitted by a CAT Reporter or CAT reporting agent to the CAT System.[13] On October 29, 2021, the Commission disapproved the Limitation of Liability Amendment.[14]

On May 20, 2022, the Participants proposed to amend the CAT NMS Plan to authorize CAT LLC to revise the Reporter Agreements to: (1) replace the arbitration provisions in the agreement with a forum selection provision, which would require the parties to the Reporter Agreements to bring any action in the SDNY, or, if there is no basis for federal subject matter jurisdiction, in the New York State Supreme Court within the First Judicial Department and, if it is permitted, seek assignment to the Commercial Division; (2) revise the governing law provision to set the governing law for all disputes as United States federal law or the laws of the state of New York; (3) include a provision requiring the parties to the Reporter Agreements to waive their right to a jury trial, with no exception; and (4) include a provision stating that CAT LLC and the Plan Processor disclaim any, and make no, representations or warranties, regarding the CAT System or any other matter pertaining to the Reporter Agreements, including any representation or warranty relating to merchantability, quality, fitness for a particular purpose, compliance with applicable laws, non-infringement, title, sequencing, timeliness, accuracy or completeness of information.[15] On September 6, 2022, the Participants withdrew that proposed amendment.[16]

III. Summary of Proposal

The Participants now propose to amend the CAT NMS Plan to authorize CAT LLC to revise the Reporter Agreements to: (1) remove the arbitration provision from each agreement and replace it with the Forum Selection Provision, which would require that any dispute regarding CAT reporting be filed in the SDNY, or, in the absence of federal subject matter jurisdiction, a New York State Supreme Court within the First Judicial Department; and (2) revise the existing choice of law clause to provide that any dispute will be governed by federal law (in addition to New York law).

In support of the Forum Selection Provision, the Participants believe that a court is the proper forum to resolve claims concerning CAT reporting, including claims relating to potential technical issues, system failures, and data breaches.[17] The Participants state that litigating in court is appropriate to address claims, which likely will involve regulatory issues, including the doctrine of regulatory immunity,[18] and complex legal and factual issues involved in cyber litigation.[19] The Participants state that litigating in court would allow parties to rely on precedent that has been developed to address those issues when resolving disputes that could potentially involve parties seeking substantial damages.[20]

[7] 17 CFR 242.613.

[8] *See supra* note 1.

[9] Plan Processor means the Initial Plan Processor or any other Person selected by the Operating Committee pursuant to SEC Rule 613 and CAT NMS Plan, Article IV, Section 4.3(b)(i) and Article VI, Section 6.1, and with regard to the Initial Plan Processor, the Selection Plan, to perform the CAT processing functions required by SEC Rule 613 and set forth in this Agreement. *See* CAT NMS Plan, *supra* note 1, at Section 1.1.

[10] CAT Reporter means each national securities exchange, national securities association and Industry Member that is required to record and report information to the Central Repository pursuant to SEC Rule 613(c). *See id.,* at Section 1.1.

[11] Industry Member means a member of a national securities exchange or a member of a national securities association. *See id.,* at Section 1.1.

[12] For a more detailed description of the background for the Proposed Amendment, *see* Notice, *supra* note 5, at 58876–78.

[13] *See* Securities Exchange Act Release No. 90826 (Dec. 30, 2020), 86 FR 591, 593 (Jan. 6, 2021) (''Limitation of Liability Amendment'').

[14] *See* Securities Exchange Act Release No. 93484 (Oct. 29, 2021), 86 FR 60933 (Nov. 4, 2021).

[15] *See* Securities Exchange Act Release No. 95031 (June 3, 2022), 87 FR 35273 (June 9, 2022).

[16] *See* Letter from Michael Simon, Chair, CAT NMS Plan Operating Committee, to Vanessa Countryman, Secretary, Commission (Sept. 6, 2022); *see also* Securities Exchange Act Release No. 96102 (Oct. 19, 2022), 87 FR 64294 (Oct. 24, 2022) (providing notice of withdrawal of the proposed amendment).

[17] *See* Notice at 58878. The Participants explain that in the aftermath of high-profile data breaches, plaintiffs have brought common law claims of breach of contract and negligence as well as claims based on various federal statutes including the Stored Communications Act, the Federal Wiretap Act, and the Computer Fraud and Abuse Act. *Id.*

[18] *Id.* at 58879. The Participants state that comments letters in connection with the Limitation of Liability Amendment ''demonstrated an assumption and understanding that'' assessments of immunity would be decided by the courts. *Id.*

[19] *See id.* at 58879. The Participants state that assessing potential defenses will likely require a tribunal to resolve complex issues that implicate the Participants' status as self-regulatory organizations and the Commission's oversight of the CAT. *Id.* at 58878.

[20] *Id.* at 58879. The Participants also state that litigating disputes in court would promote the

Continued

The Participants state that courts offer important procedural mechanisms that would help resolve claims related to CAT reporting fairly and efficiently.[21] According to the Participants, adjudicating disputes in the courts would permit consolidation and joinder of claims, as federal and New York State rules of civil procedure provide mechanisms for consolidation and joinder, as well as permit the use of class actions for certain disputes.[22] The Participants state that in arbitration, in contrast, the ultimate decision on consolidation is made by the arbitrator.[23] Further, the Participants state that the AAA Commercial Arbitration rules are silent on joinder, and parties have faced complications in joining parties to an arbitration claim when they are non-signatories, which could be significant since claims arising out of CAT reporting might be related incidents that impact Industry Members and other market participants (*e.g.,* retail investors).[24] The Participants state that for those reasons, if the arbitration provisions remain in the Reporter Agreements, cases arising out of the same facts or involving the same legal issues might result in different outcomes and damage awards, and potentially create inconsistent rules.[25]

The Participants further state that adjudicating claims related to CAT in court provides parties with appellate rights and rules governing the discovery process and admissibility of evidence.[26] They state that direct appellate review is largely absent in arbitration and that the rules relating to discovery and evidence are more limited.[27]

As for the forum itself, the Participants state that the SDNY and the New York State Supreme Court are venues with extensive experience adjudicating matters involving federal securities laws, market structure, and cybersecurity.[28] The Participants state that the Second Circuit, and the SDNY, have experience with securities and financial regulation matters, data breaches and cybersecurity incidents, and have authored opinions regarding the scope of regulatory immunity.[29] The Participants also state that New York State courts also focus on complex cases and have addressed the scope of regulatory immunity.[30] They state that New York is a convenient venue for the parties since the two largest securities exchanges, several Participants, and the most prominent Industry Members by trading volume are located in New York.[31]

The Participants state that they are proposing to modify the governing law provision, which currently provides that New York State law will govern disputes arising out of the Reporter Agreements, to provide that both federal law and New York State law will govern such disputes.[32] The Participants state that the reason for this change is that such claims could involve issues of federal law because CAT LLC was created pursuant to federal law and is subject to a federal regulatory regime.[33]

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Amendment

The Commission is instituting proceedings pursuant to Rule 608(b)(2)(i) of Regulation NMS,[34] and Rules 700 and 701 of the Commission's Rules of Practice,[35] to determine whether to disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the Proposed Amendment to inform the Commission's analysis.

Rule 608(b)(2) of Regulation NMS provides that the Commission ''shall approve a national market system plan or proposed amendment to an effective national market system plan, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'' [36] Rule 608(b)(2) further provides that the Commission shall disapprove a national market system plan or proposed amendment if it does not make such a finding.[37] In the Notice, the Commission sought comment on the Proposed Amendment, including whether the amendment is consistent with the Exchange Act.[38] In this order, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[39] the Commission is providing notice of the grounds for disapproval under consideration:

- whether, consistent with Rule 608 of Regulation NMS, the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act; and
- whether, and if so how, the Proposed Amendment would affect efficiency, competition or capital formation.

V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Amendment. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,[40] any request for an opportunity to make an oral presentation.[41] The Commission asks that commenters address the sufficiency and merit of the Participants' statements in support of the Proposed Amendment, in addition to any other comments they

development of precedent to guide Industry Members' and Participants' conduct. *Id.*

[21] *See id.* at 58876.

[22] *Id.* at 58878–79.

[23] *Id.* at 58879.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 58879–80.

[27] *Id.*

[28] *Id.* at 58880–81.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.* at 58881.

[33] *Id.*

[34] 17 CFR 242.608.

[35] 17 CFR 201.700; 17 CFR 201.701.

[36] 17 CFR 242.608(b)(2).

[37] *See id.*

[38] *See* Notice, *supra* note 5, 87 FR at 35279.

[39] 17 CFR 242.608(b)(2)(i). *See also* 17 CFR 201.700(b)(2).

[40] 17 CFR 242.608(b)(2)(i).

[41] Rule 700(c)(ii) of the Commission's Rules of Practice provides that ''[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.'' 17 CFR 201.700(c)(ii).

may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Amendment should be approved or disapproved by January 19, 2023. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 2, 2023. 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 4–698 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 4–698. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the Participants' principal offices. 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 4–698 and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28296 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96566; File No. SR–OCC–2022–010]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Proposed Rule Change by The Options Clearing Corporation Concerning a Risk Management Framework and Corporate Risk Management Policy

December 22, 2022.

I. Introduction

On September 6, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2022–010 pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder. The proposed rule change would replace OCC's current Risk Management Framework Policy (''RMFP'') with two new documents: a revised Risk Management Framework (''RMF'') as well as a Corporate Risk Management Policy (''CRMP''). The proposed rule change was published for public comment in the **Federal Register** on September 26, 2022.[3] On November 8, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Background[6]

OCC maintains several documents designed to define its framework for managing its various risks, including financial, legal, and operational risks. The RMFP describes OCC's risk management framework as summarizing its overall approach taken to identify, measure, monitor, and manage all risks faced by OCC in the provision of clearing, settlement, and risk management services. In addition to the RMFP, OCC's risk management documents include the Clearing Fund Methodology Policy, Collateral Risk Management Policy, Default Management Policy, Margin Policy, Model Risk Management Policy, Recovery and Orderly Wind-Down Plan, and Third-Party Risk Management Framework (collectively, the ''OCC Risk Policies''). These OCC Risk Policies are separate supporting documents containing details on how OCC's risk management framework is used and applied within OCC.

OCC's RMFP describes, at a high level, OCC's framework for managing risk. After its routine review of its existing RMFP, OCC proposes to replace its RMFP with two new, more detailed documents, the RMF and CRMP, which it believes will enhance the clarity and transparency of its overall risk management framework.[7]

Specifically, OCC proposes introducing the RMF to provide a broader overview of OCC's risk universe, including categorizations of risk management, descriptions of practices across OCC's three lines of defense model, a discussion of how OCC is prepared with tools to manage recovery and orderly wind-down, and a narrative about the requirements related to escalations of exceptions and deviations.

Simultaneously, OCC proposes to introduce the CRMP as a separate policy because it is intended to support the RMF by providing more extensive details on OCC's corporate risk management and its practices. These details include enhanced descriptions of OCC's activities to identify, measure, monitor, manage, report, and escalate risks to inform decision-making. Furthermore, OCC proposes to move details of OCC's corporate risk management program to the CRMP in order to make OCC's approach to corporate risk consistent with other areas of risk managed by OCC.

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[42] 17 CFR 200.30–3(a)(85).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 95842 (Sept. 20, 2022), 87 FR 58409 (Sept. 26, 2022) (File No. SR–OCC–2022–010) (''Notice of Filing'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 96275 (Nov. 8, 2022), 87 FR 68529 (Nov. 15, 2022) (File No. SR–OCC–2022–010).

[6] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[7] *See* Notice of Filing, 87 FR 58409.

A. The Risk Management Framework

Overall, OCC is proposing to expand the level of detail provided in its rules describing OCC's framework for managing risk and is proposing several changes to the substance of the rules in its RMFP to the extent they would be moved to the proposed RMF, in an entirely new document. Among other things, the RMF generally encompasses the RMFP with the following changes that: (i) replace or update information; (ii) remove extraneous information; (iii) relocate information; or (iv) add rule text not currently found in the RMFP:

(i) RMF Changes that Replace or Update Information:

1. Replace the purpose section of the RMFP with a new purpose section of the RMF and an introduction section of the CRMP that, collectively, would (i) reflect the reorganization of content across the two new documents and (ii) explain the purpose of and intention for each, as well as their place in OCC's overall framework for risk management.

2. Modify the descriptions of OCC's risk appetite framework, including the risk universe, risk appetite, and risk tolerances, to be less detailed in the RMF than in the RMFP, while relocating the risk appetite framework detail and expanding it in the CRMP for a more extensive description overall. These changes include replacing the Identification of Key Risks section in the RMFP with a new OCC Risk Management section in the RMF, and expanded in the CRMP. Both of these changes are discussed in detail below.[8]

3. In the new RMF, revise the descriptions of the responsibilities of the Management Committee and working groups. The RMF would state that the Management Committee supports the management and conduct of its business in accordance with policy directives from the Board. The RMF would also state that the Management Committee includes officers responsible for ensuring that the Management Committee's actions and decisions are consistent with OCC's mission, Code of Conduct, Rules and By-Laws, policies, procedures, and general principles of sound corporate governance. The RMF would further state that the Management Committee would have explicitly-stated authority to form and delegate authority to subcommittees and working groups to conduct certain of the Management Committee's activities, and these subcommittees and working groups would be responsible for reporting and escalating information. These proposed descriptions vary from the corresponding RMFP descriptions that primarily relate to the Management Committee's role and responsibilities in reviewing and recommending changes to OCC's risk universe and escalating breaches to the Board.[9]

4. Replace the Credit Risk Management Framework section in the RMFP with proposed Membership Standards, Credit, Clearing Fund, Margin, Collateral, and Default Management sections in the RMF. These new sections of the RMF would refer to the same OCC Risk Policies that address these risks and are currently filed with the Commission as rules of OCC (*e.g.,* the Margin Policy,[10] Clearing Fund Methodology Policy,[11] Collateral Risk Management Policy,[12] Default Management Policy,[13] and Third-Party Risk Management Framework [14]). There would be no change to the substance of these sections.

5. Revise the process for handling policy violations and exceptions. Currently, policy violations and exceptions are reviewed by OCC's Chief Executive Officer and Chief Compliance Officer, respectively. The proposed changes would instead escalate exceptions and risk acceptances to OCC's Corporate Risk group [15] and to escalate policy deviations to its Compliance department.[16]

(*ii*) *RMF Changes that Remove Extraneous Information:*

In connection with replacing the RMFP with the RMF and CRMP, OCC believes certain information would be rendered extraneous.[17] Accordingly, OCC is proposing to remove such extraneous information currently found in the RMFP but will not replace it with equivalent sections in either the RMF or CRMP, including the following:

1. Delete the Context for Risk Management Framework and Risk Management Philosophy sections of the RMFP, as these provide history and background information about OCC that is covered elsewhere in the content that OCC proposes to migrate from the RMFP to the RMF and CRMP.

2. Move the standalone RMFP section dedicated to the Compliance Risk Assessment program under the broader Compliance section of the RMF.[18]

3. Replace the Control Activities section of the RMFP with more general descriptions of Compliance's responsibilities under the RMF to clarify the department's responsibilities for management of compliance risk more succinctly.

4. Delete the RMFP sections related to project management, corporate planning and budgeting, and Human Resources and Compliance Training and Policies that address administrative policies and practices.

5. Remove the RMFP's Appendix: OCC's Key Risks with CCA, PFMI, and Reg SCI Mapping to remove detailed risk mapping from OCC high-level policy documents.[19]

(iii) RMF Changes that Relocate Information

The following changes involve relocating information contained in the RMFP by either moving it to new sections in the RMF or CRMP, or incorporating it into RMFP sections that are being moved over largely as-is:

1. Relocate the Risk Management Governance section of the RMFP, with certain modifications, to a new Governance section of the RMF. The modifications would include streamlining the description of the responsibilities of the Board, which generally are already addressed in the Board of Directors Charter and Corporate Governance principles. The RMF Governance section would state that the Board is responsible for advising and overseeing management and that OCC's Chief Risk Officer

[8] *See* ''Additional Rule Text in the RMF not Currently Found in the RMFP,'' *infra* at II.A.(iv)1; ''Additional Rule Text in the CRMP not Currently Found in the RMFP,'' *infra* at II.B.(i)2.b.

[9] As noted below, OCC proposes to provide a more detailed description in the CRMP of the Management Committee's role and responsibilities in reviewing and recommending changes to OCC's risk universe. *See* ''CRMP Governance Adjustments,'' *infra* at II.B.(ii)4.

[10] *See, e.g.,* Exchange Act Release No. 82355 (Dec. 19, 2017), 82 FR 61058 (Dec. 26, 2017) (File No. SR–OCC–2017–007).

[11] *See, e.g.,* Exchange Act Release No. 83735 (July 27, 2018), 83 FR 37855 (Aug. 2, 2018) (File No. SR–OCC–2018–008).

[12] *See, e.g.,* Exchange Act Release No. 82311 (Dec. 13, 2017), 82 FR 60252 (Dec. 19, 2017) (File No. SR–OCC–2017–008).

[13] *See, e.g.,* Exchange Act Release No. 82310 (Dec. 13, 2017), 82 FR 60265 (Dec. 19, 2017) (File No. SR–OCC–2017–010).

[14] *See, e.g.,* Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (File No. SR–OCC–2020–014).

[15] The proposed CRMP details requirements related to risk reporting and escalation. *See* ''CRMP Governance Adjustments,'' *infra* at II.B.(ii)4.

[16] OCC is making similar changes broadly across policies, which have different levels of detail regarding exception handling, because it believes such changes would create consistency with this practice in their policies and procedures without requiring each to have its own individual policy exceptions and violations that need to be updated. *See* Notice of Filing, 87 FR at 58418.

[17] OCC believes the information being removed from its rules to be extraneous. *See* Notice of Filing, 87 FR at 58411–58423.

[18] *See* Notice of Filing, 87 FR at 58417.

[19] OCC's Corporate Risk group would continue to maintain and dynamically update the mapping, risks, and manner in which it defines the risks based on business and market factors. *See* Notice of Filing, 87 FR at 58418.

(''CRO'') would present a review of the RMF to the Board for approval at least annually. Further, OCC would streamline discussion of the Management Committee and working groups to be consistent with changes in responsibility discussed above.[20]

2. Relocate the Risk Management Practice, Enterprise Risk Assessment program, and Risk Reporting sections from the RMFP to the CRMP, with the changes described below.[21]

3. Relocate the discussion of OCC's Scenario Analysis Program from the RMFP to the CRMP, with revisions designed to more accurately and completely describe the scenario analysis process.[22]

(iv) Additional Rule Text in the RMF not Currently Found in the RMFP:

1. Add new rule text describing the responsibilities of OCC employees to contain risk escalation reporting, consultations with Legal on legal and regulatory matters, and training on a culture of risk and control awareness. This new rule text would be located in the Governance section of the RMF.

2. Include a discussion of OCC's ''three lines of defense'' model in the OCC Risk Management section of the RMF that would be similar to the discussion currently provided in the RMFP. OCC's three lines of defense model would remain unchanged, while the additional information proposed for the RMF would clarify who has ownership and accountability for risk management.

3. Add text in a Security section stating that OCC's Security department manages information, physical, and personnel security risk to safeguard the confidentiality, integrity, and availability of corporate information systems and data assets implemented and maintained by Information Technology.

4. Add a summary of OCC's Recovery and Orderly Wind-Down Plan to the RMF, in order to describe this aspect of OCC's risk management framework. The RMF would state that OCC employs a set of recovery tools in the event of severe financial, operational, or general business stress, to continue to provide critical clearing and settlement services. It would further state that OCC has a wind-down plan that provides for OCC's orderly resolution if it is determined that recovery efforts would be unsuccessful or insufficient.[23]

B. The Corporate Risk Management Policy

Among other things, the CRMP would contain some of the information in OCC's RMFP and expand upon certain topics by (i) adding rule text not currently found in the RMFP and (ii) introducing certain governance adjustments. Such changes would include the following:

(i) Additional Rule Text in the CRMP not Currently Found in the RMFP:

1. Support the RMF by explaining OCC's risk management activities and provide an overview of the activities overseen by OCC's Corporate Risk group to identify, measure, monitor, manage, report, and escalate risks.

2. As noted above,[24] the CRMP would expand the discussion of OCC's risk appetite framework in the OCC Risk Management Practice section of the RMF.

a. Other than the Compliance Risk Assessment,[25] the information currently provided in the Risk Management Practice section of the RMFP would be moved as-is to the Risk Management Practice section of the CRMP and revised to more accurately and completely describe the risk assessment, monitoring, and reporting processes conducted by Corporate Risk. Specifically, the CRMP would include revised discussions of Enterprise Risk Assessments, the Scenario Analysis Program, and Risk Reporting to provide more detail about how these processes function, such as Corporate Risk's obligations, the quarterly results reporting duties of the CRO and the use of residual risk, risk tolerances, and risk warnings and associated reporting.

b. Modify the description of OCC's risk appetite framework as well as revise terminology in the risk universe, including changes to the Key Risks, Sub-Categories, and Definitions in the RMFP. In adopting the CRMP, OCC would remove the more general risk appetite statement definitions (*i.e.,* no appetite, low appetite, moderate appetite, and high appetite), which are currently described in the RMFP, enabling OCC to use more detailed qualitative risk appetite statements for each risk sub-category. As a result, the CRMP describes OCC's risk universe terminology as being classified into: (i) risk categories, which are the highest-level groups of risk aggregation; (ii) risk sub-categories, which further classify risks within risk categories into detailed groups; and (iii) risk statements, which are descriptions of the drivers, events and consequences of risks. OCC believes that the proposed terms are better at describing the elements that comprise OCC's risk universe and the relationship between them.[26]

3. Describe Corporate Risk's process for escalating risks to the CRO, Management Committee, and Board, and for training employees about risk to support risk management and decision-making.

4. Introduce the concept of risk rating scales, which reflect how large the effect of an event's occurrence would be and the likelihood of it occurring when considering a range of repercussions on OCC's business. The CRMP would state that the likelihood risk rating scale considers a 10-year financial cycle and yearly corporate planning activities, and they are used to measure both inherent and residual risk. Corporate Risk and Risk Owners would be required to review changes to the risk scales, and the CRO would approve them. The Management Committee and Board would be notified of changes to the risk rating scales.

(ii) CRMP Governance Adjustments:

1. Transfer responsibility for maintaining inventory of all business processes, risks, and associated controls from Compliance to Corporate Risk. Revise descriptions related to risk assessment, monitoring, and reporting conducted by Corporate Risk to indicate Corporate Risk and Risk Owners would be required at least every twelve months to review the risk universe, risk tolerances, and risk appetites within established tolerances and make adjustments at a risk sub-category level. This revision is a change from the RMFP because it requires Corporate Risk and Risk Owners to do the review instead of the Management Committee, and it requires these reviews at least every twelve months instead of at least annually.

2. Introduce the concept of a risk universe, and state that the CRO has (i) authority to approve OCC's risk universe and (ii) an obligation to provide the risk universe to the Management Committee and the Board.

[20] Discussion of responsibilities related to the Management Committee's role and responsibilities in reviewing and recommending changes to OCC's risk universe, including risk appetites and tolerances, and escalating breaches to the Board would be moved to the CRMP. *See, e.g.,* ''CRMP Governance Adjustments'' *infra* at II.B.(ii)4.

[21] *See* Order Granting Approval *infra* ''CRMP Changes that Add Context'' at II.B.(i)2.a.

[22] *Id.*

[23] *See* Notice of Filing, 87 FR at 58418.

[24] *See* ''RMF Changes that Replace or Update Information,'' *supra* II.A.(i)2.

[25] As noted above, the substance of Compliance Risk Assessment section of the RMFP would now be addressed in the Compliance section of the RMF, and would not be part of the Risk Management Practice section of the RMF on which the CRMP expands.

[26] *See* Notice of Filing, 87 FR at 58411.

3. Add new sections to provide additional details regarding OCC's processes for (i) monitoring qualitative or quantitative risk metrics as well as operational risk events, (ii) managing risks against OCC's tolerances and appetites, (iii) escalation, and (iv) training.

4. Provide additional details around the internal governance process for reviewing and approving risk categories, appetites, and tolerances for monitoring risk tolerances. Corporate Risk would approve Risk statements, while it would notify the Management Committee and Board of updates.

a. Risk appetites would be established at the risk subcategory level and the CRO and Management Committee would present them along with any changes to the Board, or to the Risk Committee if the Board has delegated such authority, for approval.

b. The CRO would be responsible for escalating risk appetite breaches to the Management Committee, Risk Committee, and Board.

c. Risk Owners would be responsible for developing risk treatment plans to reduce risks that exceed OCC's risk appetites.

C. Conforming Changes to OCC Risk Policies

In addition to adopting the RMF and the CRMP, OCC proposes to make conforming changes to its OCC Risk Policies by replacing or removing references throughout that would become inaccurate (*e.g.,* references to the RMFP) and removing the policy-specific references to exceptions and violations that would be uniformly covered by the new Risk Acceptance and Deviations section of the RMF.[27] OCC also proposes to make administrative updates to cross-references to other internal OCC policies and procedures that would not affect the substance of OCC's rules.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[28] After carefully considering the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent with Section 17A(b)(3)(F) of the Exchange Act,[29] Rules 17Ad–22(e)(2)(v)[30], and Rule 17Ad–22(e)(3)(i)[31] as described in detail below.

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that a clearing agency's rules are designed to promote the prompt and accurate clearance and settlement of securities transactions.[32]

The Commission believes that the proposed changes strengthen and expand on the foundation of OCC's risk management policies, procedures, and systems that make up OCC's broader risk management framework. Among other things, the changes clarify lines of reporting and escalation, designate responsibility, and provide more transparency around updates while making the update process simpler. More specifically, the proposed changes both (i) streamline key risk concepts, such as policy exceptions to OCC's process for escalating exceptions and deviations to develop and mature without requiring individual section updates, and (ii) introduce concepts such as the risk rating scales. As a result, the Commission believes that the proposed replacement of the RMFP with the RMF and CRMP would strengthen OCC's risk management processes, which, in turn, would allow OCC to manage such risks in a comprehensive manner. The additional conforming changes to the OCC Risk Policies would also serve to enhance consistency across the documents comprising OCC's framework for managing risks. The comprehensive management of risk would reduce the likelihood of a failure or disruption of OCC in its role as central counterparty for the listed options.

The Commission believes, therefore, that the proposal is consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.

B. Consistency With Rule 17Ad–22(e)(2)(v) of the Exchange Act

Rules 17Ad–22(e)(2)(v) requires that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that specify clear and direct lines of responsibility.[33]

As described above in section II.B.(ii), the proposal contained in the Notice of Filing would replace the current RMFP with amended rules describing OCC's risk management and governance arrangements in the RMF, including the roles and responsibilities of the Board, Management Committee, and OCC's internal working groups. The CRMP would provide additional descriptions and requirements complementing the rules in the RMF by introducing concepts and governance details, including the CRO owning and approving the risk universe and then providing it to the Management Committee. Furthermore, the proposal would transfer responsibility for all business processes, risks, and associated controls from Compliance to Corporate Risk, which would also be responsible for monitoring, escalating, and training processes. Additionally, the proposed changes in the RMF and CRMP together would specify clearer lines of reporting, responsibility, and escalation, provide definitive update schedules, and create more streamlined set of documents requiring updates than are present in the RMF. The Commission believes these proposed changes would improve OCC's risk framework by presenting a clearer description of OCC's governance arrangements as they relate to the management of risk within OCC.

The Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad–22(e)(2)(v) of the Exchange Act.[34]

C. Consistency With Rule 17Ad–22(e)(3)(i) Under the Exchange Act

Rule 17Ad–22(e)(3) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.[35] Rule 17Ad–22(e)(3)(i) requires that such policies and procedures include risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency that are subject to review on a

[27] *See* ''RMF Changes that Replace or Update Information'' *supra* at II.A.(i)5.

[28] 15 U.S.C. 78s(b)(2)(C).

[29] 15 U.S.C. 78q–1(b)(3)(F).

[30] 17 CFR 240.17Ad–22(e)(2)(v).

[31] 17 CFR 240.17Ad–22(e)(3)(i).

[32] 15 U.S.C. 78q–1(b)(3)(F).

[33] 17 CFR 240.17Ad–22(e)(2)(v).

[34] 17 CFR 240.17Ad–22(e)(2)(v).

[35] 17 CFR 240.17Ad–22(e)(3)(i).

specified periodic basis and approved by the board of directors annually.[36]

The Commission previously found the OCC's RMFP, and subsequent revisions thereto, to be consistent with Rule 17Ad–22(e)(3)(i).[37] As described above, the proposal contained in the Notice of Filing would replace OCC's RMFP with the RMF and CRMP. In replacing the RMFP, OCC proposes to (i) replace or update rules currently in the RMFP,[38] (ii) remove information currently in the RMFP from OCC's rules,[39] (iii) relocate rules from the RMFP to the RMF and CRMP,[40] and (iv) add new rule text expanding on what exists in the RMFP.[41] The Commission believes that, overall, the propose changes would maintain, clarify, and expand on OCC's framework for managing risk. Additionally, OCC proposes to make conforming changes to other policies that reference the RMFP.

As described above, OCC proposes replacing and updating rules currently in the RMFP. For example, OCC proposes replacing a description of the purpose of the RMFP with a description of the purpose of the RMF and an introduction to the CRMP. Further, OCC proposes relocating rules currently found in the RMFP without changing the substance of those rules. For example, OCC proposes to move the substance of the Risk Management Governance section of the RMFP under the broader Governance section the RMF. The Commission believes that such changes serve to accurately reflect the proposed organization of OCC's policies and procedures that comprise its framework for managing risk.

Additionally, OCC proposes removing information such as the history and background found in the Risk Management Philosophy section of the RFMP. The Commission believes that the removal of background and historical information would not change OCC's processes or systems for identifying, measuring, monitoring, or managing risk.

Finally, OCC proposes changes to expand the rules currently captured in the RMFP. For example, the RMF would describe OCC's reorganized framework for managing risk and provide an overview of OCC's risk appetite framework, including OCC's risk universe, risk appetite, and risk tolerances that would be described in the CRMP in greater detail. It would include an expanded discussion of OCC's three lines of defense model while relocating detailed discussions of the Risk Management Practice, Enterprise Risk Assessment program, and Risk Reporting to the CRMP. The RMF would state that the Board is responsible for advising and overseeing management, and that OCC's CRO would present a review of the RMF to the Board for approval at least annually. The discussion of Control activities would be revised to give general descriptions of Compliance while also updating OCC's processes for handling policy exceptions. The RMF would also include a new section discussing the Recovery and Orderly Wind-Down plan. Additionally, the CRMP would contain new rule text regarding OCC's risk monitoring processes. Furthermore, the key risk universe definitions provided in the CRMP would use detailed qualitative risk appetite statements for each risk sub-category to better describe the elements that comprise OCC's risk universe and the relationship between them while providing additional details for internal governance and monitoring. Finally, the CRMP would introduce risk rating scales, which reflect how large the effect of an event's occurrence would be and the likelihood of it occurring when considering a range of repercussions on OCC's business. The Commission believes that the proposed changes provide a more comprehensive and transparent discussion of OCC's overall framework for managing its range of risks, including legal, credit, liquidity, operational, general business, investment, custody, among others, as referenced in detail in its first line of defense and supported through the challenge and assurance functions in OCC's second and third lines of defense. The Commission also believes that certain proposed changes clarify and strengthen the risk management framework. For example, Corporate Risk and Risk Owners would be required to review the risk universe, risk tolerances, and risk appetites within established tolerances at least every twelve months instead of at least annually, which could otherwise result in gaps of time between reviews ranging as long as twenty-two months.

The Commission believes, therefore, that the proposal is consistent with the requirements of Rule 17Ad–22(e)(3)(i) of the Exchange Act.[42]

VI. CONCLUSION

On the basis of the foregoing, the Commission finds that the proposed rule change, is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act[43] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[44] that the proposed rule change (SR–OCC–2022–010) be, and hereby is, approved

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28303 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[36] 17 CFR 240.17Ad–22(e)(3)(i).

[37] *See* Exchange Act Release No. 82232 (Dec. 7, 2017), 82 FR 58662 (Dec. 13, 2017) (File No. SR–OCC–2017–005) (approving adoption of the RMFP). *See also, e.g.,* Exchange Act Release No. 90797 (Dec. 23, 2020), 85 FR 86592 (Dec. 30, 2020) (File No. SR–OCC–2020–014) (approving changes to the RMF related to the adoption of Third-Party Risk Management Framework).

[38] *See supra* sections II.A.(i).

[39] *See supra* sections II.A.(ii).

[40] *See supra* sections II.A.(iii).

[41] *See supra* sections II.A.(iv), II.B.(i).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[44] 15 U.S.C. 78s(b)(2).

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 11142/December 23, 2022; Securities Exchange Act of 1934 Release No. 96577/December 23, 2022]

Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2023

The Sarbanes-Oxley Act of 2002, as amended (the ''Sarbanes-Oxley Act''),[1] established the Public Company Accounting Oversight Board (''PCAOB'') to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Securities and Exchange Commission (the ''Commission''). The PCAOB is to accomplish these investor protection and public interest goals through the registration of public accounting firms, standard setting, inspections, and investigation and disciplinary programs. The PCAOB is subject to the

[1] 15 U.S.C. 7201 *et seq.*

[2] Public Law 111–203, 124 Stat. 1376 (2010).

comprehensive oversight of the Commission.

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall estblish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate ''recoverable budget expenses,'' which may include operating, capital, and accrued items. The PCAOB's annual budget and accounting support fee are subject to approval by the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among registered brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P (the ''Budget Rule'') governs the Commission's review and approval of PCAOB budgets and annual accounting support fees.[3] The Budget Rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to provide on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the Budget Rule, in March 2022 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2023 budget year. In response, the Commission provided the PCAOB with economic assumptions and general budgetary guidance for the 2023 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects, and budget estimates and participated in several meetings with staff of the PCAOB to further develop the understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a ''passback'' letter to the PCAOB on October 27, 2022. On November 18, 2022, the PCAOB adopted its 2023 budget and accounting support fee during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2023 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2023 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2023.

The Commission continues to emphasize the importance of the PCAOB's identification of efficiencies and process improvements. Accordingly, the Commission requests that the PCAOB evaluate its operational efficiency, improvements, and budgetary needs and submit such assessments to the Commission in connection with the 2024 budget cycle.

Coordination between the SEC and PCAOB continues to be important. The Commission directs the PCAOB during 2023 to continue to hold monthly meetings, as necessary, with the Commission's staff to discuss important policy initiatives, changes related to program areas, and significant impacts to the PCAOB's 2023 budget, including significant differences between actual and budgeted amounts and anticipated cost-savings. Separately, the Commission directs the PCAOB to continue its written quarterly updates on recent activities, including strategic initiatives, for the PCAOB's Office of Economic and Risk Analysis; Office of Data, Security, and Technology; and Division of Registration and Inspections. The Commission expects the PCAOB to make itself available to meet with individual Commissioners on these and other topics. Further, the Commission requests that the PCAOB submit its 2022 annual report to the Commission by March 31, 2023.

The Commission understands that the Office of Management and Budget (''OMB'') has determined that the 2023 budget of the PCAOB is subject to sequestration under the Budget Control Act of 2011.[4] For 2022, the PCAOB sequestered $17.7 million. That amount will become available in 2023. For 2023, the sequestration amount will be 5.7% or $19.9 million. Consequently, we expect the PCAOB will have approximately $2.2 million less funds available from the 2022 sequestration for spending in 2023. Accordingly, the PCAOB should submit a revised spending plan for 2023 reflecting a $2.2 million reduction to budgeted expenditures as a result of the increase in sequestration amount from 2022 to 2023.

The Commission has determined that the PCAOB's 2023 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

It is ordered, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2023 are approved.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–28338 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[3] 17 CFR 202.190.

[4] *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2023* (Mar. 28, 2022), *available at https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA_251A_Sequestration_Report_FY2023.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96570; File No. SR–CBOE–2022–057]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Increase the Position and Exercise Limits for Options on Apple Inc. Stock

December 22, 2022.

On November 7, 2022, Cboe Exchange, Inc. filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the position and exercise limits for options on Apple Inc. stock (''AAPL''). The proposed rule change was published for comment in the **Federal Register** on November 25, 2022.[3] The Commission has received no comment letters regarding the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96353 (Nov. 18, 2022), 87 FR 72568.

[4] 15 U.S.C. 78s(b)(2).

to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is January 9, 2023.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates February 23, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CBOE–2022–057).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28295 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96574; File No. SR-Phlx-2022-49]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify Equity 4, Rule 3100 to Establish Common Criteria and Procedures for Halting and Resuming Trading in Equity Securities in the Event of Regulatory or Operational Issues

December 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 15, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed

Rule Change

The Exchange proposes to modify Equity 4, Rule 3100 to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, reorganize the text of the rule, and make conforming changes to related rules. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In conjunction with adoption of an amended Nasdaq UTP Plan proposed by its participants (''Amended Nasdaq UTP Plan''),[3] the Exchange is amending Rule 3100[4] to integrate several definitions and concepts from the Amended Nasdaq UTP Plan and to reorganize the rule in light of the Exchange's experience with applying the rule over many years as a national securities exchange.[5] The Exchange proposes to reorganize and amend Rule 3100, entitled Limit Up-Limit Down Plan and Trading Halts on PSX. The rule sets forth the Exchange's authority to halt trading under various circumstances. The Exchange is a participant of the transaction reporting plan governing Tape C Securities (''Nasdaq UTP Plan'').[6] As part of these changes, the Exchange will amend categories of regulatory and operational halts, improve the rule's clarity, adopt defined terms from the Amended Nasdaq UTP Plan and delete parts of the rule that are no longer needed. Last, the Exchange is updating cross references in other rules that are affected by the proposed changes.

[3] On February 11, 2021, the Nasdaq UTP Plan participants filed Amendment 50 to the Plan, to revise provisions governing regulatory and operational halts. *See* Letter from Robert Brooks, Chairman, UTP Operating Committee, Nasdaq UTP Plan, to Vanessa Countryman, Secretary, Securities and Exchange Commission, dated February 11, 2021. The Nasdaq UTP Plan subsequently filed two partial amendments to the 50th Amendment, on March 31, 2021 and on April 7, 2021. The SEC approved the amendments on May 28, 2021. *See* Securities Exchange Act Release No. 34–92071 (May 28, 2021), 86 FR 29846 (June 3, 2021) (S7–24–89). The Amended Nasdaq UTP Plan includes provisions requiring participant self-regulatory organizations (''SROs'') to honor a Regulatory Halt declared by the Primary Listing Market. The provisions in the Nasdaq UTP Plan, and the plan for consolidation of data for non-Nasdaq-listed securities, the Consolidated Tape System and Consolidated Quotations System (collectively, the ''CTA/CQS Plan''), include provisions similar to the changes proposed by the Exchange in this filing.

[4] References herein to Nasdaq PHLX Rules in the 3000 Series shall mean Rules in Nasdaq PHLX Equity 4.

[5] The Exchange notes that its sister exchange, The Nasdaq Stock Market, LLC (''Nasdaq''), filed a similar proposed rule change with the Commission. *See* Securities Exchange Act Release No. 94370 (March 7, 2022), 87 FR 14071 (March 11, 2022); Securities Exchange Act Release No. 94838 (May 3, 2022), 87 FR 27683 (May 9, 2022). The Commission approved the proposed rule change on June 8, 2022. *See* Securities Exchange Act Release No. 95069 (June 8, 2022), 87 FR 36018 (June 14, 2022). Nasdaq BX, Inc. plans to file a similar proposed rule change. The Exchange's proposal provides the Exchange with less authority to declare halts in the event of regulatory or operational issues than under Nasdaq's proposal because the Exchange, unlike Nasdaq, is not a Primary Listing Market. Given the Exchange's status as a non-Primary Listing Market, certain definitions and concepts from the Amended Nasdaq UTP Plan, integrated in Nasdaq's proposal, are not included herein.

[6] Each transaction reporting plan has a securities information processor (''SIP'') responsible for consolidation of information for the plan's securities, pursuant to Rule 603 of Regulation NMS. The transaction reporting plan for Nasdaq-listed securities is known as The Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis or the ''Nasdaq UTP Plan.'' Pursuant to the Nasdaq UTP Plan, the UTP SIP, which is Nasdaq, consolidates order and trade data from all markets trading Nasdaq-listed securities. The Exchange uses the term ''UTP SIP'' herein when referring specifically to the SIP responsible for consolidation of information in Nasdaq-listed securities.

Background

The Exchange has been working with other SROs to establish common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues. These common standards are designed to ensure that events which might impact multiple exchanges are handled in a consistent manner that is transparent. The Exchange believes that implementation of these common standards will assist the SROs in maintaining fair and orderly markets. Notwithstanding the development of these common standards, the Exchange will retain discretion in certain instances as to whether and how to handle halts, as is discussed below.

Every U.S.-listed equity security has its primary listing on a specific stock exchange that is responsible for a number of regulatory functions.[7] These include confirming that the security continues to meet the exchange's listing standards, monitoring trading in that security and taking action to halt trading in the security when necessary to protect investors and to ensure a fair and orderly market. While these core responsibilities remain with the primary listing venue, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security[8] or in the over-the-counter market, regulated by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The exchanges and FINRA are responsible for monitoring activity on the markets over which they have oversight, but also must abide by the regulatory decisions made by the Primary Listing Market. For example, a venue trading a security pursuant to unlisted trading privileges must halt trading in that security during a Regulatory Halt, which is a defined term under the proposed rules,[9] and may only trade the security once the Primary Listing Market has cleared the security to resume trading.

While the Exchange and the other SROs intend to harmonize certain aspects of their trading halt rules, other elements of the rules will continue to be unique to each market. The Exchange believes that this is appropriate to reflect different products listed or traded on each market.

In addition to establishing common criteria and procedures for halting and resuming trading in equity securities in the event of regulatory or operational issues, the Exchange is deleting provisions that are no longer needed and reorganizing the rule to improve its clarity. The Exchange is also making a handful of non-substantive changes to rule text to improve its clarity. The Exchange will implement all of the changes proposed herein in conjunction with other SROs implementing the necessary rule changes. The Exchange will publish an Equity Trader alert at least 30 business days prior to implementing the proposed changes.

Definitions

The Exchange proposes adding a definitions section as Rule 3100(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: ''Operating Committee,'' ''Operational Halt,'' ''Primary Listing Market,'' ''Processor,''[10] ''Regulatory Halt,'' ''Regular Trading Hours,''[11] ''SIP Halt,'' and ''SIP Halt Resume Time.'' The Exchange is adopting a modified form of the term ''Extraordinary Market Activity'' from the Amended Nasdaq UTP Plan, as described below. The definitions of ''UTP Exchange Traded Product'' and ''Pre-Market Session'' have been moved into the definitions section from elsewhere in the current rule without change.[12] The definitions of ''Trust Shares,'' ''Index Fund Shares,'' ''Managed Fund Shares,'' and ''Trust Issues Receipts'' have been moved into the definitions section as subcategories to the defined term ''UTP Exchange Traded Product'' from elsewhere in the current rule without changes in the definitions.[13] The definition of ''Post-Market Session'' has been moved from elsewhere in the rule[14] with a minor change deleting the alternative closing time of 4:15 p.m. as all securities traded on the Exchange commence their closing cross process at 4:00 p.m.[15]

First, the Exchange proposes to add the definition of ''Primary Listing Market''[16] to Rule 3100, which will have the same meaning as in the Amended Nasdaq UTP Plan, Section X.A.8. As is currently the case under Rule 3100 and under the Nasdaq UTP Plan, all Regulatory Halt decisions are made by the market on which the security has its primary listing. This reflects the regulatory responsibility that the Primary Listing Market has for fair and orderly trading in the securities that list on its market and its direct access to its listed companies, which are required to advise it of certain events and maintain lines of communication with the Primary Listing Market. The proposed definition makes clear that if a security is listed on more than one market (a dually-listed security), the Primary Listing Market means the exchange on which the security has been listed the longest. This provision matches language used in the definition of ''Primary Listing Exchange'' in the Limit-Up Limit-Down Plan and will avoid conflict in the event of dually-listed securities.

Second, the Exchange proposes to add the definition of ''Extraordinary Market Activity'' to Rule 3100,[17] which would represent a modified version of the term defined in the Amended Nasdaq UTP Plan, Section X.A.1.[18] Specifically, the

[7] The Exchange is proposing to adopt Primary Listing Market as a new term, defined in Nasdaq UTP Plan, Section X.A.8, as follows: ''[T]he national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.''

[8] In addition, securities may be listed on The Nasdaq Global Market or The Nasdaq Global Select Market, and also listed on the New York Stock Exchange (''dually-listed''). *See* The Nasdaq Stock Market, LLC Rules 5005(a)(11), 5220 and IM–5220.

[9] *See* proposed Rule 3100(a)(9).

[10] The Exchange proposes to also define the term ''SIP'' to have the same meaning as the term ''Processor'' as set forth in the Amended Nasdaq UTP Plan. Because the terms ''Processor'' and ''SIP'' are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the Consolidated Tape Association Plan (''CTA Plan''), the term ''Processor'' may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.

[11] The Exchange notes that pursuant to existing Rule 3100(b)(3) and 3100(b)(4), the Regular Market Session occurs until 4:00 p.m. or 4:15 p.m., and the Post-Market Session begins at 4:00 p.m. or 4:15 p.m.

[12] ''UTP Exchange Traded Product'' is currently defined in Rule 3100(f). ''Pre-Market Session'' is currently defined in Rule 3100(b)(2).

[13] ''Trust Shares,'' ''Index Fund Shares,'' ''Managed Fund Shares,'' and ''Trust Issues Receipts'' are currently defined in Rule 3100(b)(1)(A)–(D).

[14] ''Post-Market Session'' is currently defined in Rule 3100(b)(3).

[15] As noted above, the Exchange is adopting several new terms that have the same meaning as those terms are defined in the Amended Nasdaq UTP Plan. Each of the national market system plans governing the single plan processors has identical definitions of these terms, thus there will be uniformity in the meaning of the terms among such plans as well as among the rules of the SROs.

[16] *See* proposed Rule 3100(a)(7).

[17] *See* proposed Rule 3100(a)(2).

[18] In the Amended Nasdaq UTP Plan, ''Extraordinary Market Activity'' means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or

Exchange proposes to remove the concept of a ''market-wide basis'' from the Amended Nasdaq UTP Plan's definition of Extraordinary Market Activity for purposes of the Exchange's Rules because the term ''Extraordinary Market Activity'' would only be used in the Exchange's Rules as a basis for the Exchange to initiate an Operational Halt, which would only occur on the market declaring the halt (*i.e.,* the Exchange).[19] The current rule does not include a definition for Extraordinary Market Activity.

The third set of new proposed definitions would be specific to events involving the SIP. While the Exchange recognizes that many events involving the SIP would also meet the definition of ''Extraordinary Market Activity'' (as defined in the Amended Nasdaq UTP Plan), the Exchange believes that the critical role of the SIPs in market infrastructure factors in favor of additional guidance on how such events will be handled. The definitions of ''SIP Halt Resume Time'' and ''SIP Halt'' are intended to provide additional guidance to address this subset of potential market issues.[20] In addition, the Exchange is proposing to define terms related to SIP governance needed in order to understand these definitions:

- ''Processor'' or ''SIP''[21] have the same meaning as the term ''Processor'' set forth in the Nasdaq UTP Plan, namely the entity selected by the Participants to perform the processing functions set forth in the Plan. Because the terms ''Processor'' and ''SIP'' are also used throughout the Rules, at times, to apply to processors of information furnished pursuant to the CTA Plan, the term ''Processor'' and ''SIP'' may, in those applicable circumstances, refer to the processor of transactions in Tape A and B securities, as set forth in the CTA Plan.
- ''SIP Plan''[22] is defined as the national market system plan governing the SIP.
- ''Operating Committee''[23] is defined as having the same meaning as in the Nasdaq UTP Plan, namely the committee charged with administering the Nasdaq UTP Plan.

The Exchange is proposing to adopt a category of Regulatory Halt, called a ''SIP Halt,''[24] which will have the same meaning as that term is defined in Section X.A.11. of the Nasdaq UTP Plan, namely ''a Regulatory Halt to trading in one or more securities that a Primary Listing Market declares in the event of a SIP Outage or Material SIP Latency.'' This new category of Regulatory Halt will address situations where the Primary Listing Market declares a Regulatory Halt in one or more securities as a result of a SIP outage[25] or material SIP latency.[26]

The Exchange proposes to add a definition of ''Regulatory Halt''[27] as having the same meaning as in Section X.A.10 of the Amended Nasdaq UTP Plan. Specifically, the Exchange has proposed to define Regulatory Halt to mean a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan), a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

The Exchange proposes to add a definition of ''Operational Halt,''[28] which is defined as having the same meaning as in Section X.A.7 of the Amended Nasdaq UTP Plan. Specifically, the Exchange is proposing to define Operational Halt to mean a halt in trading in one or more securities only on the market declaring the halt and is not a Regulatory Halt. An Operational Halt is effective only on the Exchange; other markets are not required to halt trading in the impacted securities. In practice, the Exchange has always had the capacity to implement operational halts in specified circumstances.[29] The proposed change would provide greater clarity on when an Operational Halt may be implemented and the process for halting and resuming trading in the event of an Operational Halt. An Operational Halt is not a Regulatory Halt.[30]

Finally, the Exchange proposes to delete the defined terms of ''Derivative Securities Product,'' ''UTP Listing Market,'' ''UTP Regulatory Halt,'' and ''UTP Security'' as the definitions are obsolete and not utilized within the Exchange's Rules with the proposed changes herein.

Regulatory Halt

Proposed Rule 3100(b)(1)(A)(i)–(ii) includes two situations in which the Exchange must halt trading pursuant to a Regulatory Halt: under the Limit Up-Limit Down Plan or pursuant to extraordinary market volatility (market-wide circuit breakers). Proposed Rule 3100(b)(1)(A)(i) retains without substantive modification the existing rule with respect to the Limit Up-Limit Down Plan (current Rule 3100(a)(2)–(5)). The Exchange, as a non-Primary Listing Market, does not itself declare trading pauses pursuant to the Limit Up-Limit Down Plan, but rather implements such pauses declared by Primary Listing Markets. The Exchange proposes to make clear in Rule 3100(b)(1)(A)(ii) that

securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

[19] The Exchange proposes to define ''Extraordinary Market Activity'' to mean a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, or transaction information for a sustained period.

[20] The Exchange proposes to define the terms ''SIP Halt Resume Time'' and ''SIP Halt'' to have the same meaning as in the Amended Nasdaq UTP Plan.

[21] *See* proposed Rule 3100(a)(8).

[22] *See* proposed Rule 3100(a)(14).

[23] *See* proposed Rule 3100(a)(3).

[24] *See* proposed Rule 3100(a)(12).

[25] SIP outage means a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual agreement among the Processor, the Primary Listing Market for the affected securities, and the Operating Committee unless the Primary Listing Market, in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future. *See* Amended Nasdaq UTP Plan, Section X.A.13.

[26] Material SIP latency means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor's vendor lines, which delay the Primary Listing Market determines, in consultation with, and in accordance with, publicly disclosed guidelines established by the Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future. *See* Amended Nasdaq UTP Plan, Section X.A.5.

[27] *See* proposed Rule 3100(a)(9).

[28] *See* proposed Rule 3100(a)(4).

[29] *See* By-Laws of Nasdaq PHLX LLC, Section 7–5 (''Authority to Take Action Under Emergency or Extraordinary Market Conditions''), available at *https://listingcenter.nasdaq.com/assets/rulebook/phlx/rules/Phlx_By-Laws.pdf.*

[30] The Exchange notes that it proposes to amend the existing definition of the term ''Post-Market Session'' to clarify that it is a trading session that begins after ''Regular Trading Hours''—a term that, in turn, is defined in the Nasdaq UTP Plan—and that such session begins at ''approximately'' 4:00 p.m. *See* Proposed Rule 3100(a)(5).

a trading halt pursuant to extraordinary market volatility (market-wide circuit breakers), as is described in Rule 3101, constitutes a Regulatory Halt.

The Exchange would also consolidate subsections concerning a Regulatory Halt declared by Primary Listing Markets in Rule 3100(b)(1)(A)(iii). The Exchange believes this consolidation would add clarity to the rule. As is the case under the current rule, the Exchange would honor a Regulatory Halt.

The Exchange proposes to add proposed Rule 3100(b)(1)(A)(iii)(a)(1), which makes clear that the start time of a Regulatory Halt is the time the Primary Listing Market declares the Regulatory Halt, regardless of whether communications issues impact the dissemination of notice of the Halt.[31] This proposal would provide market participants with certainty on the official start time of the Regulatory Halt. Under the proposed rule, the start time is fixed by the Primary Listing Market; it is not dependent on whether notice is disseminated immediately. This will avoid possible disagreement if the Regulatory Halt time were tied to dissemination or receipt of notification, which may occur at different times. The Exchange recognizes that in situations where communication is interrupted, trades may continue to occur until news of the Regulatory Halt reaches all trading centers. However, a fixed ''official'' Regulatory Halt time will allow SROs to revisit trades after the fact and determine in a consistent manner whether specific trades should stand.

Current Rule 3100(d), states, in part, that if the UTP Listing Market declares a UTP Regulatory Halt, the Exchange will halt trading in that security. This would become proposed Rule 3100(b)(1)(A)(iii)(a)(2). Consistent with Section X.G of the Nasdaq UTP Plan, the proposed Rule will more broadly require the Exchange to halt trading of a UTP security if the Primary Listing Market declares a Regulatory Halt in that security.

Current Rule 3100(f)(1)–(3), which governs trading halts in certain Exchange Traded Products traded on the Exchange pursuant to unlisted trading privileges during pre-market, regular market, and post-market sessions, would become proposed Rule 3100(b)(1)(A)(iii)(a)(3), without any substantive changes. Subsection (b)(1)(A)(iii)(a)(3) would replace the term ''Regular Market Session'' with the term ''Regular Trading Hours'' to stay consistent with other portions of the proposed rule. The change is non-substantive and would still refer to the period between 9:30 a.m. and 4:00 p.m. Eastern Time on days when the Exchange is open for trading. No other changes have been made to this subsection.

Resumption of Trading After a Regulatory Halt

The SROs have jointly developed processes to govern the resumption of trading in the event of a Regulatory Halt. While the actual process of re-launching trading will remain unique to each exchange, the proposed rule would harmonize certain common elements of the reopening process that would benefit from consistency across markets. These common elements include the primacy of the Primary Listing Market in resumption decisions, the requirement that the Primary Listing Market make its determination to resume trading in good faith,[32] and certain parts of the complex process of reopening trading after a SIP Halt. With respect to a SIP Halt, common elements of the reopening process include the interaction among SROs (including the Primary Listing Market with the SIP), the requirement that the Primary Listing Market terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time, the minimum quoting times before resumption of trading, the cutoff time after which trading would not resume during Regular Trading Hours, and the time when trading may resume if the Primary Listing Market does not open a security within the amount of time specified in its rules after the SIP Halt Resume Time.

Proposed Rule 3100(b)(2) provides the process to be followed when resuming trading upon the conclusion of a Regulatory Halt. The new rule, which incorporates Section X.E.1 and X.F.3 of the Amended Nasdaq UTP Plan, is divided into the following two subsections concerning resumption of trading: (A) after a Regulatory Halt other than a SIP Halt; and (B) after a SIP Halt. Proposed Rule 3100(b)(2)(A)(i) provides that, for a Regulatory Halt other than a SIP Halt, the Exchange may resume trading subject to the Regulatory Halt after the Exchange receives notification from the Primary Listing Market that the Regulatory Halt has been terminated. The Exchange does not conduct halt crosses and, therefore, the resumption of trading in these securities will occur once notice from the Primary Listing Market is received.

Proposed Rule 3100(b)(2)(B)(i) provides that, for securities subject to a SIP Halt initiated by another exchange that is the Primary Listing Market, during Regular Trading Hours, the Exchange may resume trading after trading has resumed on the Primary Listing Market or notice has been received from the Primary Listing Market that trading may resume. During Regular Trading Hours, if the Primary Listing Market does not open a security within the amount of time specified by the rules of the Primary Listing Market after the SIP Halt Resume Time, the Exchange may resume trading in that security. Outside Regular Trading Hours, the Exchange may resume trading immediately after the SIP Halt Resume Time.[33] Proposed Rule 3100(b)(2) is consistent with current practice.

Proposed Rule 3100(b)(3) retains without substantive modification existing Rule 3100(e). Proposed Rule 3100(b)(3) states that the Exchange will not conduct a halt cross or re-opening cross and will process new and existing orders during a Regulatory Halt as follows: (1) any unexecuted portion of Midpoint Peg and Midpoint Peg Post-Only Orders will be cancelled,[34] (2) all other resting Orders in the Exchange Book will be maintained at their last ranked price and displayed price, (3) the Exchange will accept and process all cancellations, and (4) Orders, including Order modifications, entered during the Regulatory Halt will not be accepted.

The Exchange proposes to delete current Rule 3100(c), which provides procedures for initiating and terminating a trading halt. The Exchange would not initiate a Regulatory Halt given its status as a non-Primary Listing Market, rendering language in the current rule inapplicable. In addition, the procedures for terminating a trading halt in current Rule 3100(c) would be deleted. Proposed procedures for terminating Regulatory Halts and resuming trading are included in proposed Rule 3100(b)(2), as discussed above.

[31] This is consistent with the Amended Nasdaq UTP Plan. *See* Amended Nasdaq UTP Plan, Section X.D.1.

[32] *See* Partial Amendment No. 1 of Trading Halt Amendments to the UTP Plan, dated March 31, 2021.

[33] *See* Partial Amendment No. 2 of Trading Halt Amendments to the UTP Plan, dated April 7, 2021.

[34] Proposed Rule 3100(b)(3) applies to Regulatory Halts. Consistent with current practice, Midpoint Pegged Orders are only cancelled during Regulatory Halts. In contrast, during an Operational Halt, Midpoint Pegged Orders are not cancelled. The Exchange notes that its sister exchange, Nasdaq, intends to file a proposed rule change to reflect this concept.

Operational Halt

The Exchange proposes in Rule 3100(c) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. The ability to call an Operational Halt has existed for a long time, although in the Exchange's experience, such halts have rarely been initiated. As part of the Exchange's assessment with the other SROs of the halting and resumption of trading, the Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate.[35] In part, the proposed change is designed to cover situations similar to those that might constitute a Regulatory Halt, but where the impact is limited to a single market. For example, just as a market disruption might trigger a Regulatory Halt for Extraordinary Market Activity (as defined in the Amended Nasdaq UTP Plan) if it affects multiple markets, so a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

Proposed Rule 3100(c) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange:

- if it is experiencing Extraordinary Market Activity[36] on the Exchange; or
- when otherwise necessary to maintain a fair and orderly market or in the public interest.

The Exchange is proposing to delete Rule 3100(a)(1) that authorizes the Exchange to institute an ''operational trading halt'' in a security listed on another exchange when that exchange imposes a trading halt because of an order imbalance or influx. The Exchange believes this language could restrict its ability to follow an Operational Halt imposed by another market to a limited set of fact patterns. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity and the ability to initiate an Operational Halt when necessary to maintain a fair and orderly market will better serve the interests of investors by allowing the Exchange to act where appropriate.

Proposed Rule 3100(c)(2) provides the process for initiating an Operational Halt. Under the proposed rule, the Exchange must notify the SIP if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or if it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

Proposed Rule 3100(c)(3) will clarify how the Exchange resumes trading after an Operational Halt. Proposed Rule 3100(c)(3)(A) provides that the Exchange would resume trading when it determines that trading may resume in a fair and orderly manner consistent with the Exchange's rules. Proposed Rule 3100(c)(3)(B) provides that orders entered during the Operational Halt will not be accepted, unless subject to instructions that the order will be directed to another exchange. Proposed Rule 3100(c)(3)(C) provides that trading in a halted security shall resume at the time specified by the Exchange in a notice. Proposed Rule 3100(c)(3)(C) also specifies that Exchange will notify all other Plan participants and the SIP using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the Exchange. If the SIP is unable to disseminate notice of an Operational Halt or the Exchange is not open for trading, the Exchange will take reasonable steps to provide notice of an Operational Halt, which shall include both the type and start time of the Operational Halt. Each Plan participant shall continuously monitor communication protocols established by the Operating Committee and the Processor during market hours to disseminate notice of an Operational Halt, and the failure of a participant to do so shall not prevent the Exchange from initiating an Operational Halt.

Conforming Changes to Other Rules

The Exchange is proposing to modify Rule 3301A that cross references Rule 3100 in light of the reorganization of Rule 3100. Rule 3301A (Order Types) will be modified to update a cross reference to the Rule that governs Limit-Up-Limit-Down procedures.

In addition, the Exchange is proposing to amend several rules that rely on the definition of ''Regular Market Session'' in current Rule 3100(b)(4). Regular Market Session is defined as ''the trading session from 9:30 a.m. until 4:00 p.m. or 4:15 p.m.'' The Exchange is proposing to replace the references to Regular Market Session in Rule 3301A (Order Types) and 3312 (Clearly Erroneous Transactions) with references to Regular Trading Hours as proposed in Rule 3100(a)(10). The term ''Regular Trading Hours'' would be consistent with the existing application of the definition of ''Regular Market Session'' and obviate the need for multiple definitions for the regular trading day. No securities traded on the Exchange currently close at 4:15 p.m. and, therefore, the alternative closing time in the current Regular Market Session definition is not needed.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[37] Specifically, the proposal is consistent with Section 6(b)(5) of the Act[38] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest.

As described above, the Exchange and other SROs are seeking to adopt harmonized rules related to halting and resuming trading in U.S.-listed equity securities. The Exchange believes that the proposed rules will provide greater transparency and clarity with respect to the situations in which trading will be halted and the process through which that halt will be implemented and terminated. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. equities exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposed rules are consistent with Section 6(b)(5) of the Act[39] because they will foster cooperation and coordination with persons engaged in regulating and facilitating transactions in securities.

As discussed previously, the Exchange believes that the various provisions of the proposed rules that will apply to all SROs are focused on the type of cross-market event where a consistent approach will assist market

[35] Differences between Nasdaq and the Exchange's proposals as it relates to Operational Halts stem from Nasdaq's status as a Primary Listing Market, unlike the Exchange.

[36] ''Extraordinary Market Activity'' in proposed Rule 3100(c) would have the meaning proposed by the Exchange, which is a modified form of the term from the Amended Nasdaq UTP Plan, as described above.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78f(b)(5).

participants and reduce confusion during a crisis. Because market participants often trade the same security across multiple venues and trade securities listed on different exchanges as part of a common strategy, the Exchange believes that the proposed rules will lessen the risk that market participants holding a basket of securities will have to deal with divergent outcomes depending on where the securities are listed or traded. Conversely, the proposed rules would still allow individual SROs to react differently to events that impact various securities or markets in different ways. This avoids the ''brittle market'' risk where an isolated event at a single market forces all markets trading equities securities to halt or halts trading in all securities where the issue impacted only a subset of securities. By addressing both concerns, the Exchange believes that the proposed rules further the Act's goal of maintaining fair and orderly markets.

The Exchange believes that the proposed rules' focus of responsibility on the Primary Listing Market for decisions related to a Regulatory Halt and the resumption of trading is consistent with the Act, which itself imposes obligations on exchanges with respect to issuers that are listed. As is currently the case, the Primary Listing Market would be responsible for the many regulatory functions related to its listings, including the determination of when to declare a Regulatory Halt. While these core responsibilities remain with the Primary Listing Market, trading in the security can occur on multiple exchanges that have unlisted trading privileges for the security, such as on the Exchange, or in the over-the-counter market, regulated by FINRA. The Exchange is responsible for monitoring activity on its own markets, but also must honor a Regulatory Halt.

The proposed changes relating to Regulatory Halts would ensure that all SROs handle the situations covered therein in a consistent manner that would prevent conflicting outcomes in cross-market events and ensure that all trading centers recognize a Regulatory Halt declared by the Primary Listing Market. The changes are consistent with and implement the Amended Nasdaq UTP Plan.

The Exchange believes that the definitions in the proposed rules are also consistent with the Act. The Exchange proposes adding a definitions section as Rule 3100(a) to consolidate the various definitions that will be used in the Rule, some of which are taken from the Amended Nasdaq UTP Plan. The Exchange is adopting a modified form of the term ''Extraordinary Market Activity'' from the Amended Nasdaq UTP Plan, as described above. In addition, several other definitions have been moved into the definitions section from elsewhere in the current rule without changes in the definitions. As noted, certain definitions are consistent with the definitions in the Amended Nasdaq UTP Plan, furthering the Act's goal of promoting fair and orderly markets. For example, the Exchange is proposing to adopt a definition of ''SIP Halt,'' to explicitly address a situation that may disrupt the markets, and this definition is identical to the definition in the Amended Nasdaq UTP Plan. In addition to ''SIP Halt,'' the Exchange is adopting the following terms from the Amended Nasdaq UTP Plan: ''Operating Committee,'' ''Operational Halt,'' ''Primary Listing Market,'' ''Processor,'' ''Regulatory Halt,'' ''Regular Trading Hours,'' and ''SIP Halt Resume Time,'' as discussed above.

The Exchange believes that the proposed rules, which make halts more consistent across exchange rules, are consistent with the Act in that they will foster cooperation and coordination with persons engaged in regulating the equities markets. In particular, the Exchange believes it is important for SROs to coordinate when there is a widespread and significant event, as multiple trading centers are impacted in such an event. Further, while the Exchange recognizes that the proposed rule will not guarantee a consistent result on every market in all situations, the Exchange does believe that it will assist in that outcome. While the proposed rules relating to Regulatory Halts focuses primarily on the kinds of cross-market events that would likely impact multiple markets, individual SROs will still retain flexibility to deal with unique products or smaller situations confined to a particular market.

Also consistent with the Act, and with the Amended Nasdaq UTP Plan, is the Exchange's proposal in Rule 3100(c) to address Operational Halts, which are non-regulatory in nature and apply only to the exchange that calls the halt. As noted earlier, the Exchange presently has the ability to call an Operational Halt, but does so rarely. The Exchange believes that the markets would benefit from greater clarity regarding when an Operational Halt may be appropriate. The proposed change is designed to cover situations where the impact is limited to a single market. For example, a disruption at the Exchange, such as a technical issue affecting trading in one or more securities, could impact trading on the Exchange so significantly that an Operational Halt is appropriate in one or more securities. In such an instance, it would be in the public interest to institute an Operational Halt to minimize the impact of a disruption that, if trading were allowed to continue, might negatively affect a greater number of market participants. An Operational Halt does not implicate other trading centers.

Proposed Rule 3100(c) would authorize the Exchange to implement an Operational Halt for any security trading on the Exchange: (i) if it is experiencing Extraordinary Market Activity on the Exchange; or (ii) when otherwise necessary to maintain a fair and orderly market or in the public interest.

The Exchange believes that it is consistent with the Act to delete parts of Rule 3100 that are no longer needed, including certain definitions, current Rule 3100(c), and Rule 3100(a)(1). The Exchange proposes to delete certain defined terms (''Derivative Securities Product,'' ''UTP Listing Market,'' ''UTP Regulatory Halt,'' and ''UTP Security'') that are obsolete and would no longer be referenced under the proposed Rules, providing increased clarity in the Rules. The Exchange proposes to delete current Rule 3100(c), which provides procedures for initiating and terminating a trading halt, to remove obsolete language and harmonize procedures for terminating Regulatory Halts and resuming trading. Current Rule 3100(a)(1) authorizes the Exchange to institute an ''operational trading halt'' in a security listed on another exchange when that exchange imposes a trading halt because of an order imbalance or influx. The Exchange believes this language could restrict its ability to follow an Operational Halt imposed by another market to a limited set of fact patterns. The Exchange believes that the broader language provided by the definition of Extraordinary Market Activity in proposed Rule 3100(c) will better serve the interests of investors by allowing the Exchange to act where appropriate. Other sections of current Rule 3100 are reorganized and retained without substantive modifications, as described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposal is consistent with Section 6(b)(8) of the Act[40] in that it does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as explained below.

[40] 15 U.S.C. 78f(b)(8).

Importantly, the Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all SROs to harmonize and improve the process related to the halting and resumption of trading in U.S.-listed equity securities, consistent with the Amended Nasdaq UTP Plan. In this area, the Exchange believes that all SROs should have consistent rules to the extent possible in order to provide additional transparency and certainty to market participants and to avoid inconsistent outcomes that could cause confusion and erode market confidence. The proposed changes would ensure that all SROs handle the situations covered therein in a consistent manner and ensure that all trading centers handle a Regulatory Halt consistently. The Exchange understands that all other non-Primary Listing Markets intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that its proposals concerning Operational Halts impose an undue burden on competition. Under the existing Rules, the Exchange already possesses discretionary authority to impose Operational Halts for various reasons, including because of an order imbalance or influx that causes another national securities exchange to impose a trading halt in a security. As described earlier, the proposed Rule change clarifies and broadens the circumstances in which the Exchange may impose such Halts, and specifies procedures for both imposing and lifting them. The Exchange does not intend for these proposals to have any competitive impact whatsoever. Indeed, the Exchange expects that other exchanges will adopt similar rules and procedures to govern operational halts, to the extent that they have not done so already.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally. In addition, information regarding the halting and resumption of trading will be disseminated using several freely accessible sources to ensure broad availability of information in addition to the SIP data and proprietary data feeds offered by the Exchange and other SROs that are available to subscribers. In addition, the declaration and timing of trading halts and the resumption of trading is designed to avoid any advantage to those who can react more quickly than other participants. The proposals encourage early and frequent communication among the SROs, SIPs and market participants to enable the dissemination of timely and accurate information concerning the market to market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [41] and subparagraph (f)(6) of Rule 19b–4 thereunder.[42]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–49. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–49 and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28301 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[41] 15 U.S.C. 78s(b)(3)(A)(iii).

[42] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96575; File No. SR–FICC–2022–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain MBSD Fees

December 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2022, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to FICC's Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'') and the MBSD EPN Rules (''EPN Rules'' and together with the MBSD Rules, the ''Rules'') in order to amend (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct fee, (iv) an Account Maintenance fee, and (v) the Message Processing fees, as described further below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to amend the MBSD Rules and the EPN Rules in order to amend (i) certain Trade Creates and Trade Processing fees; (ii) the DNA Request fee, (iii) the Matched Pool Instruct fee, (iv) an Account Maintenance fee, and (v) the Message Processing fees, as described in greater detail below.

FICC operates a cost plus low-margin pricing model and has in place procedures to control costs and to regularly review pricing levels against costs of operation. FICC reviews pricing levels against its costs of operation typically during the annual budget process. The budget is approved annually by the Board. FICC's fees are cost-based plus a markup as approved by the Board or management (pursuant to authority delegated by the Board), as applicable. This markup or ''low margin'' is applied to recover development costs and operating expenses and to accumulate capital sufficient to meet regulatory and economic requirements.

FICC expects the rising interest rate environment to be a long-term structural change which will continue to negatively impact MBSD revenue. Specifically, as a result of the rising interest rate environment, FICC expects the decrease in transaction volumes for MBSD, and therefore, the decrease in revenues for MBSD, to continue in 2023. FICC expects inflationary pressures, and technology and infrastructure investments related to IT risk mitigation and resiliency initiatives to contribute to costs in 2023. While overall costs in 2023 are expected to be lower than forecasted for 2022, FICC believes the proposed increases in fees, as further described below, would enable FICC to offset the above-described expected decrease in MBSD revenue due to the expected decrease in transaction volumes for MBSD because of rising interest rate environment and would enable FICC to generate sufficient revenues to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its pricing model). The net income margin forecasted for 2022 is lower than the net income margin range that FICC typically aims to achieve. Transaction volumes for MBSD were lower than expected in 2022 and as such, revenues for MBSD were lower than expected in 2022 while technology and infrastructure investments contributed to increased costs in 2022. As described above, FICC believes that the rising interest rate environment is a long-term structural change, which will continue to negatively impact revenues for MBSD in 2023. As such, the proposed increases in fees described in detail below are necessary to enable FICC to cover operating costs while generating a low net income margin. Specifically, these proposed fee increases would enable FICC to generate a low net income margin that would be in a range that FICC typically aims to achieve. As described above, this low margin is applied to recover development costs and operating expenses and to accumulate capital sufficient to meet regulatory and economic requirements.

(i) Certain Trade Creates and Trade Processing Fees

(a) Trade Creates Fees

A trade create is a type of transaction used to identify the submission and/or subsequent processing of trades as opposed to cancels or notifications.

Current Fees

In the MBSD Rules Schedule of Charges Broker Account Group and the MBSD Rules Schedule of Charges Dealer Account Group, there are fees for Trade Creates relating to Trade Processing. In the MBSD Rules Schedule of Charges Dealer Account Group, there are also fees for (i) Trade Creates relating to Trade-for-Trade Transactions, Specified Pool Trades, and Stipulated Trades, and (ii) Trade Creates relating to Options Trades.

The current fee charged to brokers in the MBSD Rules Schedule of Charges Broker Account Group for Trade Creates relating to Trade Processing is $0.20/side.

In the MBSD Rules Schedule of Charges Dealer Account Group, the current fee for Trade Creates relating to Trade Processing are as follows:[6]

Total par amount traded per month	Current fee (par value Millions/Mon.)
01–2,500,000,000	$2.00
2,500,000,001–7,500,000,000	1.58
7,500,000,001–12,500,000,000	1.39
12,500,000,001–300,000,000,000	1.19

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms not otherwise defined herein are defined in the MBSD Rules and the EPN Rules, as applicable, *available at http://www.dtcc.com/legal/rules-and-procedures.*

[6] Certain fees are based on the par value per million per month (''MM'').

Total par amount traded per month	Current fee (par value Millions/Mon.)
300,000,000,001 and over	1.16

In the MBSD Rules Schedule of Charges Dealer Account Group, the current fees for (i) Trade Creates relating to Trade-for-Trade Transactions, Specified Pool Trades, and Stipulated Trades is $1.16/MM and (ii) Trade Creates relating to Option Trades is $1.00/MM.

Proposed Changes

In the MBSD Rules Schedule of Charges Broker Account Group, FICC is proposing to revise the fee for Trade Creates relating to Trade Processing from $0.20/side to $.40/side.

In the MSBD Rules Schedule of Charges Dealer Account Group, FICC is proposing to revise the fee for Trade Creates relating to Trade Processing as follows:

Total par amount traded per month	Current fee (par value Millions/Mon.)	Proposed changes to fees (par value Millions/Mon.)
01–2,500,000,000	2.00	2.36
2,500,000,001–7,500,000,000	1.58	1.86
7,500,000,001–12,500,000,000	1.39	1.64
12,500,000,001–300,000,000,000	1.19	1.40
300,000,000,001 and over	1.16	1.37

In addition, in the MBSD Rules Schedule of Charges Dealer Account Group, FICC is proposing to revise the fees for (i) Trade Creates relating to Trade-for-Trade Transactions, Specified Pool Trades, and Stipulated Trades from $1.16/MM to $1.37/MM, and (ii) Trade Creates relating to Options Trades from $1.00/MM to $1.18/MM.

FICC believes that the proposed increases to the above-described fees for Trade Creates would be consistent with FICC's cost plus low-margin pricing model and would enable FICC to offset the expected decrease in MBSD revenue. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2023 annual budget process that the proposed increase in the above-described fees for Trade Creates would help better align costs to revenue and generate sufficient revenues to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its cost plus low-margin pricing model). As described above, due to the rising interest rate environment, FICC anticipates that transaction volumes will continue to decrease, and therefore, MBSD revenue will also continue to decrease in 2023. As such, FICC believes the proposed increases to the above-described fees for Trade Creates would enable FICC to offset the expected decrease in MBSD revenue, and enable FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin.

(b) TBA Netting Balance Order (SBON)

In the Trade Processing section of the Schedule of Charges Dealer Account Group in the MBSD Rules, there is also a TBA Netting Balance Order (SBON) fee of $1.00/MM.[7] The TBA Netting Balance Order (SBON) fee is the fee for SBON Trades that are generated from the TBA Netting System.[8] Pursuant to MBSD Rule 6, Section 1, each Clearing Member's SBO-Destined Trades in each Account in the TBA Netting System (other than SBO-Destined Trades that have been converted to Trade-for-Trade Transactions as provided in the MBSD Rules) will be netted by CUSIP on a monthly basis, and the TBA Netting System will generate SBON Trades.[9]

FICC is proposing to revise this trade processing fee from $1.00/MM to $1.20/MM.

FICC believes that this proposed increase in the TBA Netting Balance Order (SBON) fee would be consistent with FICC's cost plus low-margin pricing model and enable FICC to offset the expected decrease in MBSD revenue. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2023 annual budget process that the proposed increase in the TBA Netting Balance Order (SBON) fee would help better align costs to revenue and generate sufficient revenues to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its cost plus low-margin pricing model). As described above, due to the rising interest rate environment, FICC anticipates that transaction volumes for MBSD will continue to decrease, and therefore, MBSD revenue will also continue to decrease in 2023. As such, FICC believes the proposed increase in the TBA Netting Balance Order (SBON) fee would enable FICC to offset the expected decrease in MBSD revenue, and enable FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin.

(ii) DNA Request Fee

The Do Not Allocate (''DNA'') process is the process by which Clearing Members that have two or more TBA Obligations with the same Par Amount, CUSIP Number and established date in the settlement cycle, may offset such transactions against one another.[10] In order to initiate the offset, Clearing Members are required to submit a request (''DNA Request'') to MBSD. Upon FICC's receipt and verification of this request, the Clearing Member's designated TBA Obligations will be

[7] The term ''TBA'' or ''To-Be-Announced'' means a contract for the purchase or sale of a mortgage-backed security to be delivered at an agreed-upon future date because as of the transaction date, the seller has not yet identified certain terms of the contract, such as the pool number and number of pools, to the buyer. MBSD Rule 1, *supra* note 5.

[8] The term ''SBO'' means the settlement balance orders that constitute the net positions of a Clearing Member as a result of the TBA Netting process. The resulting transactions from this TBA Netting process are identified as SBON Trades. MBSD Rule 1, *supra* note 5.

[9] *Supra* note 5.

[10] MBSD Rule 7, Section 3, *supra* note 5.

offset, and as a result, a Clearing Member's overall number of open TBA Obligations will be reduced.[11]

FICC charges a fee in connection with a Clearing Member's request to include eligible trades in the above-described DNA process (such request is referred to as a ''DNA Request''). Currently, in the MBSD Rules Schedule of Charges Dealer Account Group, the DNA Request fee is listed as $1.25/MM.

FICC is proposing to revise this DNA Request fee from $1.25/MM to $1.50/MM.

FICC believes that this proposed increase in the DNA Request fee would be consistent with FICC's cost plus low-margin pricing model and enable FICC to offset the expected decrease in MBSD revenues. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2023 annual budget process that the proposed increase in the DNA Request fee would help better align costs to revenue and enable FICC to generate sufficient revenue to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its cost plus low-margin pricing model). As described above, due to the rising interest rate environment, FICC anticipates that transaction volumes for MBSD will continue to decrease, and therefore, MBSD revenue will also continue to decrease in 2023. As such, FICC believes the proposed increase in the DNA Request fee would enable FICC to offset the expected decrease in MBSD revenue, and enable FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin.

(iii) Matched Pool Instruct Fee

Pursuant to MBSD Rule 8, Section 1, Pool Netting is a system for aggregating and matching offsetting allocated pools submitted by Clearing Members to satisfy: (i) settlement obligations associated with Trade-for-Trade Transactions and (ii) settlement obligations resulting from the TBA Netting system. Each Business Day, FICC will calculate and report to each Clearing Member each Pool Net Settlement Position of such Member. With respect to each such Pool Net Settlement Position, FICC will report to the Member the extent to which the Member is obligated to deliver Eligible Securities to FICC and/or to receive Eligible Securities from FICC in accordance with each such Pool Net Settlement Position.[12]

In the Pool Netting fees section of the MBSD Rules Schedule of Charges Dealer Account Group, there is a fee for Matched Pool Instructs of $1.00 per side. The fee for Matched Pool Instructs is the fee for pools that are submitted into Pool Netting.

FICC is proposing to increase this fee for Matched Pool Instructs from $1.00 per side to $1.20 per side.

FICC believes that this proposed increase in the Matched Pool Instruct fee would be consistent with FICC's cost plus low-margin pricing model and enable FICC to offset the expected decrease in MBSD revenue. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2023 annual budget process that the proposed increase in the Matched Pool Instruct fee would help better align costs to revenue and enable FICC to generate sufficient revenue to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its cost plus low-margin pricing model). As described above, due to the rising interest rate environment, FICC anticipates that transaction volumes for MBSD will continue to decrease, and therefore, MBSD revenue will also continue to decrease in 2023. As such, FICC believes the proposed increase in the Matched Pool Instruct fee would enable FICC to offset the expected decrease in MBSD revenue, and enable FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin.

(iv) Account Maintenance Fee

In the Account Maintenance fees section of the EPN Service Schedule of Charges in the EPN Rules, the current fee for Direct Accounts is $1,000.00 per month (per account). FICC is proposing to revise this Account Maintenance fee for Direct Accounts from $1,000.00 per month (per account) to $1,200.00 per month (per account). FICC has not increased the Account Maintenance fee for Direct Accounts since 2014.[13]

FICC believes that this proposed increase in the Account Maintenance fee for Direct Accounts would be consistent with FICC's cost plus low-margin pricing model and enable FICC to offset the expected decrease in MBSD revenue. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2023 annual budget process that the proposed increase in the Account Maintenance fee would help better align costs to revenue and enable FICC to generate sufficient revenue to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its cost plus low-margin pricing model). As described above, FICC has not increased the Account Maintenance fee for Direct Accounts since 2014, and this proposed increase would enable FICC to offset the expected decrease in MBSD revenue, and enable FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin.[14]

(v) Message Processing Fees

FICC's electronic pool notification service (the ''EPN Service'') provides Clearing Members and EPN Users with the ability to electronically communicate pool information to other EPN Users or FICC.

In connection with the EPN Service, certain message processing fees are charged. Specifically, there are fees for the following EPN message types: (i) Notification Send, (ii) Notification Receive, (iii) Pool Substitution Cancel/Correct. The Notification Send fee is a fee for sending an EPN message type that provides MBS pool information and the Notification Receive fee is the fee for receiving an EPN message type that contains MBS pool information. Pool Substitution Cancel/Correct is an EPN message type that supports the simultaneous ''cancel'' of previously allocated pools and the ''correct'' notification of substituted pools; this EPN message type provides Clearing Members and EPN Users with a method of transmitting pool substitutions to their allocation counterparties. FICC charges a fee for this EPN message type.

FICC is also proposing to amend the ''Message Processing Fees'' in the EPN Service Schedule of Charges in the EPN Rules as described below:

[11] *Id.*

[12] MBSD Rule 8, *supra* note 5.

[13] *See* Securities Exchange Act Release No. 72305 (June 4, 2014), 79 FR 33244 (June 10, 2014) (SR–FICC–2014–03).

[14] *Id.*

Message processing fees	Current fees	Proposed changes to fees
ON Send:		
Opening of Business to 1:00 p.m	$.19/million Current Face	$.20/million Current Face.
1:00 p.m. to 2:00 p.m	$.95/million Current Face	$1.00/million Current Face.
2:00 p.m. to 3:00 p.m	$1.90/million Current Face	$2.00/million Current Face.
3:00 p.m. to Close of Business	$1.58/million Current Face	$1.67/million Current Face.
ON Receive:		
Opening of Business to 1:00 p.m	$.51/million Current Face	$.54/million Current Face.
1:00 p.m. to 2:00 p.m	$.26/million Current Face	$.28/million Current Face.
2:00 p.m. to 3:00 p.m	$.26/million Current Face	$.28/million Current Face.
Pool Substitution Cancel/Correct		
Cancel/Correct Send:		
Open of Business up to 11:00 a.m	$0.19/million Current Face	$0.20/million Current Face.
11:00 a.m. up to 12:00 p.m	$0.95/million Current Face	$1.00/million Current Face.
12:00 p.m. up to 12:15 p.m	$1.90/million Current Face	$2.00/million Current Face.
12:15 p.m. to End of Day	$0.19/million Current Face	$0.20/million Current Face.

FICC believes that the proposed increases in the above-described Message Processing fees would be consistent with FICC's cost plus low-margin pricing model and enable FICC to offset the expected decrease in MBSD revenue. As described above, FICC regularly reviews pricing levels against its costs of operation typically during the annual budget process. FICC determined during the 2023 annual budget process that the proposed increases in the Message Processing fees would help better align costs to revenue and enable FICC to generate sufficient revenue to cover its operating costs plus generate a low net income margin (*i.e.,* to be consistent with its cost plus low-margin pricing model). As described above, due to the rising interest rate environment, FICC anticipates that transaction volumes for MBSD will continue to decrease, and therefore, MBSD revenue will also continue to decrease in 2023. As such, FICC believes the proposed increases in the Message Processing fees would enable FICC to offset the expected decrease in MBSD revenue, and enable FICC to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin.

(vi) Expected Member Impact

The proposed rule change is expected to increase FICC's annual revenue by approximately $16.5 million.

In general, FICC anticipates that the proposal would result in fee increases for all MBSD Clearing Members and EPN Users. FICC anticipates that the proposal would result in a fee increase of (i) less than $10,000 per year for approximately 53% of impacted affiliated MBSD Clearing Members and EPN Users, (ii) between $10,000 and $100,000 for approximately 30% of impacted affiliated MSBD Clearing Members and EPN Users, and (iii) more than $100,000 for approximately 17% of impacted affiliated MBSD Clearing Members and EPN Users.

(vii) Member Outreach

FICC has conducted ongoing outreach to each Clearing Member and EPN User in order to provide them with notice of the proposed changes and the anticipated impact for the Clearing Members and EPN Users. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

FICC would implement this proposal on January 1, 2023. As proposed, a legend would be added to the Schedule of Charges Broker Account Group in the MBSD Rules, the Schedule of Charges Dealer Account Group in the MBSD Rules, and the EPN Service Schedule of Charges in the EPN Rules, as appropriate, stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend would include the date on which such changes would be implemented and the file number of this proposal, and state that once this proposal is implemented, the legend would automatically be removed.

2. Statutory Basis

Section 17A(b)(3)(D) of the Act requires that the rules of a clearing agency, such as FICC, provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.[15] FICC believes that the proposed changes to increase (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct fee, (iv) an Account Maintenance fee, and (v) the Message Processing fees are consistent with this provision of the Act.[16]

FICC believes the proposed changes to increase (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct Fee, and (iv) the Message Processing fees, as described above, are consistent with Section 17A(b)(3)(D).[17] The proposal would provide for the equitable allocation of fees among participants because the proposal would apply to all participants, such that all Clearing Members and EPN Users, as applicable, would be subject to these proposed increases in these fees following the implementation of the proposed changes. The above-described fees are and would continue to be charged to all Clearing Members and EPN Users, as applicable, and are and would continue to be based on each Clearing Member's and each EPN User's utilization of MBSD's services. Specifically, each Clearing Member and EPN User would be charged based on the volume of transactions and/or messages submitted to MBSD.

Similarly, FICC believes the above-described (i) Trade Create and Trade Processing fees, (ii) DNA Request fee, (iii) Matched Pool Instruct Fee, and (iv) Message Processing fees would continue to be reasonable fees under the proposed changes described above. The proposed changes to increase (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct Fee, and (iv) the Message Processing fees, as described above, would be consistent with FICC's cost plus low-margin pricing model. With the proposed changes to these fees, FICC believes it would still be able to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin. Furthermore, the proposed changes to these fees

[15] 15 U.S.C. 78q–1(b)(3)(D).

[16] *Id.*

[17] 15 U.S.C. 78q–1(b)(3)(D).

would enable FICC to offset the expected decrease in MBSD revenue attributed to the long-term structural change due to the rising interest rate environment. As described above, FICC expects the rising interest rate environment to be a long-term structural change which will continue to negatively impact MBSD revenue. Specifically, as a result of the rising interest rate market, FICC expects the decrease in transaction volumes for MBSD, and therefore, the decrease in revenues for MBSD, to continue in 2023. As such, FICC believes the proposed changes to increase (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct Fee, and (iv) the Message Processing fees would enable FICC to offset the above-described expected decrease in MBSD revenue due to the expected decrease in transaction volumes for MBSD because of rising interest rate environment.

FICC also believes the proposed change to increase the Account Maintenance fee for Direct Accounts is consistent with Section 17A(b)(3)(D) of the Act.[18] The proposal would provide for the equitable allocation of fees among participants because the proposal would apply to all participants, such that all Clearing Members and EPN Users with Direct Accounts would be subject to the proposed increase in the Account Maintenance fee for Direct Accounts.

In addition, FICC believes the Account Maintenance fee for Direct Accounts would continue to be a reasonable fee under the proposed change described above. The proposed change to increase the Account Maintenance fee for Direct Accounts would be consistent with FICC's cost plus low-margin pricing model, and as described above, FICC has not increased this fee since 2014. With the proposed change to this fee, FICC believes it would still be able to continue to generate sufficient revenues to cover its operating costs plus generate a low net income margin. FICC believes the proposed increase in the Account Maintenance fee for Direct Accounts would enable FICC to offset the expected decrease in MBSD revenue due to the expected decrease in transaction volumes for MBSD because of the rising interest rate environment.

Based on the foregoing, FICC believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act.[19]

(B) Clearing Agency's Statement on Burden on Competition

FICC believes that the proposed changes to increase (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct fee, (iv) an Account Maintenance fee, and (v) the Message Processing fees may impose a burden on competition. However, FICC believes any burden on competition that may result from the proposed fee increases would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.[20]

FICC believes the proposed changes to increase (i) certain Trade Creates and Trade Processing fees, (ii) the DNA Request fee, (iii) the Matched Pool Instruct fee, (iv) an Account Maintenance fee, and (v) the Message Processing fees are necessary because these proposed fee increases would provide FICC with the ability to achieve and maintain its net income margin. In addition, FICC believes these proposed fee increases are appropriate because these proposed fee increases would enable FICC to offset the expected decrease in revenue in MBSD due to the expected decrease in transaction volumes for MBSD because of the rising interest rate environment (which FICC believes is a long-term structural change).

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC reviewed the proposed rule change with Clearing Members and EPN Users. FICC has not received any written comments relating to this proposal. If any additional written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the SEC's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[21] of the Act and paragraph (f)[22] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–FICC–2022–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2022–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[18] 15 U.S.C. 78q–1(b)(3)(D).

[19] *Id.*

[20] 15 U.S.C. 78q–1(b)(3)(I).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–FICC–2022–009 and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28304 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96567; File No. SR–NASDAQ–2022–078]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 2 Concerning the NOM Pricing Schedule

December 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Pricing Schedule at Options 7, Section 2.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NOM's Pricing Schedule at Options 7, Section 2(1), ''Nasdaq Options Market—Fees and Rebates.'' Today, NOM Options 7, Section 2(1) provides for various fees and rebates applicable to NOM Participants.

Customer[3] and Professional[4] Rebates to Add Liquidity in Penny Symbols are paid per the highest tier achieved among the 6 available tiers. To determine the applicable percentage of total industry customer equity and ETF option average daily volume, unless otherwise stated, the Exchange considers the Participant's Penny and Non-Penny Symbol Customer and/or Professional volume that adds liquidity. Below is the criteria for each Rebate to Add Liquidity in Penny Symbol tier.

MONTHLY VOLUME

Tier 1	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols of up to 0.10% of total industry customer equity and ETF option average daily volume (''ADV'') contracts per day in a month.
Tier 2	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 3	Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.05% to less than 0.10% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.
Tier 4	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.
Tier 5	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month.

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Options 1, Section 1(a)(47)). *See* Options 7, Section 1(a).

[4] The term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Options 1, Section 1(a)(47). All Professional orders shall be appropriately marked by Participants. *See* Options 7, Section 1(a).

MONTHLY VOLUME—Continued

Tier 6	Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.70% or more of total industry customer equity and ETF option ADV contracts per day in a month, or Participant: (1) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.10% or more of total industry customer equity and ETF option ADV contracts per day in a month, and (2) has added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS (defined below).

The Exchange proposes to amend the current Customer and Professional Rebates to Add Liquidity in Penny Symbols to amend Tiers 2–5 to remove the range of total industry customer equity and ETF option ADV contracts that must be met and, instead, simply note what percentage of total industry customer equity and ETF option ADV contracts a Participant needs to exceed. The Exchange is not amending the qualifications for any of the Customer and Professional Rebates to Add Liquidity in Penny Symbols tiers, rather the Exchange proposes to streamline the qualifications as the Customer and Professional Rebate to Add Liquidity in Penny Symbols are paid per the highest tier achieved.

For example, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 2 provides that a ''Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.'' The Exchange would amend Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 2 to instead provide, ''Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.'' This amendment does not change the criteria, rather it simply provides a floor that must be exceeded.[5] The Exchange believes that this change will make the tier qualifications easier to understand and review. Similar changes would be made to Customer and Professional Rebate to Add Liquidity in Penny Symbols Tiers 3–5.

Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 3 currently states, ''Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.05% to less than 0.10% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.'' With the proposed change, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 3 instead would provide, ''Participant: (a) adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% of total industry customer equity and ETF option ADV contracts per day in a month; or (b) adds Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols above 0.05% of total industry customer equity and ETF option ADV contracts per day in a month and qualifies for MARS.''[6]

Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 4 currently states, ''Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.'' With the proposed change, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 4 instead would provide, ''Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% of total industry customer equity and ETF option ADV contracts per day in a month.''[7]

Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 5 currently states, ''Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month.'' With the proposed change, Customer and Professional Rebate to Add Liquidity in Penny Symbols Tier 5 instead would provide, ''Participant adds Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% of total industry customer equity and ETF option ADV contracts per day in a month.''[8]

The Exchange proposes similar changes to the NOM Market Maker[9] Rebate to Add Liquidity in Penny Symbol tiers. There are currently 6 NOM Market Maker Rebate to Add Liquidity in Penny Symbol tiers. The NOM Market Maker Rebates to Add Liquidity in Penny Symbols are paid per

[5] Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 3 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate.

[6] Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.30% to 0.40% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 4 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate. Also, currently, Participants that add Customer and/or Professional liquidity in Penny Symbols and/or Non-Penny Symbols of 0.10% or more of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate provided in this case the Participant also added liquidity in all securities through one or more of its Nasdaq Market Center MPIDs that represent 1.00% or more of Consolidated Volume in a month or qualifies for MARS.

[7] Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.40% to 0.80% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 5 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate.

[8] Currently, Participants that add Customer, Professional, Firm, Non-NOM Market Maker and/or Broker-Dealer liquidity in Penny Symbols and/or Non-Penny Symbols above 0.70% or more of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Symbols rebate and would be paid the higher rebate.

[9] The term ''NOM Market Maker'' or (''M'') is a Participant that has registered as a Market Maker on NOM pursuant to Options 2, Section 1, and must also remain in good standing pursuant to Options 2, Section 9. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security. *See* Options 7, Section 1(a).

the highest tier achieved.[10] The Exchange proposes to amend Tiers 2 and 3 in a similar fashion to reflect only the floor where a range is provided.

NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tier 2 currently states, ''Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month.'' With the proposed change, Market Maker Rebate to Add Liquidity in Penny Symbols Tier 2 instead would provide, ''Participant adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.10% of total industry customer equity and ETF option ADV contracts per day in a month.'' [11]

NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tier 3 currently states,

Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month, (2) transacts in all securities through one or more of its Nasdaq Market Center MPIDs that represent (i) 0.70% or more of Consolidated Volume (''CV'') which adds liquidity in the same month on The Nasdaq Stock Market or (ii) 70 million shares or more ADV which adds liquidity in the same month on The Nasdaq Stock Market, (3) transacts in Tape B securities through one or more of its Nasdaq Market Center MPIDs that represent 0.10% or more of CV which adds liquidity in the same month on The Nasdaq Stock Market, and (4) executes greater than 0.01% of CV via Market-on- Close/Limit-on-Close (''MOC/LOC'') volume within The Nasdaq Stock Market Closing Cross in the same month

With the proposed change, the introductory part of NOM Market Maker Rebate to Add Liquidity in Penny Symbols Tier 3 instead would provide, ''Participant: (a) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% of total industry customer equity and ETF option ADV contracts per day in a month; or (b)(1) adds NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.07% of total industry customer equity and ETF option ADV contracts per day in a month . . .''.[12]

The Exchange believes that the proposed amendments will further clarify the qualifications for the NOM Market Maker Rebate to Add Liquidity in Penny Symbols.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed changes to NOM Options 7, Section 2(1) are not substantive amendments to the current pricing structure for NOM, rather these changes streamline the qualifications for the Customer and Professional Rebate to Add Liquidity in Penny Symbols as well as the NOM Market Maker Rebate to Add Liquidity in Penny Symbols which are paid per the highest tier achieved. These amendments do not change the criteria, rather they simply provide a floor that must be exceeded to obtain the rebates. The Exchange believes that these amendments will make the tier qualifications easier to understand.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to NOM Options 7, Section 2(1) are not substantive amendments to the current pricing structure for NOM, rather these changes streamline the qualifications for the Customer and Professional Rebate to Add Liquidity in Penny Symbols as well as the NOM Market Maker Rebate to Add Liquidity in Penny Symbols which are paid per the highest tier achieved. These amendments do not change the criteria, rather they simply provide a floor that must be exceeded to obtain the rebates. The Exchange believes that these amendments will make the tier qualifications easier to understand.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 [16] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. Rule 19b–4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange states that this proposed rule change could immediately benefit market participants by making more clear the qualifications for achieving rebates on NOM by removing superfluous rule text. The Commission thus believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[10] The Exchange also proposes to make plural the word ''Rebates'' within note 3 of Options 7, Section 2(1).

[11] Currently, Participants that add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 3 NOM Market Maker rebate and would be paid the higher rebate.

[12] Currently, Participants that Participants that add NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols of above 0.60% of total industry customer equity and ETF option ADV contracts per day in a month qualify for a Tier 4 NOM Market Maker rebate and would be paid the higher rebate. Participants would qualify for a Tier 3 NOM Market Maker rebate if they added NOM Market Maker liquidity in Penny Symbols and/or Non-Penny Symbols above 0.20% to 0.60% of total industry customer equity and ETF option ADV contracts per day in a month.

[13] 15 U.S.C. 78f(b)

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2022–078 and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28297 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96571; File No. SR–NSCC–2022–016]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Certain Fees

December 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies Addendum A (Fee Structure) (''Addendum A'') of NSCC's Rules & Procedures (''Rules'') to reduce certain trade clearance fees, as described below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Addendum A (Fee Structure) of the Rules to modify the ''value into the net'' and ''value out of the net'' components of NSCC's Clearance Activity Fees effective January 1, 2023. The proposed fee change is discussed in detail below.

Background

NSCC provides clearance and settlement services for trades executed by its Members in the U.S. equity, corporate and municipal bond, and unit investment trust markets and for equities securities financing transactions (''SFTs'') entered into by Members, certain firms that are sponsored into NSCC membership by a Sponsoring Member, and Agent Clearing Members on behalf of their customers, as provided in the Rules. Members are charged fees in accordance with Addendum A based upon Members' activities and the NSCC services utilized.

As part of the annual budgeting process, NSCC reviews price levels against its cost of operations and evaluates potential expense reductions and/or fee changes to correct any misalignment of costs and fees. NSCC's fees are cost-based plus a markup as approved by the Board of Directors or management (pursuant to authority delegated by the Board), as applicable. This markup is applied to recover development costs and operating expenses and to accumulate capital sufficient to meet regulatory and economic requirements.[6]

During the 2023 budgeting process, management identified opportunities to better align fees and costs for NSCC, which were approved by the Businesses, Technology and Operations Committee of the Board of Directors. As a result of this review, NSCC is proposing to

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[19] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[6] NSCC maintains procedures to control costs and regularly review pricing levels against costs of operation. *See* NSCC Disclosure Framework for Covered Clearing Agencies and Financial Market Infrastructures, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/policy-and-compliance/NSCC_Disclosure_Framework.pdf,* at 120.

reduce the ''value into the net'' and ''value out of the net'' components of its Clearance Activity Fees.

Proposed Fee Changes

Pursuant to Section II.A. of Addendum A, NSCC charges Clearance Activity Fees for SFT and non-SFT transactions. For transactions excluding SFTs, NSCC charges a (i) ''value into the net'' fee of $0.47 per million of processed value (*i.e.,* for CNS and Balance Order netting, the sum of the contract amount and any CNS fail value) and (ii) a ''value out of the net'' fee of $2.56 per million of settling value (*i.e.,* the absolute value of the CNS Long and Short Positions). The ''value into the net'' fee is the value of transactions for which a broker is buyer or seller (excluding non-DTCC settling trades, non-CNS municipal bond transactions, flip trades, and foreign security trades) and is calculated as the gross cleared value prior to netting. The ''value into the net'' fee also includes any fails re-entered into CNS. The into the net value reflects the aggregate of each opening CNS security position multiplied by the current market price for each security. The ''value out of the net'' fee is based on the daily aggregate market value of all settling CNS positions after netting.[7]

Based on its annal budgeting review, NSCC proposes to (i) decrease its ''value into the net'' fee from $0.47 to $0.46 per million of processed value and (ii) decrease its ''value out of the net'' fee from $2.56 to $2.16 per million of settling value in order to achieve a targeted annual fee revenue reduction of approximately $30 million. The ''value into the net'' and ''value out of the net'' fees affect all participants using NSCC's trade capture and CNS Accounting Operation services. The ''value into the net'' fee, specifically, is the largest fee type for NSCC. As a result, the proposed reduction in this fee from $0.47 to $0.46 is expected to result in the largest portion of the aggregate fee reduction. However, NSCC would be unable to completely align its targeted projected revenue reduction based on a decrease in the ''value into the net'' fee alone. NSCC therefore proposes to also reduce its ''value out of the net'' fee from $2.56 to $2.16 to achieve its targeted cost-revenue alignment. To effectuate the proposed fee change, NSCC would amend Section II.A. of Addendum A concerning Clearance Activity Fees for transactions other than SFTs to reflect the new ''value into the net'' fee of $0.46 per million of processed value and ''value out of the net'' fee of $2.16 per million of settling value.

Expected Member Impact

The proposed rule change would result in reduced ''value into the net'' and ''value out of the net'' fees for NSCC Members, the impact of which would vary based on their usage of the underlying NSCC services. The proposed fee change is expected to decrease NSCC's overall annual fee revenue by approximately $30 million. Individual Member impacts are estimated to range from an approximately 0–13% reduction in fees depending on their ''value into the net'' and ''value out of the net'' activity.

Member Outreach

NSCC has conducted ongoing outreach to Members in order to provide them with notice of the proposed changes and the anticipated impact for the Member. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

NSCC would implement this proposal on January 1, 2023. As proposed, a legend would be added to Addendum A stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include the date on which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed.

2. Statutory Basis

NSCC believes the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act[8] and Rule 17Ad–22(e)(23)(ii)[9] thereunder for the reasons set forth below.

Section 17A(b)(3)(D) of the Act[10] requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. NSCC believes the proposed fees would be allocated equitably among its full-service Members. The proposed rule change would result in reduced ''value into the net'' and ''value out of the net'' fees for NSCC Members. The proposed ''value into the net'' and ''value out of the net'' fee changes would be fairly applied to all Members using NSCC's trade capture and CNS Accounting Operation services. While the impact of the proposed fees would vary based on Members' usage of the underlying NSCC services, the proposed rule change would not alter how the Clearance Activity Fees are calculated or how such fees are allocated to Members. As mentioned above, the ''value into the net'' component of the Clearance Activity Fee is based on the Member's gross cleared value prior to netting. As such, and as is currently the case, Members that make greater use of NSCC's guaranteed services would generally be subject to larger ''value into the net'' fees, and therefore would see a greater reduction in fees as a result of the proposed fee change, because such Members would typically have a higher value of gross positions prior to netting. And conversely, Members that use NSCC's guaranteed services less would generally be subject to smaller ''value into the net'' fees, and therefore would see smaller fee reductions, because such Members would typically have a lower value of gross positions. Similarly, the ''value out of the net'' component of the Clearance Activity Fee is based on a Member's daily aggregate market value of all settling CNS positions after netting. Members that make greater use of NSCC's guaranteed services are generally subject to larger ''value out of the net'' fees, and therefore would see greater fee reductions as a result of the proposed fee change, because such Members typically have higher value out of the net positions after netting. Conversely, Members that use NSCC's guaranteed services less would generally be subject to a smaller ''value out of the net'' fees, and therefore would see smaller fee reductions, because such Members would typically have lower value of net positions after netting. The proposed changes to the ''value into the net'' and ''value out of the net'' components of the Clearance Activity Fee would not adjust these allocations or the manner in which the fees are applied. As a result, NSCC believes the proposed fees would continue to be allocated equitably among its Members.

NSCC also believes that the proposed fee changes are reasonable. The proposed fees were selected based on an analysis of projected market volumes and revenues for NSCC during its

[7] Additional details regarding NSCC's equity trade capture fees, including the ''value into the net'' and ''value out of the net'' fees, can be found on the DTCC Learning Center website, *available at https://dtcclearning.com/products-and-services/equities-clearing/utc/utc-users.html.*

[8] 15 U.S.C. 78q–1(b)(3)(D).

[9] 17 CFR 240.17Ad–22(e)(23)(ii).

[10] 15 U.S.C. 78q–1(b)(3)(D).

annual budgeting process. The proposed fee changes are intended to better align to the projected operating costs and expenses of NSCC and would result in an overall reduction of fees imposed on NSCC's Members. As discussed above, the ''value into the net'' fee is the largest fee type for NSCC. As a result, the proposed reduction in this fee is expected to result in the largest portion of the projected aggregate fee reduction. However, NSCC also proposes to reduce its ''value out of the net'' fee to achieve its targeted cost-revenue alignment. Together, the proposed fee changes are designed to achieve a targeted annual fee revenue reduction of approximately $30 million, which would better align to the projected operating costs and expenses of NSCC. Moreover, as noted above, the proposed rule change would not alter how these Clearance Activity Fees are calculated or how such fees are allocated to Members. For these reasons, NSCC believes the proposed fees would continue to be reasonable.

Rule 17Ad–22(e)(23)(ii) under the Act [11] requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency. The proposed fees would be clearly and transparently published in Addendum A of the Rules, which are available on a public website,[12] thereby enabling Members to identify the fees and costs associated with participating in NSCC. As such, NSCC believes the proposed rule change is consistent with Rule 17Ad–22(e)(23)(ii) under the Act.[13]

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed reduction in Clearance Activity Fees would have any impact or burden on competition. As discussed above, NSCC believes the proposed fees would be allocated equitably among its full-service Members. The proposed fee change would result in reduced ''value into the net'' and ''value out of the net'' fees for NSCC Members, the impact of which would vary based on their usage of the underlying NSCC services. The proposed ''value into the net'' and ''value out of the net'' fee changes would apply to all Members using NSCC's trade capture and CNS Accounting Operation services and would not alter how the Clearance Activity Fees are calculated or allocated to Members. In the aggregate, NSCC expects the proposed fee change would result in a reduction of NSCC's annual fee revenue by approximately $30 million. Individual Member impacts are estimated to range from an approximately 0–13% reduction in fees depending on their ''value into the net'' and ''value out of the net'' activity. NSCC believes the proposed fee reduction would not unfairly inhibit access to NSCC's services by any Member. NSCC therefore believes the proposed rule changed would not have any impact or burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has conducted outreach to Members to provide them with notice of the proposed fees.

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received by NSCC, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

NSCC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [14] of the Act and paragraph (f) [15] of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSCC–2022–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–NSCC–2022–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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

[11] 17 CFR 240.17Ad–22(e)(23)(ii).

[12] *See supra* note 5.

[13] 17 CFR 240.17Ad–22(e)(23)(ii).

[14] 15 U.S.C 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2022–016 and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28298 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96583; File No. SR–NYSE–2022–56]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List

December 23, 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 December 12, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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

The Exchange proposes to amend its Price List to (1) eliminate the underutilized alternative Tier 2 Adding Credit qualification requirements and the underutilized alternative Step Up Adding Tier 3 credits and requirements, and (2) revise and streamline the Supplemental Liquidity Provider (''SLP'') Adding Tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the discount for SLPs that are also Designated Market Makers (''DMMs'') with fixed levels. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend it Price List to (1) eliminate the underutilized alternative Tier 2 Adding Credit qualification requirements and the underutilized alternative Step Up Adding Tier 3 credits and requirements, and (2) revise and streamline the SLP Adding Tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the discount for SLPs that are also DMMs with fixed levels.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for member organizations to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective December 12, 2022.[4]

Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, cash equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is less than 12%.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. With respect to non-marketable order flow that would provide displayed liquidity on an Exchange, member organizations can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to the competitive environment described above, the Exchange has established incentives for its member organizations who submit orders that provide liquidity on the

[16] 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] The Exchange originally filed to amend the Price List on December 1, 2022 (SR–NYSE–2022–55). On December 12, 2022, SR–NYSE–2022–55 was withdrawn and replaced by this filing.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

Exchange. The proposed changes are designed to continue to attract additional order flow to the Exchange by streamlining and revising the SLP Adding Tiers in order to further incentivize member organizations to submit additional displayed liquidity to, and quote aggressively in support of the price discovery process on, the Exchange.

Proposed Rule Change

The Exchange proposes to eliminate underutilized alternative requirements and credits and revise and streamline the SLP Adding Tiers by eliminating and combining the SLP step up tier and incremental tiers and replacing the current DMM discount with fixed levels. The Exchange believes that the proposed changes to the SLP Adding Tiers, taken together, will make the SLP Adding Tiers easier for member organizations that are SLPs, including member organizations that are also DMMs, to utilize and will continue incentivizing submission of additional liquidity in Tape A, B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations.

Deletion of Underutilized Requirements and Credits

Current Tier 2 Adding Credit provides a $0.0020 credit for orders, other than MPL and Non-Display Reserve orders, that add liquidity to the Exchange if a member organization (1) has an average daily volume (''ADV'') that adds liquidity to the Exchange during the billing month (''Adding ADV''),[11] that is at least 0.75% of NYSE CADV, and (2) executes MOC and LOC orders of at least 0.10% of NYSE CADV or executes an ADV during the billing month of at least one million shares in Retail Price Improvements Orders (''RPIs''). The purpose of providing an alternative way to qualify for the Tier 2 Adding Credit was to encourage member organizations to provide higher volumes of RPIs, which would contribute to the quality of the Exchange's market, particularly for retail investors.[12]

The Exchange proposes to eliminate and remove the second method qualifying for the Tier 2 Adding Credit from the Price List. The method has been underutilized by member organizations insofar as member organizations qualifying for this tier are choosing not to provide higher volumes of RPIs. Currently, no member organizations qualify for the tiered credit based on the submission of RPIs. The Exchange does not anticipate that any other member organization in the near future would qualify for the tiered credit based on the alternative criteria proposed to be eliminated and that elimination of the alternative method is therefore appropriate.

In addition, member organizations meeting the current Step Up Adding Tier 3 Adding Credit requirements [13] and that also have (1) an adding ADV that is at least 0.45% of US CADV, and (2) Adding ADV setting the NBBO that is at least 0.18% of US CADV, qualify for the following credits instead of the existing credit combined with the incremental $0.0006 credit:

- a $0.0036 for adding orders that set the NBBO, or
- a $0.0031 for all other displayed adding orders in Tape A, B and C Securities.

The purpose of these incremental credits was to continue incentivizing member organizations to increase aggressively priced liquidity-providing orders that improve the market by setting the NBBO or a new BBO on the Exchange and encourage higher levels of liquidity, which supports the quality of price discovery on the Exchange and is consistent with the overall goals of enhancing market quality.[14]

The Exchange proposes to eliminate and remove the Step Up Tier 3 Adding Credit alternative requirements and associated credits from the Price List. The credits have been underutilized by member organizations insofar as the member organizations that have qualified for the alternative credits achieve higher credits under the current Step Up Tier 3 Adding tier and thus does not benefit from the incremental credits. The Exchange does not anticipate that any additional member organization in the near future would qualify for the incremental credits that are the subject of this proposed rule change.

Consolidation and Revision of SLP Adding Tiers

The Exchange proposes to streamline and revise the SLP Adding Tiers to make it easier for member organizations that are SLPs, including member organizations that are also DMMs, to utilize and to further incentivize submission of additional liquidity in Tape A, B and Tape C securities to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities. Specifically, the revision would consist of the elimination of the SLP Step Up Tier, the three SLP incremental tiers, the alternative method to qualify for current SLP Tier 5 (proposed SLP Tier 7), and the replacement of the current discount for SLPs that are also DMMs based on a DMM's percentage of NYSE CADV in DMM assigned securities for the prior quarter with fixed rates, the introduction of a new SLP Tier 1 and a new SLP Tier 5, and a revision of the credits for current SLP Tier 1, Tier 2, Tier 3 (proposed new SLP Tier 2, Tier 3 and Tier 4). The step up credits previously available pursuant to the deleted Step Up Tier and SLP incremental tiers would be subsumed in the revised SLP Adding Tiers to be substantially in line with the combined credits SLPs currently receive in order not to disadvantage any SLPs currently qualifying for the deleted SLP incremental tiers.

[11] The terms ''ADV'' and ''CADV'' are defined in footnote * of the Price List.

[12] *See* Securities Exchange Act Release No. 72805 (August 11, 2014), 79 FR 48274 (August 15, 2014) (SR–NYSE–2014–42).

[13] Under current Step Up Adding Tier 3, the Exchange provides an incremental $0.0006 credit in Tapes A, B and C securities for all orders from a qualifying member organization market participant identifier (''MPID'') or mnemonic that sets the National Best Bid or Offer (''NBBO'') or a new Best Bid or Offer (''BBO'') if the MPID or mnemonic: (1) has adding ADV in Tapes A, B and C Securities as a percentage of Tapes A, B and C CADV (''US CADV''), excluding liquidity added by a DMM, that is at least 50% more than the MPID's or mnemonic's Adding ADV in Tapes A, B and C securities in June 2020 as a percentage of US CADV, and (2) is affiliated with a SLP that has an Adding ADV in Tape A securities at least 0.10% of NYSE CADV, and (3) has Adding ADV in Tape A securities as a percentage of NYSE CADV, excluding any liquidity added by a DMM, that is at least 0.20%. For MPIDs or mnemonics of qualifying member organizations that are SLPs in a month where Tape A, Tape B and Tape C CADV combined equals or exceeds 13.0 billion shares per day for the billing month, CADV for that month will be subject to a cap of 13.0 billion shares per day for the billing month, and in a month where NYSE CADV equals or exceeds 5.5 billion shares per day for the billing month, NYSE CADV for that month will be subject to a cap of 5.5 billion shares per day for the billing month. Step Up Adding Tier 3 currently provides that the credit is in addition to the MPID's or mnemonic's current credit for adding liquidity and also does not count toward the combined limit on SLP credits of $0.0032 per share provided for in the Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of $0.0001, $0.0002 or $0.0003. As discussed below, the Exchange proposes to delete the incremental credits and retain the combined limit on SLP credits of $0.0032 per share as set forth in current Bullet 2 associated with the SLP Adding Tiers. The phrase ''Incremental Credit per Share for affiliated SLPs whereby SLPs can qualify for incremental credits of $0.0001, $0.0002 or $0.0003'' will accordingly be deleted from Step Up Adding Tier 3.

[14] *See* Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR–NYSE–2020–71).

Deletion of Tiers and Alternative Qualification and Credits

The current SLP Step Up tier provides that an SLP adding liquidity to the Exchange receive a credit of $0.0018, or $0.0001 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity for all assigned SLP securities in the aggregate taken as a percentage of NYSE CADV.[15] The step up tier was intended to provide greater incentives for SLPs to add liquidity to the Exchange.[16] The Exchange proposes to remove the separate SLP Step Up Tier from the Price List. The credits have been underutilized by SLPs insofar as the only SLPs that qualified for the Step Up Tier credits achieve higher credits under other SLP tiers. In addition, as discussed below, the Exchange proposes a new SLP Tier 1 and SLP Tier 5 that, along with current SLP tiers, provide greater incentives for more SLPs to add more liquidity to the Exchange.

The Exchange similarly proposes to eliminate the three current SLP Incremental Tiers that provide incremental credits of $0.0001, $0.0002 and $0.0003 to SLPs that (1) meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) add liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.10%, 0.15%, or 0.25% of NYSE CADV in the billing month over the SLP's adding liquidity for all assigned SLP securities in the aggregate as a percent of NYSE CADV in either the second quarter of 2018, the third quarter of 2018 or the month of January 2021, whichever is lowest. The current combined SLP credits are currently capped at $0.0032 per share in a billing month as set forth in current footnote * in the column heading titled ''Tiered Display Incremental Credit.'' Current footnote * would be deleted as well.

As discussed below, new SLP Tiers 1 and 5 along with renumbered SLP Tiers 2 (current SLP Tier 1), 3 (current SLP Tier 2) and 4 (current SLP Tier 3) reflect increased rates of $.0001, $.0002 and/or $.0003 that seek to incorporate the deleted step up rates in a way that does not disadvantage current SLPs by providing a combined credit that is in line with the combined credits SLPs are qualifying for under the current tiers. Renumbered SLP Tiers 6 (current SLP Tier 4) and 7 (current SLP Tier 5) do not reflect the deleted SLP incremental credits.

Finally, under current SLP Tier 5 (proposed new SLP Tier 7), an SLP that is either (1) is in the first two calendar months as an SLP, or (2) adds liquidity for all assigned SLP securities in the aggregate of an ADV of more than 0.03% of NYSE CADV after averaging less an adding ADV of than 0.01% in each of the prior 3 months, after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month,[17] would receive a credit of $0.0029, or $0.00105 if a Non-Displayed Reserve Order, if the SLP meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B. The alternative qualification method was intended to provide greater incentives for less active SLPs to add liquidity to the Exchange.[18] The Exchange proposes to delete the alternative qualification as underutilized insofar as no SLP has qualified for current SLP Tier 5 based on this alternative criteria. The Exchange does not anticipate that any additional member organization in the near future would qualify for the incremental credits that are the subject of this proposed rule change.

DMM Fixed Rates For Calculating Tier-Based Credits

For SLPs that are also DMMs and subject to Rule 107B(i)(2)(A), the current SLP Tier 1, Tier 1A,[19] Tier 2, Tier 3, Tier 4, Tier 5 and Step Up Tier requirements are after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to replace the dynamic discount with fixed rates that would be set forth in a new column titled ''SLP Adding ADV % Tape A CADV If DMM.'' As discussed below in connection with the individual SLP tiers, the requirements would range from 0.08% to 0.55%. The Exchange believes that fixed percentages represent a clearer and easier to understand benchmark for determining the appropriate credit for SLPs that provide liquidity to the Exchange rather than a monthly rolling calculation utilizing the most recent quarter's percentage of DMM CADV.

In addition, the Exchange proposes that the fixed rates would apply to SLPs that are also DMMs subject to Rule 107B(i)(2)(A) and that are registered as a DMM in at least 500 Tape A securities. Bullet 1 immediately beneath the chart setting forth the SLP Adding Tiers currently sets forth the requirements for SLPs that are also DMMs. As amended, Bullet 1 would become new footnote * in the new proposed column.

Proposed SLP Tier 1

Proposed SLP Tier 1 would be new and would seek to incorporate the equivalent the SLP Incremental Tier rates. As proposed, under new SLP Tier 1 an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of $0.0032, or $0.0012 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization)[20] of an ADV of more than 1.00% (or 0.080% for SLPs that meet the SLP Cross Tape Tier 1 Incentive) of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, more than 0.55% of NYSE CADV.

[15] SLPs that are also DMMs and subject to Rule 107B(i)2)(A) must add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.085% of NYSE CADV over that SLPs' April 2018 adding liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) taken as a percentage of NYSE CADV after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month. As discussed below, as part of the streamlining of the SLP requirements, the Exchange proposes to replace the discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month with the requirement that SLPs that are also DMMs be registered as a DMM in at least 500 Tape A issues.

[16] *See* Securities Exchange Act Release No. 83929 (August 23, 2018), 83 FR 44115 (August 29, 2018) (SR–NYSE–2018–37).

[17] As discussed below, the Exchange proposes to eliminate the discount for SLPs that are also DMMs.

[18] *See* Securities Exchange Act Release No. 83424 (June 13, 2018), 83 FR 28479 (June 19, 2018) (SR–NYSE–2018–27). When adopted, current SLP Tier 5 was SLP Tier 4.

[19] SLP Tier 1A was merged into current SLP Tier 2 in 2021. *See* Securities Exchange Act Release No. 92898 (September 8, 2021), 86 FR 51201 (September 14, 2021) (SR–NYSE–2021–49). The bullets in the Price List referencing SLP Tier 1A were inadvertently not updated.

[20] Under Rule 107B, an SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM''). For purposes of the 10% average or more quoting requirement in assigned securities pursuant to Rule 107B, quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated. However, for purposes of adding liquidity for assigned SLP securities in the aggregate, shares of both an SLP-Prop and an SLMM of the same member organization are included.

The Exchange believes that the new tier will continue to provide incentives for SLPs to add more liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposed tier is new, the Exchange does not know how many SLPs and their affiliates could qualify for the proposed tiered credits based on their current trading profile on the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange believes that additional SLPs and affiliated firms could qualify for the new tier if they choose direct order flow to, and increase quoting on, the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Proposed SLP Tier 2

Proposed SLP Tier 2 is current SLP Tier 1. Under current SLP Tier 1, an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of $0.0029, or $0.0012 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.90% (or 0.75% for SLPs that meet the SLP Cross Tape Tier 1 Incentive) of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a), more than 0.90% (or 0.75% for SLPs that are also DMMs and meet the SLP Cross Tape Tier 1 Incentive) after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to increase the credit for displayed orders by $.0002 to $0.0031. The credit for Non-Displayed Reserve Orders would remain unchanged. The higher credit is generally in line with the credit for SLPs that qualify with the current SLP Tier 1 and SLP Incremental Tier credits.

In addition, as proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.45% of NYSE CADV. The tier's other requirements would remain unchanged.

Proposed SLP Tier 3

Proposed SLP Tier 3 is current SLP Tier 2. Under current SLP Tier 2, an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of $0.00275, or $0.00105 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.60% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a), more than 0.60% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to increase the credit by $.0002 to $0.00305. The credit for Non-Displayed Reserve Orders would remain unchanged. The higher credit is generally in line with the credit for SLPs that qualify with the current SLP Tier 3 and SLP Incremental Tier credits.

In addition, as proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.36% of NYSE CADV. The tier's requirements and credit would otherwise remain unchanged.

Proposed SLP Tier 4

Proposed SLP Tier 4 is current SLP Tier 3. Under current SLP Tier 3, an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of $0.0026, or $0.0009 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.45% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a), more than 0.45% after a discount of the percentage for the prior quarter of NYSE CADV in DMM assigned securities as of the last business day of the prior month.

The Exchange proposes to increase the credit by $.0003 to 0.0029 credit. The credit for Non-Displayed Reserve Orders would remain unchanged. The higher credit is generally in line with the credit for SLPs that qualify with the current SLP Tier 3 and SLP Incremental Tier credits.

In addition, as proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.24% of NYSE CADV. The tier's requirements and credit would otherwise remain unchanged.

Proposed SLP Tier 5

Proposed SLP Tier 5 would be new and would seek to incorporate credits from the current SLP Incremental Tier credits. As proposed, under new SLP Tier 5 an SLP adding liquidity to the Exchange in Tape A securities would receive a credit of $0.0026, or $0.0006 if a Non-Displayed Reserve Order, if the SLP (1) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B, and (2) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.025% of NYSE CADV or, with respect to an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, more than 0.18% of NYSE CADV.

The Exchange believes that the new tier will continue to provide incentives for SLPs to add more liquidity to the Exchange. The Exchange does not know how much order flow member organizations choose to route to other exchanges or to off-exchange venues. Since the proposed tier is new, the Exchange does not know how many SLPs and their affiliates could qualify for the proposed tiered credits based on their current trading profile on the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange believes that additional SLPs and affiliated firms could qualify for the new tier if they choose direct order flow to, and increase

quoting on, the Exchange. However, without having a view of member organization's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any member organization directing orders to the Exchange in order to qualify for the new tier.

Proposed SLP Tier 6

Proposed SLP Tier 6 is current SLP Tier 4. The requirements and credits for qualifying under proposed SLP Tier 6 would remain unchanged.

As proposed, an SLP that is also a DMM subject to Rule 107B(i)(2)(a) and that is registered in at least 500 Tape A issues, would be required to add liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same or an affiliated member organization) of an ADV of more than 0.08% of NYSE CADV in order to qualify for the credit of $0.0023 or $0.0006 if a Non-Displayed Reserve Order.

Proposed SLP Tier 7

Proposed SLP Tier 7 is current SLP Tier 5. As described above, the alternative method to qualify for this tier would be eliminated. The Exchange proposes no other changes to this tier. Since there is no volume requirement for the tier, there would be no associated NYSE ADV requirement for a SLP that is also a DMM. The Exchange would therefore add ''No requirement in first 2 calendar months if DMM'' to the new SLP Adding ADV column.

Changes to Chart Bullets

The Exchange proposes the following changes to the general information bullets immediately following the SLP Adding Tiers chart. As noted above, the current first bullet would become new footnote *.

The Exchange would add a new first bullet restating the first sentence in footnote * to the incremental tiers that the Exchange proposes to delete. The bullet would provide that combined SLP credits, including additional credits above, shall not exceed $0.0032 per share in a billing month.

The current second bullet provides that SLPs that meet the requirements of one of the above tiers (Tiers 1A, 2, 3, 4 and the SLP Step Up Tier) and add liquidity in Tapes B and C securities of at least 0.25% of Tape B and Tape C CADV combined, will receive an additional credit of $0.0001 if at SLP Step Up Tier, SLP Tier 3, SLP Tier 2, SLP Tier 1A or $0.00005 if at SLP Tier 1, SLP Tier 4 and SLP Tier 5.

The Exchange would amend the bullet as follows. First, the clause enumerating the tiers would be deleted. Second, the tiers eligible for the $0.0001 additional credit would be updated to reflect new SLP Tiers 3, 4, 5, 6, or 7. Finally, the tiers eligible for the $0.00005 additional credit would be updated to reflect new SLP Tier 1 or 2. Further, the Exchange would add a new clause providing that these additional credits of $0.0001 or $0.00005, along with the credit for the SLP Tape A Tier in Tape B and C Securities that appears in the ''Transaction Fees and Credits for Tape B and C Securities'' section of the Price List, would be subject to a limit of $0.0032 per share.

Finally, the current third bullet provides that in current SLP Tier 1 and Tier 5, SLPs receive an additional $0.00005 per share for adding liquidity, other than MPL and Non-Display Reserve orders, in securities where they are not assigned as an SLP or do not meet the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B. The Exchange proposes to add SLP Tier 2 and update current SLP Tier 5 to proposed SLP Tier 7. As proposed, Bullet 3 would provide that the additional $0.00005 would be available to SLPs in SLP Tier 1, Tier 2 and Tier 7.

The proposed changes are not otherwise intended to address other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[21] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[22] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change Is Reasonable

Deletion of Underutilized Requirements and Credits

The Exchange believes that the proposed elimination of the underutilized alternative Tier 2 Adding Credit qualification requirements, the underutilized alternative Step Up Adding Tier 3 credits and requirements, and the underutilized alternative qualification requirements of current SLP Tier 5 are reasonable because member organizations have underutilized these incentives. As noted, the second method qualifying for the Tier 2 Adding Credit from the Price List has been underutilized by member organizations insofar as member organizations qualifying for this tier are choosing not to provide higher volumes of RPIs. Currently, no member organizations qualify for the tiered credit based on the submission of RPIs. Similarly, the Step Up Tier 3 Adding Credit alternative requirements and associated credits have been underutilized by member organizations insofar as the member organizations that qualified for the alternative credits achieve higher credits under the current Step Up Tier 3 Adding tier and thus does not benefit from the incremental credits. Finally, current SLP Tier 5 alternative qualification method has been underutilized insofar as no SLP has qualified for current SLP Tier 5 based on this alternative criteria. In each case, the Exchange does not anticipate that any additional member organization in the near future would qualify for the credits that are the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate credits when such incentives become underutilized. The Exchange also believes eliminating underutilized incentives would also add clarity and transparency to the Price List.

Consolidation and Revision of the SLP Adding Tiers

The Exchange believes that the proposed changes to the SLP Adding Tiers, taken together, are reasonable. The Exchange believes that subsuming the separate step up and incremental tiers in the SLP adding tiers would make the SLP Adding Tiers easier for member organizations that are SLPs to utilize and will continue to provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. In addition, the Exchange believes that introducing new SLP Tiers 1 and 5 as part of the revision in order to subsume some of the deleted credits is also reasonable and would continue to provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. Since the proposed tiers would be new, no member organization currently qualifies

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(4) and (5).

for the proposed pricing tiers. As previously noted, without a view of member organization activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any member organization qualifying for either tier. The Exchange believes the proposed credits are reasonable as it would provide an incentive for member organizations to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

Similarly, replacing the dynamic discount with fixed rates in DMM assigned securities is reasonable. As noted above, the Exchange believes that fixed percentages represent a fairer benchmark for determining the appropriate credit for market participants that provide liquidity to the Exchange rather than a calculation utilizing the most recent quarter's percentage of DMM CADV. The Exchange believes that more accurate and fairer discounts would incentivize these market participants to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. Further, the Exchange believes that the proposed benchmark is equitable because it would apply to all similarly situated SLPs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes.

Finally, the Exchange believes that requiring SLPs that are DMMs subject to Rule 107B(i)(2)(A) to be registered as a DMM in at least 500 Tape A securities is also reasonable. Rule 107B(i)(2)(A) prohibits a DMM from acting as a SLP in the same securities in which it is a DMM, so requiring a SLP that is also a DMM to be registered as a DMM in at least 500 securities could incentivize smaller and new DMMs to register as a DMM in more securities. In addition, two of the Exchange's three DMMs already meet the requirement, and the Exchange believes that the third DMM, plus future DMMs, could reach that number.

The Proposed Change Is an Equitable Allocation of Fees and Credits

Deletion of Underutilized Requirements and Credits

The Exchange believes the proposed elimination of the underutilized qualification requirements and credits equitably allocates fees among its market participants because the underutilized requirements and credits the Exchange proposes to eliminate would be eliminated in their entirety, and would no longer be available to any member organization in any form. Similarly, the Exchange believes the proposal equitably allocates fees among its market participants because elimination of the underutilized requirements and credits would apply to all similarly-situated member organizations that are SLPs on an equal basis. All such member organizations would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and nondiscriminatory terms.

Consolidation and Revision of the SLP Adding Tiers

The Exchange believes the proposal to consolidate and revise the SLP Adding Tiers equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. As noted, the proposed changes will eliminate step up and incremental tiers and subsume those credits into seven adding tiers that the Exchange believes will make it easier for member organizations to utilize and will continue to provide an incentive for member organizations to send additional liquidity providing orders to the Exchange in Tape A securities. The Exchange believes that offering two new SLP adding tiers as part of the revision equitably allocates its fees among its market participants. The proposed changes would encourage the submission of additional liquidity to a national securities exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for member organizations from the substantial amounts of liquidity that are present on the Exchange. The proposed changes would also encourage the submission of additional orders that add liquidity, thus providing price improving liquidity to market participants and increasing the quality of order execution on the Exchange's market, which would benefit all market participants. Moreover, the proposed changes are equitable because they would apply equally to all qualifying SLPs that submit orders to the NYSE and add liquidity to the Exchange.

In addition, as noted, the Exchange believes that the proposed fixed rates for DMMs would result in a fairer benchmark for market participants that provide liquidity to the Exchange. The Exchange believes that that the proposed benchmark is equitable because it would apply to all similarly situated SLPs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. Similarly, the Exchange believes that requiring SLPs that are DMMs subject to Rule 107B(i)(2)(A) to be registered as a DMM in at least 500 Tape A securities is also equitable since it would apply to all similarly situated SLPs that are also DMMs. As noted, two of the Exchange's three DMMs already meet the requirement, and the Exchange believes that the third could also reach that number.

The Proposed Fee Change Is Not Unfairly Discriminatory

Deletion of Underutilized Requirements and Credits

The Exchange believes that the proposed elimination of underutilized requirements and credits is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal is not unfairly discriminatory because the proposed elimination of the underutilized alternative Tier 2 Adding Credit qualification requirements, the underutilized alternative Step Up Adding Tier 3 credits and requirements, and the underutilized alternative qualification requirements of current SLP Tier 5 would affect all similarly-situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating requirements and credits that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized credits would make the Price List more accessible and transparent.

Consolidation and Revision of the SLP Adding Tiers

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, member organizations are free to disfavor the Exchange's pricing if

they believe that alternatives offer them better value.

The Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. The proposed cap for calculating monthly combined CADV for Step Up Adding Tier 3 credits for adding liquidity to the Exchange also does not permit unfair discrimination because the proposed changes would apply to all similarly situated market participants on an equal and non-discriminatory basis. The Exchange believes that eliminating requirements and credits that are underutilized and ineffective would no longer be available to any member organization on an equal basis. The Exchange also believes that the proposed change would protect investors and the public interest because the deletion of underutilized credits would make the Price List more accessible and transparent.

The Exchange believes its proposal to offer two new SLP adding tiers is not unfairly discriminatory because the proposal would be provided on an equal basis to all member organizations that add liquidity by meeting the new proposed requirements, who would all be eligible for the same credits on an equal basis. Accordingly, no member organization already operating on the Exchange would be disadvantaged by this allocation of fees. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the qualification criteria would be applied to all similarly situated member organizations, who would all be eligible for the same credits on an equal basis. Finally, as noted, the Exchange believes the proposal would provide an incentive for member organizations to continue to send orders that provide liquidity to the Exchange, to the benefit of all market participants.

The Exchange believes that the proposed fixed rates for DMMs is equitable because it would apply to all similarly situated SLPs that are also DMMs and provide credits that are reasonably related to the value of an exchange's market quality associated with higher volumes. The proposal does not permit unfair discrimination because the qualification criteria would be applied to all similarly situated member organizations, who would all be eligible for the same requirement on an equal basis. For similar reasons, the Exchange believes that requiring SLPs that are DMMs subject to Rule 107B(i)(2)(A) to be registered as a DMM in at least 500 Tape A securities is also not unfairly discriminatory. The proposed requirement would apply to all similarly situated SLPs that are also DMMs. As noted, two of the Exchange's three DMMs already meet the requirement, and the Exchange believes that the third could also reach that number.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes relating to the elimination of an underutilized requirements and credits and, as such, would not have any impact on intra- or inter-market competition because the proposed change is solely designed to accurately reflect the services that the Exchange currently offers, thereby adding clarity to the Price List. Moreover, the proposed changes to SLP Adding Tiers would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for member organizations. The Exchange believes that this could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [24]

Intramarket Competition. The proposed changes are in part designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The current credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated member organizations on the same and equal terms, who would benefit from the proposed change on the same basis. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [25] of the Act and subparagraph (f)(2) of Rule 19b–4 [26] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[23] 15 U.S.C. 78f(b)(8).

[24] Regulation NMS, 70 FR at 37498–99.

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[27] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–56 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–56. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–56, and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28372 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(2)(B).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34791; File No. 812–15416]

Franklin FTSE Russia ETF, a Series of Franklin Templeton ETF Trust, and Franklin Advisory Services, LLC; Notice of Application and Temporary Order

December 23, 2022.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application and a temporary order under Section 22(e)(3) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request a temporary order to permit Franklin FTSE Russia ETF (the ''Fund''), a series of Franklin Templeton ETF Trust (the ''Trust''), to suspend the right of redemption of its outstanding redeemable securities and postpone the date of payment of redemption proceeds with respect to redemption orders received but not yet paid.

APPLICANTS: The Trust, on behalf of the Fund, and Franklin Advisory Services, LLC, the Fund's investment adviser (''Adviser'' and together with the Trust, the ''Applicants'').

FILING DATE: The application was filed on December 23, 2022.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing by emailing to the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on January 19, 2023, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: J. Stephen Feinour, Jr., Esq. and Bruce G. Leto, Esq., Stradley Ronon Stevens and Young, LLP, 2005 Market Street, Suite 2600, Philadelphia, PA 19103–7018, with copies to Navid J. Tofigh, Franklin Templeton Investments, One Franklin Parkway, San Mateo, CA 94403–1906.

FOR FURTHER INFORMATION CONTACT: Christopher D. Carlson, Senior Counsel, Trace W. Rakestraw, Branch Chief, or Daniele Marchesani, Assistant Chief Counsel, 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' application, dated December 23, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

Background

1. The Trust is registered under the Act as an open-end series management investment company. Adviser is the investment adviser to the Fund, a series of the Trust. Adviser is registered as an investment adviser under the Investment Advisers Act of 1940.

2. The Fund is a non-diversified exchange-traded fund (''ETF'') that operates pursuant to Rule 6c–11 under the Act, which provides that shares of an ETF can be purchased or redeemed directly from the ETF at net asset value solely by authorized participants (''APs'') and only in aggregations of a specified number of shares. Shares of the Fund are listed on NYSE Arca, Inc. (''NYSE Arca'').

3. The Fund's investment goal is to seek to provide investment results that closely correspond, before fees and expenses, to the performance of an index composed of Russian equities (the ''Underlying Index''). On March 7, 2022, in light of ongoing issues related to

Russia's invasion of Ukraine, FTSE Russell suspended rebalancings/reconstitutions of the Underlying Index, including application of the capping methodology, as well as other index policies until further notice.

4. Applicants state that the request for relief arises from the effect of geopolitical affairs on transactions in the Russian equity markets and on the relevant markets for Russian equity securities generally, and on related clearance and payment systems. As a result of these geopolitical affairs, virtually all of the Fund's direct and indirect holdings of Russian equity securities have become illiquid and are fair valued at zero.

5. Effective March 1, 2022, the Fund temporarily suspended new creations of its shares until further notice due to concerns about newly imposed restrictions impacting the ability of U.S. investors to transact in securities in the Underlying Index, among other reasons.[1] Prior to market open on March 4, 2022, NYSE Arca halted trading of the Fund's shares in light of ongoing issues related to Russia's invasion of Ukraine.

6. Applicants anticipate that the Fund's shares will be delisted by NYSE Arca on a date 15 days after the requested relief is granted (or an earlier date if NYSE Arca determines in its discretion to delist shares of the Fund, which may occur even if the requested relief is not granted). If shares of the Fund are delisted by NYSE Arca, the Fund will not be able to continue to operate as an ETF, pursuant to Rule 6c–11.

7. If the order requested in the Application is granted, pursuant to the Plan of Liquidation and Dissolution of Series (the ''Plan of Liquidation'') approved by the Board of Trustees of the Trust (the ''Board''), the Fund will distribute in liquidation all of its assets to shareholders, less any provision for payment of any liabilities, including the costs of the liquidation that would be borne by the Fund, prior to its termination. Other than the amount of cash that is expected to be included in one or more liquidating distributions, the Fund will have no assets of realizable value, and the Fund's positions in Russian securities are not transferable by the Fund. If some or all of those Russian securities were at some point before the Fund's final termination determined to have a greater value, it is possible that they would continue not to be transferable at that time. In addition, it is possible that even if Russian securities were able to be sold, local regulations may not permit the proceeds of any such sale(s) to be converted to U.S. dollars which are freely available to the Fund. The Fund's Russian equity securities will therefore remain in the Fund until they can be sold and converted into U.S. dollars (with the proceeds distributed to the Fund's shareholders) or are permanently written off, in each case as determined by the Adviser and approved by the Board.

8. Applicants believe the requested relief will permit the Fund to liquidate its holdings in the manner described above without the risk that it might be required to meet redemption requests submitted when the Fund would have no or few assets to meet the redemption requests. In addition, applicants state that suspension of redemptions prior to a distribution in liquidation will ensure that shareholders submitting such redemption requests will participate in the liquidation and also will be entitled to share in any liquidating distribution. Notwithstanding the present inability to dispose of Russian securities held by the Fund, Applicants have determined to seek the requested order at this time because Applicants believe that liquidation of the Fund is in the best interests of the Fund's shareholders. Without the requested relief, the Fund will be required to satisfy redemption requests from APs, while other investors would be unable to trade the Fund's shares. Although the Fund has received no redemption orders since the invasion began, it is possible that redemption orders could be received at any time.

9. In addition, as noted above, the NYSE Arca may determine in its discretion to delist shares of the Fund if the requested relief is not granted. The Fund will not be eligible to rely on Rule 6c–11 once the Fund's shares are delisted by NYSE Arca. As a consequence, to the extent that the Fund is obligated to satisfy any individual redemption requests received from non-AP shareholders of the Fund, the Fund would be unable to accept or process such redemption requests from an operational perspective because the Fund and its service providers do not have the operational infrastructure to enable the Fund to engage in non-AP primary market transactions. The Fund therefore would not, for its part, initiate delisting of the Fund's shares with NYSE Arca until after the requested relief is granted.[2]

Relief Requested

1. Applicants request an order pursuant to Section 22(e) of the Act to suspend the right of redemption with respect to shares of the Fund effective December 23, 2022, and postpone the date of payment of redemption proceeds with respect to redemption orders received on or after December 21, 2022 but not yet paid as of December 23, 2022, for more than seven days after the tender of securities to the Fund, until the Fund completes the liquidation of its portfolio and distributes all its assets to the shareholders, or until the Commission rescinds the order granted herein. Applicants believe that the relief requested is appropriate for the protection of shareholders of the Fund.

Applicants' Legal Analysis

1. Section 22(e)(1) of the Act provides that a registered investment company may not suspend the right of redemption or postpone the date of payment or satisfaction upon redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security to the company or its designated agent except for any period during which the New York Stock Exchange (''NYSE'') is closed other than customary week-end and holiday closings, or during which trading on the NYSE is restricted.

2. Section 22(e)(3) of the Act provides that redemptions may be suspended by a registered investment company for such other periods as the Commission may by order permit for the protection of security holders of the registered investment company.

3. Applicants submit that granting the requested relief would be for the protection of the shareholders of the Fund, as provided in Section 22(e)(3) of the Act. Applicants assert that, in requesting an order by the Commission, the Applicants' goal is to ensure that all of the Fund's shareholders will be treated appropriately and fairly in view of the otherwise detrimental effect on the Fund of the illiquidity of the Fund's investments and the ongoing uncertainty surrounding the Russian equity markets. The requested relief is intended to permit an orderly liquidation of the Fund's portfolio and ensure that all of the Fund's shareholders are protected in the process.

[1] *See* Exchange-Traded Funds, Investment Company Act Release Number 33646 (Sept. 25, 2019) (''[A]n ETF generally may suspend the issuance of creation units only for a limited time and only due to extraordinary circumstances, such as when the markets on which the ETF's portfolio holdings are traded are closed for a limited period of time.'').

[2] It is not anticipated that NYSE Arca will delist the Fund's shares before the Fund's requested relief is granted by the SEC.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Board, including a majority of the Independent Trustees,[3] will adopt or has adopted the Plan of Liquidation for the orderly liquidation of Fund assets and distribution of appropriate payments to Fund shareholders.

2. Pending liquidating distributions, the Fund will invest proceeds of cash dispositions of portfolio securities solely in U.S. government securities, money market funds that are registered under the Act and comply with the requirements of Rule 2a–7 under the Act, cash equivalents, securities eligible for purchase by a registered money market fund meeting the requirements of Rule 2a–7 under the Act with legal maturities not in excess of 90 days and, if determined to be necessary to protect the value of a portfolio position in a rights offering or other dilutive transaction, additional securities of the affected issuer.

3. The Fund's assets will be distributed to the Fund's shareholders solely in accordance with the Plan of Liquidation.

4. The Fund and the Adviser will make and keep true, accurate, and current all appropriate records, including but not limited to those surrounding the events leading to the requested relief, the Plan of Liquidation, the sale of Fund portfolio securities, the distribution of Fund assets, and communications with shareholders (including any complaints from shareholders and responses thereto).

5. The Fund and the Adviser will promptly make available to Commission staff all files, books, records, and personnel, as requested, relating to the Fund.

6. The Fund and the Adviser will provide periodic reporting to Commission staff regarding their activities carried out pursuant to the Plan of Liquidation.

7. The Adviser, its affiliates, and its and their associated persons will not receive any fee for managing the Fund.

8. The Fund will be in liquidation and will not be engaged and does not propose to engage in any business activities other than those necessary for the protection of its assets, the protection of shareholders, and the winding-up of its affairs, as contemplated by the Plan of Liquidation.

9. The Fund and the Adviser will appropriately convey accurate and timely information to shareholders of the Fund, before or promptly following the effective date of the liquidation, with regard to the status of the Fund and its liquidation (including posting such information on the Fund's website), and will thereafter from time to time do so to reflect material developments relating to the Fund or its status, including, without limitation, information concerning the dates and amounts of distributions, and press releases and periodic reports, and will maintain a toll-free number to respond to shareholder inquiries.

10. The Fund and the Adviser shall consult with Commission staff prior to making any material amendments to the Plan of Liquidation.

Commission Finding

Based on the representations and conditions in the application, the Commission permits the temporary suspension of the right of redemption for the protection of the Fund's shareholders. Under the circumstances described in the application, which require immediate action to protect the Fund's shareholders, the Commission concludes that it is not practicable to give notice or an opportunity to request a hearing before issuing the order.

Accordingly, in the matter of Franklin FTSE Russia ETF, a series of Franklin Templeton ETF Trust, and Franklin Advisory Services, LLC (File No. 812–15416),

It is ordered, pursuant to Section 22(e)(3) of the Act, that the requested relief from Section 22(e) of the Act is granted with respect to the Fund until it has liquidated, or until the Commission rescinds the order granted herein. This order shall be in effect as of December 23, 2022, with suspension of redemption rights as requested by the Applicants to be effective as of December 23, 2022 and the postponement of payment of redemption proceeds to apply to redemption orders received on or after December 21, 2022 but not yet paid as of December 23, 2022.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28384 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[3] ''Independent Trustees'' means trustees who are not ''interested persons'' of the Trust, as such term is defined in section 2(a)(19) of the Act.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96572; File No. SR–NYSEAMER–2022–57]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Rules 900.2NY, 925NY and 993NY

December 22, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 21, 2022, NYSE American LLC (''NYSE American'' 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

The Exchange proposes to amend Rule 900.2NY (Definitions), with conforming change to Rules 925NY (Obligations of Market Makers) and 993NY (Operation of Routing Broker). The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 900.2NY (Definitions), including to clarify and alphabetize existing definitions. As described in detail below, certain of the proposed modifications to existing definitions would update the Exchange's definitions regarding options trading to be substantively identical to the same defined terms as set forth in Rule 1.1 (referred to herein as ''Rule 1.1'') of NYSE Arca, Inc. (''NYSE Arca''), which is the Exchange's affiliated SRO.[4] The Exchange is also proposing to make conforming change to Rules 925NY (Obligations of Market Makers) and 993NY (Operation of Routing Broker).

Rule 900.2NY sets forth definitions applicable to the trading of option contracts on the Exchange. The Exchange proposes to modify Rule 900.2NY in a number of ways. First, the Exchange proposes to modify Rule 900.2NY to remove the numbering (of 1–88) associated with each defined term and to re-locate those definitions that are out of alphabetical order (which change impacts existing definitions: ''Exchange System,'' ''ICE,'' and ''Short Term Option Series'').[5] The Exchange does not believe that the sub-paragraph numbering is necessary because the definitions are (mostly) organized in alphabetical order and would continue to be organized in alphabetical order. In addition, removing the sub-paragraph numbering would make any future amendments to Rule 900.2NY easier to process as any new definitions would simply be added in alphabetical order. The Exchange believes this proposed change would add more clarity and transparency to Exchange rules making them easier to navigate and comprehend. The Exchange also proposes to change ''which'' to ''that'' in the proposed definitions of ''Clearing Member'' and ''Outstanding,'' as well as changing ''shall refer to'' with ''means'' to streamline the proposed definitions of ''BBO'' and ''NBBO,'' which are stylistic preferences that would add consistency to Exchange rules.

Second, the Exchange proposes to modify certain existing definitions as follows.

- The Exchange proposes to amend certain definitions to use the term ''underlying security'' rather than referring separately to an ''underlying stock or Exchange-Traded Fund Share.'' The Exchange believes that this proposed change would not make any substantive changes because an Exchange-Traded Fund Share is a ''security'' as that term is defined in Rule 900.2NY(71) (*i.e.,* that ''security'' refers to ''any security as defined in Rule 3(a)(10) under the Securities Exchange Act of 1934''). Accordingly, the term ''underlying security,'' by definition, would include stock or Exchange-Traded Fund Shares. The Exchange proposes to make this change to the following definitions: ''Aggregate Exercise Price,'' ''Call,'' ''Class of Options,'' ''Covered,'' ''Exercise Price,'' ''Primary Market,'' ''Put,'' ''Option Issue,'' and ''Underlying Stock or Underlying Security.''[6] These proposed changes are substantively identical to how these terms are defined in NYSE Arca Rule 1.1.
- The Exchange proposes to streamline the definitions of ''Closing Purchase Transaction,'' ''Closing Sale Transaction,'' ''Opening Purchase Transaction,'' and ''Opening Writing Transaction'' without any substantive differences, consistent with how these terms are defined per NYSE Arca Rule 1.1, as follows:
  - The term ''Closing Purchase Transaction'' is currently defined in Rule 900.2NY(12) to mean ''an option transaction in which the purchaser's intention is to reduce or eliminate a short position in the series of options involved in such transaction.'' The proposed Rule 900.2NY definition of this term would be ''a transaction in a series in which the purchaser intends to reduce or eliminate a short position in such series.''
  - The term ''Closing Sale Transaction'' is currently defined in Rule 900.2NY(13) to mean an ''option transaction in which the seller's intention is to reduce or eliminate a long position in the series of options involved in such transaction.'' The proposed Rule 900.2NY definition of this term would be ''a transaction in a series in which the seller intends to reduce or eliminate a long position in such series.''
  - The term ''Opening Purchase Transaction'' is currently defined in Rule 900.2NY(51) to mean ''an option transaction in which the purchaser's intention is to create or increase a long position in the series of options involved in such transaction.'' The proposed Rule 900.2NY definition of this term would be ''a transaction in a series in which the purchaser intends to create or increase a long position in such series.''
  - The term ''Opening Writing Transaction'' is currently defined in Rule 900.2NY(52) to mean ''an option transaction in which the seller's (writer's) intention is to create or increase a short position in the series of options involved in such transaction.'' The proposed Rule 900.2NY definition of this term would be ''a transaction in a series in which the seller (writer) intends to create or increase a short position in such series.''
- The Exchange proposes to revise the definition of ''ATP'' and ''ATP Holder'' to remove reference to 86 Trinity Holders as being included in these definitions because these permits are no longer valid and no participants of the Exchange hold such permits. Accordingly, the Exchange proposes to remove reference to this concept to add clarity and transparency to Exchange rules.
- The Exchange proposes to revise the definition of BBO, which is currently defined in Rule 900.2NY(7)(a) as ''the best bid or offer on the System,'' to instead be defined as ''the best displayed bid or best displayed offer on the Exchange.''[7] The Exchange believes that the proposed difference would add granularity to be clear that non-displayed quotes and orders would not be included in the BBO, which is consistent with current functionality. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.
- The Exchange proposes to revise the definition of ''Class of Options,'' which is currently defined in Rule 900.2NY(10), to include ''class,'' and to refer to ''all series of options, both puts and calls, overlying the same underlying security. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

[4] The proposed definitions that are based on NYSE Arca Rule 1.1 (as identified herein) relate solely to options trading and, unlike Rule 1.1, do not include a description of how such terms relate to equities trading. Thus, when the Exchange states that the proposed definitions are substantively identical to the definitions in Rule 1.1, the Exchange means solely as relates to options trading. The Exchange believes this distinction is immaterial as Rule 900.2NY pertains solely to options trading, whereas Rule 1.1 applies to both options and equities trading.

[5] The Exchange is not proposing any textual changes to the definition of ''Exchange System'' or ''ICE,'' but is merely relocating the definitions. The Exchange is not proposing to relocate the definition of ''Short Term Options Series'' in the proposed rule because it is duplicative of Rule 903(h) (describing the Short Term Option Series Program).

[6] The Exchange proposes to make a similar non-substantive change to delete the term ''Exchange-Trade Fund Share'' in Rule 925NY(b) and (c).

[7] The Exchange is not proposing any changes to the definitions of Complex BBO or Derived BBO as set forth in Rule 900.2NY(7)(a).

• The Exchange proposes to revise the definition of ''Consolidated Book,'' which is currently defined in Rule 900.2NY(14) as ''the Exchange's electronic book of limit orders for the accounts of Customers and broker-dealers, and Quotes with Size,'' and further provides that ''[a]ll orders and Quotes with Size that are entered into the Book will be ranked and maintained in accordance with the rules of priority as provided in Rule 964NY'' to include the shorthand ''Book'' in the title and to replace reference to ''Quotes with Size'' to ''quotes,'' as the former concept incorporates to the definition of quotes set forth in Rule 925.1NY(a)(1)) and would thus streamline the proposed definition. The Exchange also proposes to refer simply to ''orders'' and to remove reference to ''limit'' orders and ''orders for the accounts of Customers and broker-dealers,'' because the proposed use of the phrase ''electronic book of orders and quotes'' makes clear that the Consolidated Book would include all orders and quotes, including orders from both ''Customers and broker-dealers,'' and it is not necessary to separately reference what entity may be entering orders. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.[8]

○ Relatedly, consistent with the foregoing argument to replace reference to ''Quotes with Size'' with ''quotes'' in the proposed definition of Consolidate Book, the Exchange proposes to delete as duplicative the definition of ''Quote with Size,'' which is currently defined in Rule 900.2NY(65) to mean ''a quotation (as defined in Rule 925.1NY(a)(1)) to buy or sell a specific number of option contracts at a specific price that a Market Maker has submitted to the System through an electronic interface.'' Because the concept of Quote with Size cross-references and incorporates the definition of quotes set forth in Rule 925.1NY(a)(1)), the Exchange believes this proposed deletion would streamline and add internal consistent to Exchange rules.

• The Exchange proposes to revise the definition of ''Crowd Participants,'' which is currently defined in Rule 900.2NY(17) to mean ''the Market Makers appointed to an option issue under Rule 923NY, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series,'' to not include the clause ''for a particular option series'' as unnecessary text. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

• The Exchange proposes to revise the definition of ''Electronic Order Capture System,'' which is currently defined in Rule 900.2NY(20), to include the shorthand ''EOC'' in the title and to eliminate reference to the Commission's order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, which was the initial authority for the Exchange to specify requirements relating to the Electronic Order Capture System. The Exchange will continue to include requirements for the Electronic Order Capture System in its rules and does not believe it is necessary to continue to cite to the original authority for this requirement in Exchange rules. The Exchange also proposes to correct/delete the erroneous references to ''ATP Firms,'' which is not a defined concept on the Exchange. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

• The Exchange proposes to streamline the definition of ''Expiration Date,'' which is currently defined in Rule 900.2NY(26), to eliminate now obsolete language limiting the definition to options expiring before, on, or after February 15, 2015. In addition, the Exchange does not propose to include the following text in the proposed Rule 900.2NY definition of ''Expiration Date'': ''Notwithstanding the foregoing, in the case of certain long-term options expiring on or after February 1, 2015 that the Options Clearing Corporation has designated as grandfathered, the term ''expiration date'' shall mean the Saturday immediately following the third Friday of the expiration month.'' This rule text is now obsolete as the Exchange does not have any series trading on the Exchange with such Saturday expiration dates. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

• The Exchange proposes to amend the definition of ''NBBO,'' which is currently defined in Rule 900.2NY(41)(a), to add language stating that ''[t]he terms 'NBB' mean the national best bid and 'NBO' means the national best offer,'' which would add clarity to Exchange rules.[9]

• The Exchange proposes to amend the definition of ''Options Trading,'' which is currently defined in Rule 900.2NY(56), to delete the phrase ''issued by the Options Clearing Corporation.'' Accordingly, the proposed Rule 900.2NY definition of ''options trading'' would be as follows: ''when not preceded by the word 'Exchange,' means trading in any option contract, whether or not approved for trading on the Exchange.'' The Exchange believes that this proposed change is immaterial because the Exchange trades only options that have been issued by the Options Clearing Corporation, and therefore reference to the OCC is redundant and unnecessary. The Exchange also proposes to delete as superfluous the reference to any ''class or series'' of option contract traded whether or not approved by the Exchange. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

• The Exchange proposes to modify the definition of ''Outstanding'' to replace the following (seemingly incomplete) Rule 900.2NY(58) text, ''has neither been the subject of a closing sale transaction on the Exchange or a comparable expiration date,'' with the following, ''has not been the subject of a closing sale transaction, exercised, or expired.'' The Exchange believes that the proposed revised text is more complete. This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

• The Exchange proposes to modify the definition of ''Trading Crowd,'' which is currently defined in Rule 900.2NY(80), to remove the text that limits Market Makers covered by the definition to those ''who hold an appointment in the option classes'' and to expand the definition to include Floor Brokers, which modified definition is substantially identical to how this term is defined in NYSE Arca Rule 1.1, with the one difference that Rule 1.1 refers to the ''trading post'' whereas the proposed definition refers to the conceptually identical defined term ''Trading Zone.''[10]

[8] The Exchange also proposes to remove as duplicative the definition of ''Book, Consolidated Book'' which is currently defined in Rule 900.2NY(46), as ''the System's electronic file of orders and quotes, which contains all of the orders in the Display Order Process and the Working Order File and all of the Market Makers' quotes in the Display Order Process,'' so as to avoid investor confusion and help streamline Exchange rules making them easier to follow and comprehend.

[9] The Exchange notes that, unlike Rule 1.1, the proposed definition of NBBO does not include reference to the Exchange's adjustment of its calculation of the NBBO, as this language applies to options trading on the Pillar platform. The Exchange believes this distinction is immaterial and inapplicable as the Exchange has not migrated to the Pillar trading platform.

[10] Including Floor Brokers in the definition of Trading Crowd is also consistent with how this concept is defined on other options exchanges. *See also* Cboe Exchange Inc. Rule 1.1 (defining the terms ''in-crowd market participant'' and ''ICMP'' to

• The Exchange proposes to modify the definition of ''Trading Facilities,'' which is currently defined in Rule 900.2NY(81), to remove the reference to ''11 Wall Street, New York, NY'' (*i.e.,* the physical location of the Trading Floor) such that ''Trading Facilities'' would mean ''the Exchange's facilities for the trading of options, office space provided by the Exchange to ATP Holders in connection with their floor trading activities, and any and all electronic or automated order execution systems and reporting services provided by the Exchange to ATP Holders.'' [11] This proposed change is substantively identical to how this term is defined in NYSE Arca Rule 1.1.

• The Exchange proposes to modify the definition of an ''Uncovered'' position, which is currently defined in Rule 900.2NY(85) as ''in respect of a short position in an option contract means that the short position is not covered.'' Because a ''covered'' position is also defined in proposed Rule 900.2NY, the Exchange proposes to add quotation marks around ''covered'' and, immediately after this term, to add ''as defined above,'' to make clear the cross-reference is to another defined term, which would add transparency to the rule text and is consistent with how this term is defined in NYSE Arca Rule 1.1.

In addition, the Exchange proposes to clarify, expand and/or streamline certain existing definitions, including to specify variations or abbreviations of the defined term, as follows.

• The Exchange proposes to revise the definition of ''Board,'' which is currently defined in Rule 900.2NY(8) and refers to the Board of Directors of the Exchange to include the synonymous defined term ''Board of Directors,'' which term is used throughout existing Exchange rules and make two changes to add the article ''the'' immediately before ''Board of Directors'' and to remove the (superfluous) term ''shall.'' These proposed changes would add clarity and consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Customer,'' which is currently defined in Rule 900.2NY(18), to include reference to the sub-category (and separate and distinct definition) of ''Professional Customer'' in the title. The Exchange also proposes to modify the definition of Professional Customer to align with how this term is defined in NYSE Arca Rule 1.1, *i.e.,* to remove as superfluous the sub-heading ''Calculation of Professional Customer Orders,'' to modify the wording and numbering in the portion of the proposed definition that describes how the Exchange calculates orders for purposes of determining whether a market participant qualifies as a ''Professional Customer.''

• The Exchange proposes to revise the definition of ''Floor,'' which is currently defined in Rule 900.2NY(30) and refers to the options trading floor, to include the synonymous defined terms ''Trading Floor'' and ''Options Trading Floor,'' which terms are used throughout existing Exchange rules and make one change to remove the term ''shall.'' These proposed changes would add clarity and consistency to Exchange rules. which would add clarity and transparency to Exchange rules.

• The Exchange proposes to correct a typographical error in the definition of Marketable, which is currently defined in Rule 900.2NY(39), to capitalize the reference to ''Orders'' as pertains to ''Market Orders,'' which are defined in Rule 900.3NY(a). This proposed change would add transparency and internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Market Center,'' which is currently defined in Rule 900.2NY(36) and refers a national securities exchange that has qualified for participation in the Options Clearing Corporation pursuant to the provisions of the rules of the Options Clearing Corporation, to include the term ''Trading Center.''

• The Exchange proposes to revise the definition of ''Minimum Price Variation,'' which is currently defined in Rule 900.2NY(40) and means the variations established by the Exchange pursuant to Rule 960NY(a), to include reference to the shorthand ''MPV'' in the title. This proposed change would add transparency and internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Non-Resident Organization,'' which is currently defined in Rule 900.2NY(43), to revise the numbering of the sub-paragraphs to be consistent with the balance of the proposed rule. This proposed change would add internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''NYSE American Options,'' which is currently defined in Rule 900.2NY(47), to include reference to the shorthand ''NYSE American'' in the title. This proposed change would add internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Options Clearing Corporation,'' which is currently defined in Rule 900.2NY(55), to include reference to the shorthand ''OCC'' in the title. This proposed change would add internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Order Flow Provider,'' which is currently defined in Rule 900.2NY(57), to include reference to the shorthand ''OFP'' in the title. This proposed change would add internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Related Person,'' which is currently defined in Rule 900.2NY(67), to revise the numbering of the sub-paragraphs to be consistent with the balance of the proposed rule. This proposed change would add transparency and internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Series of Options,'' which is currently defined in Rule 900.2NY(73), to include ''option series'' or ''series,'' which change would add transparency and internal consistency to Exchange rules.

• The Exchange proposes to revise the definition of ''Trading Official,'' which is currently defined in Rule 900.2NY(82), to add quotation marks around the defined term, which correction would add transparency and internal consistency to Exchange rules.

Finally, the Exchange proposes to relocate (and revise) the definition of ''Routing Broker,'' which is currently defined in Rule 900.2NY(69) to mean ''the broker-dealer affiliate of the Exchange and/or any other non-affiliate third-party broker-dealer that acts as a facility of the Exchange for routing orders entered into the System of ATP Holders and Sponsored Participants to other Market Centers for execution whenever such routing is required by Exchange Rules.'' The Exchange proposes to re-locate this term to Rule 993NY (Operation of a Routing Broker) to mean ''the broker-dealer affiliate of the Exchange and/or any other non-affiliate that acts as a facility of the Exchange for routing orders submitted to the Exchange to other Market Centers for execution whenever such routing is required by Exchange Rules and federal securities laws.'' [12] The proposed rule text is based on the current definition in Rule 900.2NY(69), with differences to

include ''an in-crowd Market-Maker, an on-floor DPM or LMM with an allocation in a class, or a Floor Broker or PAR Official representing an order in the trading crowd on the trading floor'').

[11] *See* Rule 900.2NY(30) (defining the terms ''Floor'' and ''Trading Floor'' as referring to ''the options trading floor located at 11 Wall Street, New York, NY.'').

[12] *See* proposed Rule 993NY(a). The Exchange also proposes non-substantive amendments to Rule 993NY to renumber current paragraphs (a), (b), and (c), as paragraphs (b), (c), and (d).

streamline the definition (*i.e.,* by removing reference to the ATP Holder or Sponsoring Participant submitting the order). The Exchange notes that the proposal to include the definition of ''Routing Broker'' in its rule governing the operation of the routing broker (as well as the content of the revised definition) is consistent with the NYSE Arca Rule 6.96–O (Operation of Routing Broker).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(5),[14] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed amendments to Rule 900.2NY would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed changes are designed to promote clarity, transparency, and internal consistency in Exchange rules. The Exchange believes that the proposed changes to eliminate duplicative definitions that are used elsewhere in Exchange rules and to modify the text of certain existing definitions would further remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure that the definitions used in Exchange rules are updated to accurately reflect (or more clearly describe) functionality and are internally consistent. In particular, the Exchange believes that the proposed updates to existing definitions would add further granularity, clarity and transparency to Exchange rules making them easier for the investing public to navigate. The proposed changes to existing definitions would also remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the definitions, as modified, are substantively identical to how the same concepts are described in NYSE Arca Rule 1.1.

Finally, the Exchange believes that the clarifying changes, including non-substantive and conforming changes, would remove impediments to and perfect the mechanism of a free and open market and a national market system, not significantly affect the protection of investors or the public interest because such changes add clarity, transparency, and internal consistency to Exchange rules to the benefit of all market participants.[15] The Exchange believes that organizing Rule 900.2NY alphabetically and eliminating sub-paragraph numbering would make the proposed rules easier to navigate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather designed to add clarity, transparency, and internal consistency to Exchange rules making them easier to comprehend and navigate. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17] Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[20] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–57. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See e.g.,* notes 5, 6, 7 and 12, *supra.*

[16] 15 U.S.C. 78s(b)(3)(A)(iii).

[17] 17 CFR 240.19b–4(f)(6).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] 15 U.S.C. 78s(b)(2)(B).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NYSEAMER–2022–57 and should be submitted on or before January 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–28299 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34790; 812–15408]

Touchstone Strategic Trust, et al.

December 22, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

SUMMARY OF APPLICATION: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

APPLICANTS: Touchstone Strategic Trust, Touchstone ETF Trust, Touchstone Funds Group Trust, Touchstone Variable Series Trust and Touchstone Advisors, Inc.

FILING DATES: The application was filed on November 15, 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 17, 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.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Meredyth A. Whitford-Schultz, *meredyth.whitford@westernsouthernlife.com;* Clair Pagnano; *clair.pagnano@klgates.com;* and Abigail Hemnes; *abigail.hemnes@klgates.com.*

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, or Terri G. Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' application, dated November 15, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–28291 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2022–0056]

Notice on Penalty Inflation Adjustments for Civil Monetary Penalties

AGENCY: Social Security Administration.

ACTION: Notice announcing updated penalty inflation adjustments for civil monetary penalties for 2023.

SUMMARY: The Social Security Administration is giving notice of its updated maximum civil monetary penalties. These amounts are effective from January 15, 2023 through January 14, 2024. These figures represent an annual adjustment for inflation. The updated figures and notification are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

FOR FURTHER INFORMATION CONTACT: Jessica Stubbs, Deputy Counsel to the Inspector General, Room 3–ME–1, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 816–4054. For information on eligibility or filing for benefits, call the Social Security Administration's national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit the Social Security Administration's internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On June 27, 2016, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act),[1] we published an interim final rule to adjust the level of civil monetary penalties (CMPs) under Sections 1129 and 1140 of the Social Security Act, 42 U.S.C. 1320a–8 and 1320b–10, respectively, with an initial ''catch-up'' adjustment effective August 1, 2016.[2] We announced in the interim final rule that for any future adjustments, we would publish a notice in the **Federal Register** to announce the new amounts. The annual inflation adjustment in subsequent years must be a cost-of-living adjustment based on any increases in the October Consumer Price Index for All Urban Consumers (CPI–U) (not seasonally adjusted) each year.[3]

[1] *See https://www.congress.gov/bill/114th-congress/house-bill/1314/text. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[2] *See* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[3] *See* OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act

Continued

Inflation adjustment increases must be rounded to the nearest multiple of $1.[4] We last updated the maximum penalty amounts effective January 15, 2022.[5] Based on Office of Management and Budget (OMB) guidance,[6] the information below serves as public notice of the new maximum penalty amounts for 2023. The adjustment results in the following new maximum penalties, which will be effective as of January 15, 2023.

Section 1129 CMPs (42 U.S.C. 1320a–8):

$8,723.00 (current maximum per violation for fraud facilitators in a position of trust) × 1.07745 (OMB-issued inflationary adjustment multiplier) = $9,398.60. When rounded to the nearest dollar, the new maximum penalty is $9,399.00.

$9,250.00 (current maximum per violation for all other violators) × 1.07745 (OMB-issued inflationary adjustment multiplier) = $9,966.41. When rounded to the nearest dollar, the new maximum penalty is $9,966.00.

Section 1140 CMPs (42 U.S.C. 1320b–10):

$11,506.00 (current maximum per violation for all violations other than broadcast or telecasts) × 1.07745 (OMB-issued inflationary adjustment multiplier) = $12,397.14. When rounded to the nearest dollar, the new maximum penalty is $12,397.00.

$57,527.00 (current maximum per violative broadcast or telecast) × 1.07745 (OMB-issued inflationary adjustment multiplier) = $61,982.47. When rounded to the nearest dollar, the new maximum penalty is $61,982.00.

Michelle Murray,

Chief Counsel, Office of the Inspector General, Social Security Administration.

[FR Doc. 2022–28284 Filed 12–28–22; 8:45 am]

BILLING CODE 4191–02–P

Improvements Act of 2015, M–16–06, p. 1 (February 24, 2016), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2016/m-16-06.pdf. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[4] OMB Memorandum, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06, p. 3 (February 24, 2016), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2016/m-16-06.pdf. See also* 81 FR 41438, *https://www.federalregister.gov/documents/2016/06/27/2016-13241/penalty-inflation-adjustments-for-civil-money-penalties.*

[5] *See* 86 FR 73839, *https://www.federalregister.gov/documents/2021/12/28/2021-28144/notice-on-penalty-inflation-adjustments-for-civil-monetary-penalties.*

[6] *See https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf.*

DEPARTMENT OF STATE

[Public Notice 11955]

Notice of Public Meeting To Prepare for International Maritime Organization HTW 9 Meeting

The Department of State will conduct a public meeting at 10 a.m. on Wednesday, February 1, 2023, both in-person at Coast Guard Headquarters in Washington, DC, and via teleconference. The primary purpose of the meeting is to prepare for the ninth session of the International Maritime Organization's Sub-Committee on Human Element, Training and Watchkeeping (HTW) to be held in London, United Kingdom, from Monday, February 6, 2023, to Friday, February 10, 2023.

Members of the public may participate up to the capacity of the teleconference phone line, which can handle 500 participants, or up to the seating capacity of the room if attending in-person. To RSVP, participants should contact the meeting coordinator, Mr. Charles J. Bright by email at *Charles.J.Bright@uscg.mil.* The meeting location will be the United States Coast Guard Headquarters, Ray Evans Conference Room, Room A, and the teleconference line will be provided to those who RSVP.

The agenda items to be considered at this meeting mirror those to be considered at HTW 9, and include:

- Adoption of the agenda
- Decisions of other IMO bodies
- Validated model training courses
- Role of the human element
- Reports on unlawful practices associated with certificates of competency
- Implementation of the Standards of Training, Certification and Watchkeeping (STCW) Convention
- Comprehensive review of the 1978 STCW Convention and Code
- Comprehensive review of the 1995 STCW-Fish Convention
- Development of measures to ensure quality of onboard training as part of the mandatory seagoing service required by the STCW Convention
- Development of measures to facilitate mandatory seagoing service required under the STCW Convention
- Development of training provisions for seafarers related to the BWM Convention
- Biennial status report and provisional agenda for HTW 10
- Election of Chair and Vice-Chair for 2024
- Any other business
- Report to the Maritime Safety Committee

Please note: The Sub-committee may, on short notice, adjust the HTW 9 agenda to accommodate the constraints associated with the meeting format. Although no changes to the agenda are anticipated, if any are necessary, they will be provided to those who RSVP.

Those who plan to attend should contact the meeting coordinator, Mr. Charles J. Bright, by email at *Charles.J.Bright@uscg.mil,* by phone at (202) 372–1046, or in writing at 2703 Martin Luther King Jr. Ave. SE, Stop 7509, Washington, DC 20593–7509 by January 18, 2023. Members of the public needing reasonable accommodation should also advise Mr. Charles Bright by January 18, 2023. Requests made after that date will be considered but might not be possible to fulfill. The meeting coordinator will provide the teleconference information, facilitate the building security process, and process requests for reasonable accommodation. Please note, that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's. This building is accessible by taxi, public transportation, and privately owned conveyance (upon request).

Additional information regarding this and other IMO public meetings may be found at: *https://www.dco.uscg.mil/IMO.*

(Authority: 22 U.S.C. 2656 and 5 U.S.C. 552)

Emily A. Rose,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2022–28354 Filed 12–28–22; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 11953]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: ''The Tudors: Art and Majesty in Renaissance England'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary display in the exhibition ''The Tudors: Art and Majesty in Renaissance England'' at The Cleveland Museum of Art, Cleveland, Ohio, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its 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. 2022–28300 Filed 12–28–22; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11943]

Secretary of State's Determinations Under The International Religious Freedom Act of 1998 and Frank R. Wolf International Religious Freedom Act of 2016

Pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), as amended (the Act), notice is hereby given that, on November 30, 2022, the Secretary of State, under authority delegated by the President, has designated each of the following as a ''country of particular concern'' (CPC) under section 402(b) of the Act, for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Cuba, Eritrea, Iran, the Democratic People's Republic of Korea, Nicaragua, Pakistan, Russia, Saudi Arabia, Tajikistan, and Turkmenistan. The Secretary simultaneously designated the following as satisfying the requirement to take Presidential Action for these CPCs:

For Burma, the existing ongoing restrictions referenced in 22 CFR 126.1, pursuant to section 402(c)(5) of the Act;

For China, the existing ongoing restriction on exports to China of crime control or detection instruments or equipment, under the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991 (Pub. L. 101–246), pursuant to section 402(c)(5) of the Act;

For Cuba, the existing ongoing restrictions referenced in 31 CFR 515.201 and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (Helms-Burton Act), pursuant to section 402(c)(5) of the Act;

For the Democratic People's Republic of Korea, the existing ongoing restrictions to which the Democratic People's Republic of Korea is subject, pursuant to sections 402 and 409 of the Trade Act of 1974 (the Jackson-Vanik Amendment), and pursuant to section 402(c)(5) of the Act;

For Eritrea, the existing ongoing restrictions referenced in 22 CFR 126.1, pursuant to section 402(c)(5) of the Act;

For Iran, the existing ongoing travel restrictions in section 221(c) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) for individuals identified under section 221(a)(1)(C) of the TRA in connection with the commission of serious human rights abuses, pursuant to section 402(c)(5) of the Act;

For Nicaragua, the existing ongoing restrictions referenced in section 5 of the Nicaragua Investment Conditionality Act of 2018 (the NICA Act)

For Pakistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Russia, the existing ongoing sanctions issued for individuals identified pursuant to section 404(a)(2) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 and section 11 of the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, as amended by Section 228 of the Countering America's Adversaries Through Sanctions Act, pursuant to section 402(c)(5) of the Act;

For Saudi Arabia, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act;

For Tajikistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act; and

For Turkmenistan, a waiver as required in the ''important national interest of the United States,'' pursuant to section 407 of the Act.

In addition, the Secretary of State has designated the following countries as ''special watch list'' countries for engaging in or tolerating severe violations of religious freedom: Algeria, the Central African Republic, Comoros, and Vietnam.

Pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), notice is hereby given that, on November 30, 2022, the Secretary of State, under authority delegated by the President, has designated each of the following as an ''entity of particular concern'' under section 301 of the Frank R. Wolf International Religious Freedom Act of 2016 (Pub. L. 114–281), for having engaged in particularly severe violations of religious freedom: Al-Shabaab, Boko Haram, Hayat Tahrir al-Sham, the Houthis, ISIS-Sahel (formerly known as ISIS in the Greater Sahara), ISIS-West Africa, Jamaat Nasr al-Islam wal Muslimin, the Taliban, and Wagner Group based on its actions in the Central African Republic.

FOR FURTHER INFORMATION CONTACT: Carter Allen, Office of International Religious Freedom, U.S. Department of State, (Phone: (202) 718–1792 or Email: *AllenCG@state.gov*).

Carson Relitz Rocker,

Acting Director, Office of International Religious Freedom, Department of State.

[FR Doc. 2022–28311 Filed 12–28–22; 8:45 am]

BILLING CODE 4710–18–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36377 (Sub–No. 6)]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for its acquisition of restricted, local, trackage rights over two rail lines owned by Union Pacific Railroad Company (UP) between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles (collectively, the Lines).

Pursuant to a written temporary trackage rights agreement, UP has agreed to grant restricted trackage rights to BNSF over the Lines. The purpose of this transaction is to permit BNSF to move empty and loaded ballast trains to and from the ballast pit at Elsey, which is adjacent to the Lines. The agreement provides that the trackage rights are temporary and scheduled to expire on December 31, 2023.[1]

The transaction may be consummated on or after January 12, 2023, the

[1] BNSF states that, because the trackage rights are for local rather than overhead traffic, it has not filed under the Board's class exemption for temporary overhead trackage rights under 49 CFR 1180.2(d)(8). Instead, BNSF has filed under the trackage rights class exemption at § 1180.2(d)(7). BNSF concurrently filed a petition for partial revocation of this exemption, in Docket No. FD 36377 (Sub–No. 7), to permit these proposed trackage rights to expire at midnight on December 31, 2023, as provided in the agreement. The petition for partial revocation will be addressed in a subsequent decision.

effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

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 January 5, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36377 (Sub–No. 6), 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 BNSF's representative, Peter W. Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 19, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–28165 Filed 12–28–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket #FAA–2022–1797]

FY 2022 Competitive Funding Opportunity: Airport Improvement Program Supplemental Discretionary Grants

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

ACTION: Notice of funding opportunity.

SUMMARY: The Federal Aviation Administration (FAA) announces the opportunity to apply for approximately $268,728,965 in fiscal year (FY) 2022 competitive supplemental discretionary grants. The purpose of the supplemental discretionary grant program is to make grants to eligible airports for airport construction projects, associated airport capital planning, noise planning and noise mitigation projects, and energy and environmental sustainability projects. FAA will implement the FY 2022 supplemental discretionary grant program consistent with Airport Improvement Program (AIP) sponsor and project eligibility and will consider project applications that align with the priorities, limitations, and requirements described in this notice.

DATES: Airport sponsors that wish to be considered for FY 2022 supplemental discretionary funding should submit an application that meets the requirements of this Notice of Funding Opportunity (NOFO) as soon as possible, but no later than 5 p.m. eastern time on Tuesday, January 31, 2023. Submit applications to the specified FAA Supplemental 2022 NOFO mailbox per instructions in section D below. Additional project information may be required after the original application submission date. FAA may contact the grant applicant for any additional information required for an initial project evaluation based on the application submission.

FOR FURTHER INFORMATION CONTACT: David F. Cushing, Manager, Airports Financial Assistance Division, APP–500, at (202) 267–8827.

SUPPLEMENTARY INFORMATION:

A. Program Description

This competitive supplemental discretionary grant program falls under the project grant authority for the Airport Improvement Program (AIP) in 49 United States Code (U.S.C.) 47104. Per 2 Code of Federal Regulations (CFR) part 200—*Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,* the AIP Federal Assistance Listings Number is 20.106, with the objective of assisting eligible airports in the development and improvement of a nationwide system that adequately meets the needs of civil aeronautics.

Public Law 117–103, Consolidated Appropriations Act, 2022, authorizes the Secretary of Transportation to issue grants for projects as authorized by subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, U.S.C., in a total amount of supplemental funding of $554,180,000, to remain available through September 30, 2024. Of this total made available, and as stipulated in Public Law 117–103 and the accompanying Joint Explanatory Statement (JES), Congress sets aside up to $2,770,900 (0.5 percent) for administrative expenses and up to $3,500,000 to reimburse losses related to Temporary Flight Restrictions. After these initial set-asides, $547,909,100 remains available for discretionary grants.

Of the total made available, $279,180,135 is available for the purposes, and in amounts, specified for Community Project Funding/Congressionally Directed Spending as stipulated in Public Law 117–103 and the JES. This Congressionally Directed Spending identified specific projects at specific airports and thus is not part of this NOFO.

As such, per the provisions of Public Law 117–103 and the JES discussed above, funds remaining after those set-asides shall be available to the Secretary of Transportation to distribute as discretionary grants to airports, as authorized by subchapter 1 of chapter 471 and subchapter 1 of chapter 475 of title 49, U.S.C. Accordingly, at least $268,728,965 is available under this NOFO.

Notably, the JES directs FAA to adhere to 49 U.S.C. 47115(j)(3)(B), requiring FAA to make available not less than 50 percent of the funds for grants at nonhub, small hub, reliever, and nonprimary airports. Furthermore, the JES directs the FAA to prioritize the remaining 50 percent of funds for grants at medium hub and large hub airports. This 50 percent applies to the amount of Supplemental Funding available for grants of $547,909,100, including Community Project Funding/Congressionally Directed Spending, which is not the subject of this NOFO. This results in no less than approximately $20,000,000 available for supplemental discretionary grants to nonhub, small hub, reliever, and nonprimary airports. FAA intends to award no more than $70,000,000 to comply with the JES.

At least $25,000,000 will be made available for the Voluntary Airport Low Emissions Program (VALE) and the Zero-Emission Vehicle and Infrastructure Program (ZEV), pursuant to the JES. The JES also directs FAA to ensure that funds are made available to reduce the impact of noise on local communities, including funding grants for noise planning and noise mitigation.

Eligible project categories are described in detail in the section C. Eligibility, sub-section 3. Project Eligibility.

Consistent with statutory criteria and E.O. 14008, ''*Tackling the Climate Crisis at Home and Abroad*'' (86 FR 7619), FAA seeks to fund projects that align

with the President's greenhouse gas reduction goals, promote energy efficiency, support fiscally responsible land use and efficient transportation design, support terminal development compatible with the use of sustainable aviation fuels and technologies, increase climate resilience, incorporate sustainable and less emissions-intensive pavement and construction materials wherever possible, and reduce pollution. This focus extends beyond the $25,000,000 set aside for VALE and ZEV project grants. This funding supports FAA's Climate Challenge, as described herein and at this link: *https://qa-www.faa.gov/sites/faa.gov/files/airports/environmental/zero_emissions_vehicles/airports-climate-challenge-presentation-April2022.pdf.*

In addition, in support of E.O. 13985, "*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*" (86 FR 7009), FAA seeks to fund projects that address the challenges faced by individuals in underserved communities and to pursue emission reductions that fight climate change and improve air quality in over-burdened communities. This includes, pursuant to the JES, funding noise projects, including noise planning and noise mitigation in neighborhoods impacted by aircraft noise near airports. To the extent that projects impact terminal and land-side elements, FAA seeks to fund projects that accommodate persons with disabilities accessing aviation services or airport employment.

Section E provides more information on the specific measures a project may undertake to support these goals.

All projects must comply with Federal civil rights requirements. See section F.2 of this NOFO for program requirements.

B. Federal Award Information

This NOFO announces approximately $268,728,965, subject to the availability of funds, for supplemental discretionary grants. From FY 2018 through FY 2021, over 550 supplemental discretionary grants were awarded, totaling approximately $2.3 billion. The discretionary grants ranged in amount from $160,397 to $29,115,000. The average AIP supplemental discretionary grant was approximately $5,200,000. The amount available under this NOFO is significantly less than prior years' competitive appropriation. Those supplemental discretionary appropriations ranged from $400 million to $1 billion.

Under 49 U.S.C. 47115(j)(3)(B), not less than 50 percent of the funds made available shall be for grants at nonhub, small hub, reliever, and nonprimary airports. Furthermore, the JES directs the FAA to prioritize the remaining 50 percent of funds for grants at medium hub and large hub airports. This 50 percent applies to the amount of Supplemental Funding available for grants of $547,909,100, including Community Project Funding/Congressionally Directed Spending, which are not the subject of this NOFO. This results in a range of available funding of approximately $20,000,000 to $70,000,000 available for supplemental discretionary grants to nonhub, small hub, reliever, and nonprimary airports.

In addition, the JES directs at least $25,000,000 be made available for Voluntary Airport Low Emissions (VALE) projects and Zero-Emissions Vehicles (ZEV) projects. These funds do not affect the funding available as part of annual AIP funding outside of this NOFO. The JES also directs FAA to ensure that AIP funds are made available to reduce the impact of noise on local communities.

The FAA will prioritize funding projects that are complete usable-units-of-work, to include construction of eligible airport development, acquisition and installation of eligible equipment, acquisition and commissioning of eligible rolling-stock equipment, procurement of actionable plans, including sustainability plans, energy planning and noise compatibility planning as described in section C.3 of this NOFO.

Selected projects should be ready to go to grant according to AIP requirements, including such things as National Environmental Policy Act (NEPA) clearance, Federal civil rights compliance, construction bids or negotiated fees, by May 15, 2024, but may go to grant at any time post-award.

C. Eligibility Information

1. Eligible Applicants

Eligible applicants are those airport sponsors normally eligible for AIP discretionary grants as defined in 49 U.S.C. 47115, which includes a public agency, private entity, state agency, Indian Tribe or Pueblo owning a public-use NPIAS airport, the Secretary of the Interior for Midway Island Airport, the Republic of the Marshall Islands, Federated States of Micronesia, and the Republic of Palau.

2. Cost Sharing or Matching

Grants have Federal shares ranging from 70 percent to 95 percent under 49 U.S.C. 47109. The Federal share percentage is based on the airport size and type of project. Federal share by airport and project type can be found in chapter 4 of the AIP Handbook, FAA Order 5100.38D, February 26, 2019.

3. Project Eligibility

Projects should be ready to begin by/on June 30, 2024. Supplemental discretionary funds are awarded in accordance with 49 U.S.C. 47115(j).

Eligible projects include, but are not limited to:

a. Improvements related to enhancing airport safety, capacity, security, environmental sustainability, planning, or any combination of the above, including terminal development;

b. Planning for the feasibility of and options for unleaded aviation fuel infrastructure;

c. Airport projects associated with pavement rehabilitation, reconstruction, and extension of the pavement's useful life;

d. Noise planning and noise mitigation;

e. Projects to plan for, relocate, and/or construct run-up locations to reduce community exposure to emissions from leaded aviation fuel usage;

f. Other emission reduction projects.

In further support of FAA's Climate Challenge, supplemental discretionary funds are available for certain low-emission fuel system or air quality improvement projects such as Voluntary Airport Low Emissions (VALE) projects and Zero-Emissions Vehicles (ZEV) projects, as well as energy efficiency, energy resiliency and sustainability projects.

VALE is a competitive program that provides grant funding to commercial airports implementing clean technology projects that improve air quality in non-attainment and maintenance areas. See *https://www.faa.gov/airports/environmental/vale/.* ZEV is a competitive program that provides grant funding to acquire zero-emissions vehicles and associated infrastructure for any airport in the National Plan of Integrated Airport Systems (NPIAS). See *https://www.faa.gov/airports/environmental/zero_emissions_vehicles/.*

Applicants should submit an application specifically referencing all requirements in this NOFO to be considered for supplemental discretionary funding, even if the applicant previously applied for funding under FY 2022 AIP.

Examples of eligible energy and sustainability project categories that support FAA's Climate Challenge are:

a. Airport Sustainability Planning Program—provides grant funding for eligible airports to develop comprehensive sustainability plans.

Based on the authority of 49 U.S.C. 47102(5), such plans may address a broad array of environmental and energy planning activities, green construction and operations, energy efficiency, and renewable energy. Consistent with E.O. 14008, a sustainability plan also can address climate resiliency. Additional information is available at *https://www.faa.gov/airports/environmental/sustainability/.*

b. Energy Efficiency of Airport Power Sources Program—provides grant funding for energy assessments/audits and implementation of energy reduction measures to reduce energy consumption across airport operations. Eligibility is based on Energy Efficiency of Airport Power Sources projects eligibility per 49 U.S.C. 47140(a)(b), and details are contained in the AIP Handbook section 7, which is available at *https://www.faa.gov/airports/aip/aip_handbook/media/AIP-Handbook-Order-5100-38D-Chg1.pdf.*

c. Energy Supply, Redundancy and Microgrids Program—provides grant funding that can be used to improve the reliability and efficiency of the airport power supply. Eligibility is based on Energy Supply, Redundancy and Microgrids projects eligibility under 49 U.S.C. 47102(3)(P). Additional information is available at *https://www.faa.gov/airports/environmental/.*

Also, pursuant to the JES, noise planning and noise mitigation projects have priority. More information on noise planning and noise mitigation projects, and their eligibility criteria, can be found at *https://www.faa.gov/airports/environmental/airport_noise/* and in appendix R of the AIP Handbook, which is available at *https://www.faa.gov/airports/aip/aip_handbook/media/AIP-Handbook-Order-5100-38D-Chg1.pdf.*

Additional funding considerations specific to supplemental discretionary funds are described in section B, Federal Award Information, of this NOFO.

D. Application and Submission Information

1. Address To Request Application Package.

Application forms are available at *https://www.faa.gov/airports/aip/aip_supplemental_appropriation.* All applications must include the ''Type of Project'' identifier indicated in section D.2 in Box 2: ''Other'' of the applications form.

Direct all administrative inquiries regarding applications to the appropriate Regional Office (RO) or Airports District Office (ADO). RO/ADO contact information is available at *https://www.faa.gov/about/office_org/headquarters_offices/arp/offices/regional_offices.* For specific technical questions about environmental programs, please see section G for contact information.

2. Content and Form of Application Submission

For content and application information, reference Standard Operating Procedure for FAA Review and Approval of an Airport Improvement Program (AIP) Grant Application, which is available at *https://www.faa.gov/sites/faa.gov/files/airports/resources/sops/arp-sop-600-grant-application.pdf.*

All applications must be submitted electronically following instructions to the following mailbox: *9-ARP-AIPSupp@Faa.gov.*

All applications must include the following information:

a. Identify the type of project to which the grants applications refers (select only one group):

- ○ Group N: airport noise planning and noise mitigation projects
- ○ Group E: environmental projects that reduce emissions or increase energy efficiency or reliability as described in section C.3, Eligibility
- ○ Group VZ: VALE/ZEV projects; or
- ○ Group I: airport development or terminal development projects, including planning for such development.

b. Where applicable, competitive applications for such projects should include specific provisions incorporating sustainable, less emissions-intensive pavement and construction materials as allowable and should describe construction practices that reduce pollution.

c. The grant applications may be based on estimates. However, FAA may request additional information, including bids or firm cost determinations, substantiation of greenhouse gas or emissions reductions, and associated requirements.

d. Airports covered under FAA's State Block Grant Program should coordinate with their associated state agencies and submit project applications via the procedures noted herein to the specified mailbox.

e. All project applications to the VALE and ZEV programs should have the Group VZ designation. Applications for all VALE and ZEV projects must address the requirements listed on their respective web pages. Refer to the link listed below for the respective programs:

- ○ VALE: *https://www.faa.gov/airports/environmental/vale*
- ○ ZEV: *https://www.faa.gov/airports/environmental/zero_emissions_vehicles*

In addition, the following information must be included for the specific group.

For Group N applications:

a. Describe how noise compatibility planning and/or mitigation has or will meaningfully engage communities affected by aviation noise emissions, with effective public participation that is accessible to all persons regardless of race, creed, color, national origin, disability, age, or sex.

b. Describe any public involvement plan or targeted outreach, demonstrating engagement of diverse input such as community-based organizations during project planning and consideration of such input in the decision-making

c. With regard to noise projects, including noise planning and noise mitigation, how the project aligns with E.O. 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*'' (86 FR 7009).

For Group E or Group VZ applications:

a. Identification of the specific program under which the project fits (*i.e.,* VALE; ZEV; Airport Sustainability, Energy Efficiency of Airport Power Sources; or Energy Supply, Redundancy and Microgrids);

b. A description of the project and the benefits the project will provide;

c. Cost estimate;

d. Total Project Cost per tons of emissions reductions, as applicable;

e. Estimated reduction of greenhouse gas that the project (other than proposals for plans and audits only) will produce, relative to a no-action baseline, including average annual amount and estimated amount over the project lifetime, and a description of the methodology and tool used to calculate the estimated greenhouse gas reduction;

f. Other environmental sustainability benefits with regard to energy resiliency, efficiency, or reliability, such as through incorporation of specific design elements that address resiliency to climate change impacts; and

g. Description of the degree to which the project addresses the disproportionate negative environmental impacts of transportation on disadvantaged communities, consistent with environmental justice and civil rights authorities.

For Group I applications:

a. Describe how the project will incorporate considerations of climate change and environmental justice in the planning stage and in project delivery,

such as through incorporation of specific design elements that address climate change impacts.

b. Describe the degree to which the project is expected to reduce transportation-related pollution, such as air pollution and greenhouse gas emissions relative to a no-action baseline, increase use of lower-carbon travel modes such as active transportation, improve the resiliency of at-risk infrastructure, incorporate lower-carbon pavement and construction materials and techniques, or address the disproportionate negative environmental impacts of transportation on disadvantaged communities.

c. Explain to what extent the project will prevent stormwater runoff that would be a detriment to aquatic species.

d. Describe whether the project will promote energy efficiencies, support fiscally responsible land use and transportation efficient design that reduces greenhouse gas emissions, improve public health, increase resilience to hazards, and recycle or redevelop brownfield sites, particularly in communities that disproportionally experience climate-change-related consequences. Such project features support FAA's Climate Challenge and adhere to the requirements of E.O. 14008, ''*Tackling the Climate Crisis at Home and Abroad*'' (86 FR 7619).

e. Describe how the project has or will meaningfully engage communities affected by the project, with effective public participation that is accessible to all persons regardless of race, creed, color, national origin, disability, age, or sex, consistent with Federal civil rights requirements, and describe how community feedback will be taken into account in decision-making. Civil rights considerations should be integrated into planning, development, and implementation of transportation investments, including application of the Disadvantaged Business Enterprise (DBE) Program.

f. Describe any public involvement plan or targeted outreach, demonstrating engagement of diverse input such as community-based organizations during project planning and consideration of such input in the decision-making. (please see DOT's Promising Practices for Meaningful Public Involvement in Transportation Decision-Making at *https://www.transportation.gov/priorities/equity/promising-practices-meaningful-public-involvement-transportation-decision-making*)

g. Describe planning and engagement in the project design phase to mitigate and, to the greatest extent possible, prevent physical and economic displacement. These efforts display adherence to E.O. 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*'' (86 FR 7009).

3. Unique Entity Identifier and System for Award Management (SAM)

Applicants must comply with 2 CFR part 25—*Universal Identifier and System for Award Management.* All applicants must have a Unique Entity Identifier (UEI) provided by SAM. Additional information about obtaining a UEI and registration procedures may be found at the SAM website (currently at *http://www.sam.gov*). Each applicant is required to: (1) be registered in SAM; (2) provide a valid UEI prior to grant award; and (3) continue to maintain an active SAM registration with current information at all times during which the applicant has an active Federal award or an application or plan under consideration by FAA. Under the supplemental discretionary grant program, the UEI and SAM account must belong to the entity that has the legal authority to apply for, receive, and execute supplemental discretionary grants.

Once awarded, the FAA grant recipient must maintain the currency of its information in SAM until the recipient submits the final financial report required under the grant or receives the final payment, whichever is later. A grant recipient must review and update the information at least annually after the initial registration and more frequently if required by changes in information or another award term.

FAA may not make an award until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with the requirements by the time FAA is ready to make an award, FAA may determine that the applicant is not qualified to receive an award and use that determination as a basis for making a Federal award to another applicant.

Non-Federal entities that have received a Federal award are required to report certain civil, criminal, or administrative proceedings to SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS: *https:/sam.gov/content/fapiis*) to ensure registration information is current and complies with Federal requirements. Applicants should refer to 2 CFR 200.113 for more information about this requirement.

4. Submission Dates and Times

Airports that want to be considered for FY 2022 AIP competitive supplemental discretionary funding should submit an application that meets the requirements of this NOFO as soon as possible, but no later than 5 p.m. eastern time on Tuesday, January 31, 2023. The grant applications may be based on estimates. However, FAA may request additional information, including bids or firm cost determinations, State letters of emission reduction eligibility (VALE projects), substantiation of greenhouse gas or emissions reductions, and other associated requirements.

5. Funding Restrictions

Under 49 U.S.C. 47115, projects must meet airport and project eligibility criteria. Eligibility is derived from statute and may include projects to enhance airport safety, capacity, security, and the environment or any combination of the above. In general, sponsors may receive AIP funds for most airfield capital improvements, and in specific situations, for terminals, hangars, equipment, and non-aeronautical development. Operational costs—such as salaries, equipment, and supplies—are not eligible for AIP grants.

The AIP has funding restrictions by airport and/or project type, including for all groups of projects discussed herein. Please see below criteria and refer to AIP Handbook, chapters 3 and 4, for further details on eligibility criteria and funding restrictions, which is available at *https://www.faa.gov/airports/aip/aip_handbook/*. The AIP Handbook is the published policy for AIP. Except where options are specifically noted or where non-mandatory language is used, the procedures and requirements are mandatory. The general requirements for project funding include considerations of: project eligibility; project justification; good title of airport property; an FAA-approved airport layout plan (if applicable); a complete intergovernmental review; airport-user consultations; complete required environmental reviews; a determination that the grant will yield a usable unit of work; certification that the project specification will meet FAA standards; applicable cost justifications; and a work plan to complete the project without unreasonable delay.

See AIP Handbook, section B, Federal Award Information, for specific mandatory program set-asides. Also see section C for eligibility details for project categories under this NOFO. Environmental sustainability and energy projects associated with the Climate Challenge may have additional funding restrictions, which are described in the program website links in section C.

E. Application Review Information

1. Criteria

General:

All applications will be rated using the following criteria:

a. Projects are subject to the availability of funds

b. Projects must meet the eligibility requirements identified in section C.3 of this NOFO

c. Projects must be ready to begin by/on June 30, 2024.

d. FAA will evaluate and administer these supplemental discretionary applications consistent with the statutory criteria as described in 49 U.S.C. 47115. Under 49 U.S.C. 47115(d), capacity enhancement projects have additional considerations, including a project's impact on national transportation system capacity, airport capacity, and global air cargo activity.

e. Prerequisites for selection are: the capital improvement project is included in the airport's approved layout plan (if applicable), an environmental determination, and all necessary airspace studies. Prerequisites must be met in order for grant funding to be released.

In addition, FAA seeks to support the creation of good-paying jobs with the free and fair choice to join a union and the incorporation of strong labor standards and workforce programs, in particular, registered apprenticeships and labor management partnerships. Projects that incorporate such planning considerations are expected to support a strong economy and labor market. Projects that have not sufficiently considered job creation and labor considerations in their planning, as determined by FAA, will be required to do so to the full extent possible under the law before receiving funds for construction.

Finally, FAA will consider the readiness of the project to be completed within a four-year period of performance.

Group-specific criteria:

The following are criteria specific to each group:

Group N: Noise and noise planning projects may be ranked amongst themselves under the following criteria:

a. The extent to which the noise compatibility program or mitigation improves quality of life for residents within areas not compatible with aviation noise. This includes the extent to which the project engages diverse people and communities and meaningfully integrates equity considerations and community input into noise compatibility planning.

b. Demonstrated strong collaboration and support among a broad range of stakeholders, including community-based organizations, other public or private entities, and homeowners and resident associations.

c. With regard to noise projects, including noise planning and noise mitigation, FAA seeks to fund noise projects in alignment with E.O. 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*'' (86 FR 7009).

Groups E or VZ: Energy and environmental sustainability projects, as mentioned in section C.3 Project Eligibility, may be ranked amongst themselves according to their standard National Priority Rating (NPR) or primarily by emission reduction efficiency as stated by Congress for ZEV projects (49 U.S.C. 47136).

In addition, FAA will consider the following criteria:

a. Cost per ton of emission reduction for criteria pollutants and greenhouse gases, as applicable. Criteria pollutants are codified in Clean Air Act standards at 40 CFR part 50 and are referred to as NAAQS, National Primary and Secondary Ambient Air Quality Standards;

b. Cost to design, contract and implement the project;

c. Estimated reduction in energy use or estimated energy production;

d. Estimated reduction in greenhouse gas emissions relative to a no-action baseline, which should include average annual amount as well as the estimated amount over a project lifetime;

e. Useful life of the improvements or infrastructure;

f. Benefits to communities beyond the airport; and

g. Resiliency and redundancy benefits that enhance operability or increase the ability to utilize energy sources with less greenhouse gas emissions.

Rating such projects in this manner will assist FAA to advance project grant awards consistent with general AIP sponsor and project eligibility, and with due consideration of project applications in alignment with the priorities in E.O. 14008, ''*Tackling the Climate Crisis at Home and Abroad*'' and in support of FAA's Climate Challenge.

In addition to the degree to which the project reduces emissions, as described above, FAA will consider the extent to which the project improves quality of life near the airport. FAA will consider the extent to which the project benefits a historically disadvantaged community or population, or areas of persistent poverty, as expressed in the President's January 20, 2021, E.O. 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.*''

Group I: Among all other airport improvement projects, FAA will apply the standard National Priority System (NPS) equation to calculate the NPR, a quantitative measure used for ranking project importance for discretionary grants.

FAA will also consider:

a. How the project incorporates climate change, environmental justice, and equity in the planning stage and in project delivery, such as through incorporation of specific design elements that address climate change impacts.

b. The degree to which the project is expected to reduce transportation-related pollution compared to a no-action baseline, including reduction of greenhouse gas emissions; to increase use of lower-carbon travel modes such as active transportation; to improve the resiliency of at-risk infrastructure; to incorporate lower-carbon pavement and construction materials and techniques; and to address the disproportionate negative environmental impacts of transportation on disadvantaged communities.

c. To what extent the project will prevent stormwater runoff.

d. To what extent the project will promote energy efficiencies, support fiscally responsible land-use, employ efficient transportation design that reduce greenhouse gas emissions, improve public health, increase resilience to hazards, and recycle or redevelop brownfield sites, particularly in communities that disproportionally experience climate-change-related consequences.

Rating such projects in this manner will assist FAA to advance project grant awards consistent with general AIP sponsor and project eligibility, and with due consideration of project applications in alignment with the priorities in E.O. 14008, ''*Tackling the Climate Crisis at Home and Abroad*'' and in support of FAA's Climate Challenge.

This is described further in section E.2, Review and Selection Process, of this NOFO.

2. Review and Selection Process

FAA will evaluate how well the projects meet the criteria in E.1, including project eligibility, justification, readiness, and the availability of matching funds.

While FAA will consider the NPR in determining a project's priority, FAA will also assess qualitative factors such as project justification and priority

project identification. FAA will consider whether the project justification includes Safety or Security, System Capacity, Environment, and Access. Qualitative factors do not impact the NPR for a given project but are taken into account in funding decisions.

In particular, FAA will prioritize projects that advance the goals of E.O. 14008, ''*Tackling the Climate Crisis at Home and Abroad*.'' E.O. 14008 aims to put the United States on a path to achieve net-zero emissions, economy-wide no later than 2050. E.O. 14008 promotes sustainable infrastructure and emphasizes that Federal infrastructure investment should reduce climate pollution, and that the effects of greenhouse gas emissions and climate change should be considered. E.O. 14008 also addresses climate action plans, data and information to improve adaptation and increase resilience. In FAA's Aviation Climate Action Plan, chapter 5, one of the key actions is to develop a resilience framework for airports through research and potential grant funding (see: *https://www.faa.gov/sites/faa.gov/files/2021-11/Aviation_Climate_Action_Plan.pdf*). The review and selection process will take into consideration these E.O. 14008 goals that also support FAA's Climate Challenge. FAA will also consider projects that advance the goals of the following E.O.: the President's January 20, 2021, E.O. 13985, ''*Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*''; the President's May 20, 2021, E.O. 14030, ''*Climate Related Financial Risk*''; and the President's July 9, 2021, E.O. 14036, ''*Promoting Competition in the American Economy*.''

3. Integrity and Performance Check

Prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, FAA is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313). An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered. FAA will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.206.

F. Federal Award Administration Information

1. Federal Award Notices

Supplemental discretionary grant awards are announced through a Congressional notification process and the Secretary's Notice of Intent to Fund. The FAA RO/ADO representative will contact the airport with further information and instructions. Once all pre-grant actions are complete, the FAA RO/ADO will offer the airport sponsor a grant for the announced project. This offer may be provided through postal mail or by electronic means. Once this offer is signed by the airport sponsor, it becomes a grant agreement. Awards made under this program are subject to conditions and assurances in the grant agreement.

2. Administrative and National Policy Requirements

a. Pre-Award Authority

Under 49 U.S.C. 47110(b)(2), all project costs must be incurred after the grant execution date unless specifically permitted under the AIP statutes. Table 3–60 of the AIP Handbook lists the rules regarding when project costs can be incurred in relation to the grant execution date, the type of funding, and the type of project. Certain airport development costs incurred before execution of the grant agreement are allowable, but only if certain conditions under 49 U.S.C. 47110(b)(2)(D) and Table 3–60 of the AIP Handbook are met.

b. Grant Requirements

All grant recipients are subject to the grant requirements of the AIP, including the grant assurances, found in 49 U.S.C. chapter 471. Grant recipients are subject to requirements in the FAA's *AIP Grant Agreement* for financial assistance awards; the annual Certifications and Assurances required of applicants; and any additional applicable statutory or regulatory requirements, including nondiscrimination requirements and 2 CFR part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.* Grant requirements include, but are not limited to, approved projects on an airport layout plan, and compliance with Federal civil rights laws, Buy American requirements under 49 U.S.C. 50101, the *Department of Transportation's Disadvantaged Business Enterprise (DBE) Program* regulations for airports (49 CFR part 23 and 49 CFR part 26), Build America, Buy America requirements in sections 70912(6) and 70914 in Public Law 117–58, the Infrastructure Investment and Jobs Act, and prevailing wage rate requirements under the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5, and reenacted at 40 U.S.C. 3141–3144, 3146, and 3147).

Domestic Preference Requirements: As expressed in E.O. 14005, ''*Ensuring the Future Is Made in All of America by All of America's Workers*'' (86 FR 7475), it is the policy of the executive branch to maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. FAA expects all applicants to comply with that requirement without needing a waiver. However, to obtain a waiver, a recipient must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials in constructing their project.

Civil Rights and Title VI: Recipients of Federal transportation funding will be required to comply fully with Title VI of the Civil Rights Act of 1964 and implement regulations, the Americans with Disabilities Act, section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements. FAA's Office of Civil Rights will be providing resources and technical assistance to ensure full and sustainable compliance with Federal civil rights requirements.

Critical Infrastructure Security and Resilience: It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against both physical and cyber threats. Each applicant selected for Federal funding under this notice must demonstrate, prior to the signing of the grant agreement, effort to consider and address physical and cybersecurity risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cybersecurity and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds for construction, consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems.

Performance and Program Evaluation: As a condition of grant award, grant recipients may be required to participate in an evaluation undertaken by FAA.

The evaluation may take different forms, such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grant recipients, or a benefit/cost analysis or assessment of return on investment. FAA may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grant recipients must agree to: (1) make records available to the evaluation contractor or FAA staff; (2) provide access to program records and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or FAA staff. Requested program records or information will be consistent with record requirements outlined in 2 CFR 200.334–338 and the grant agreement.

c. Standard Assurances

Each grant recipient must assure that it will comply with all applicable Federal statutes, regulations, executive orders, directives, FAA circulars, and other Federal administrative requirements in carrying out any project supported by the supplemental discretionary grant. The grant recipient must acknowledge that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with the FAA. The grant recipient understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and may affect the implementation of the project. The grant recipient must agree that the most recent Federal requirements will apply to the project unless FAA issues a written determination otherwise.

As referenced under section F.2.b, Grant Requirements, the grant recipient must submit the Certifications at the time of grant application, and Assurances must be accepted as part of the grant agreement at the time of accepting a grant offer. Grant recipients must also comply with the requirements of 2 CFR part 200, which ''are applicable to all costs related to Federal awards'' and which are cited in the grant assurances of the grant agreements. The Airport Sponsor Assurances are available on the FAA website at: *https://www.faa.gov/airports/aip/grant_assurances.*

3. Reporting

Grant recipients are subject to financial reporting per 2 CFR 200.328 and performance reporting per 2 CFR 200.329. Under the supplemental discretionary grant program, the grant recipient is required to comply with all Federal financial reporting requirements and payment requirements, including the submittal of timely and accurate reports. Financial and performance reporting requirements are available in the FAA October 2020 Airport Improvement Program (AIP) Grant Payment and Sponsor Financial Reporting Policy, which is available at *https://www.faa.gov/sites/faa.gov/files/airports/aip/grant_payments/aip-grant-payment-policy.pdf.* The grant recipient must comply with annual audit reporting requirements. The grant recipient and sub-recipients, if applicable, must comply with 2 CFR part 200, subpart F, Audit Reporting Requirements. The grant recipient must comply with any requirements outlined in 2 CFR part 180, *Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).*

G. Federal Awarding Agency Contact(s)

For further information concerning this notice, please contact your local Regional Office or District Office. Contact information is available at *https://www.faa.gov/airports/regions/.*

For technical questions regarding specific energy and environmental sustainability programs described in this NOFO, please contact:

a. VALE and ZEV—Michael Lamprecht, michael.lamprecht@faa.gov or 202–267–6496;

b. Airport Sustainability Program—Alan Strasser, *alan.strasser@faa.gov* or 202–267–7630;

c. Energy Efficiency of Airport Power Supply; and Energy Supply, Redundancy and Microgrids—Alan Strasser, *alan.strasser@faa.gov* or 202–267–7630.

To ensure applicants receive accurate information about eligibility for the program, the applicant is encouraged to contact FAA directly, rather than through intermediaries or third parties, with questions. All applicants, including those requesting full Federal share of eligible projects costs, should have a plan to address potential cost overruns as part of an overall funding plan.

Issued in Washington, DC, on December 22, 2022.

Juan C Brown,

Acting Director, Office of Airport Planning and Programming.

[FR Doc. 2022–28285 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0035]

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 18 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 were applicable on December 22, 2022. The exemptions expire on December 22, 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–2022–0035) 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 August 17, 2022, FMCSA published a notice announcing receipt of applications from 18 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 50690). The public comment period ended on September 16, 2022, and three 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 that is 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 three comments in this proceeding. One commenter stated that Mr. Hagop Balian's name was spelled incorrectly in the notice published on August 17, 2022 (87 FR 50690). The spelling of Mr. Balian's name has been corrected in this notice exempting him from the hearing standard in § 391.41(b)(11).

The Commercial Vehicle Training Association's (CVTA) comment did not address any of the applications before the Agency in docket number FMCSA–2022–0035. Instead, CVTA stated that ''without a comprehensive understanding of the Agency's reasoning behind providing certain exemptions and additional research on the subject, our members are not able to provide a consistent standard without sacrificing safety or opening themselves up to liability.''

CVTA also stated that ''not enough research has been made available to the public on this matter and the Agency has not been transparent with their standards of how exemptions are granted or extended.'' It requested additional research, public data, and guidance on this matter. CVTA noted that the Agency's recent decisions to renew some exemptions ''were based 'on their merits.''' CVTA continued that in ''order for an agency's assessment to not run afoul of the 'arbitrary and capricious' standard for judicial review set forth by the Administrative Procedure Act (APA), the Agency must engage in reasoned decision making by examining the relevant data and articulating a satisfactory explanation for its action. Further, there must be a rational connection between the facts found and the choice made. CVTA does not believe that FMCSA has satisfied this standard.''

CVTA also stated that ''FMCSA provided little to no relevant data other than noting that they 'searched for crash and violation data' and 'driving records from the State Driver's Licensing Agency' when making the decision.'' CVTA continued that it understood this database has never been a factor in determining whether a hearing-impaired commercial driver's license (CDL) driver meets the medical fitness examination required by the FMSCRs to operate a CMV. CVTA stated that the ''Agency did not articulate a satisfactory explanation of why this data was relevant when determining if this exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.''

In addition, CVTA stated that it ''does not feel the statutory requirements have been met by the extension of these exemptions, there has been a lack of transparency in the decision making, and the regulation has not been articulated in a way that can produce a reliable and consistent standard our members can rely on when making accommodations.'' Finally, CVTA stated it ''cannot support this rule without additional research, data, and an articulated explanation on the subject that can be consistently employed throughout the industry.''

The last comment received on the August 17, 2022, notice opposes CVTA's comment and supports the issuance of the exemptions.

FMCSA Response

CVTA in essence is renewing the global comments relating to the standards and bases FMCSA uses in determining whether to grant exemptions from the hearing standards that it provided on October 21, 2015, in response to a **Federal Register** notice announcing applications for exemptions from the hearing requirement in the FMCSRs. FMCSA has already responded to and addressed those comments in a **Federal Register** notice on December 29, 2017 (82 FR 61809). FMCSA has no basis for reconsidering its treatment of the matters raised previously by CVTA.

FMCSA acknowledges CVTA's concerns about the challenges driver training schools may experience delivering services for hearing impaired drivers. The Agency's decision regarding exemption applications is based on relevant medical information and literature indicating whether a licensed driver with the medical condition could operate safely, as well as the specific bases discussed in the December 2017 **Federal Register** notice (82 FR 61809). FMCSA also considers its experience with hearing exemption holders. The information obtained from each applicant's driving record provides the Agency with details regarding any moving violations or reported crash data, which demonstrates whether the driver has a safe driving history and is used as an indicator of future driving performance. This information assists the Agency in determining whether these drivers pose a risk to public safety and if granting these exemptions would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

CVTA has not provided any data showing that drivers who are hard of hearing or deaf are at increased crash risk. The Agency's decision to exercise its discretion and grant the exemptions is not arbitrary or capricious nor does it fail to meet the statutory standard. Therefore, the Agency will continue to consider each application for a hearing exemption on an individual basis and will continue exempting those drivers who do not pose a risk to public safety when granting the exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

In granting these exemptions, FMCSA focuses on whether these individuals can safely operate a CMV in interstate commerce. Matters concerning the training of deaf or hard of hearing

individuals to operate CMVs are beyond the scope of the medical exemptions being granted and are not evidence that FMCSA should no longer grant exemptions from its hearing standard. FMCSA notes there are CDL training schools that have successfully trained deaf and hard of hearing drivers and State driver's licensing agencies have found ways to conduct CDL skills tests for such individuals. FMCSA believes that it is not necessary for FMCSA to ''provide a consistent standard'' for training and testing activities when considering an application for an exemption from the hearing standard.

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 medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for 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 that is 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 18 exemption applications, FMCSA exempts the following drivers from the hearing standard in § 391.41(b)(11), subject to the requirements cited above:

Stephen Arellano (CO)
Hagop Balian (MD)
Michael Clark (MD)
Jeremy Earl (IL)
James Hall (MS)
Arnold Heyen (NE)
Omar Ibrahim (MN)
Majuong Koijza (CO)
Peter Mannella (WA)
Jay Manns (PA)
Matthew Moyer (PA)
Ismail Muse (UT)
Dax Nutt (TX)
Michael Piirainen (ME)
Jeremy Stockman (KS)
Zander Symansky (KS)
Dalton Taylor (OK)
Jorge Toledo (FL)

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. 2022–28282 Filed 12–28–22; 8:45 am]
BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2022–02; Addressing Unintended Train Brake Release

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2022–02 to make the rail industry aware of a recent issue encountered by a train crew that experienced an unintended brake release of a train's automatic air brakes while stopped at a signal, and to recommend steps addressing the unintended release of train air brakes.

FOR FURTHER INFORMATION CONTACT: Gary Fairbanks, Staff Director, Motive Power & Equipment Division, Office of Railroad Infrastructure and Mechanical, FRA, 1200 New Jersey Avenue SE., Washington, DC 20590, telephone: (202) 493–6322, email: *gary.fairbanks@dot.gov.*

Disclaimer: This Safety Advisory is considered guidance pursuant to DOT Order 2100.6A (June 7, 2021). Except when referencing laws, regulations, policies, or orders, the information in this Safety Advisory does not have the force and effect of law and is not meant to bind the public in any way. This document does not revise or replace any previously issued guidance.

SUPPLEMENTARY INFORMATION:

Background

On June 22, 2022, during a significant thunderstorm, a crew consisting of a locomotive engineer and conductor operated a conventionally powered, intermodal train with 3 head-end locomotives, 47 loaded cars, and 6 empty cars, totaling 9,204 feet in length and 7,392 tons in weight. The engineer stopped the train on a downhill grade of 0.9–1.18% near the signal governing the train's movement, set the train's air brakes at approximately 12 pounds, and

fully set the locomotive consist's independent brakes. After being stopped for approximately 3 hours, the engineer and conductor, located in the lead locomotive cab, observed the train roll towards the signal interlocking displaying a stop indication. This train experienced an unintended automatic brake release. The locomotive consist's independent brakes remained fully applied but due to the grade, tonnage and wet rail could not solely hold the train without the automatic air brakes also being applied.

At that time, an opposing train on the same track was preparing to cross through the interlocking in front of the rolling train. The locomotive engineer of the rolling train applied full-service airbrakes and full dynamic braking but was not satisfied that the brakes were working effectively or fast enough. The conductor operated the emergency brake valve and stopped the train short of the signal and the train that was preparing to cross through the interlocking.

The crew then contacted the dispatcher and railroad management to report the unintended brake release and the conductor set a sufficient number of car handbrakes to hold the train on the grade.

FRA's investigation of the rolling train's event recorder, positive train control (PTC) system, and engine data logs, revealed: the PTC system had operated properly and would have initiated an emergency brake application upon reaching the signal; the Trip Optimizer was off; and the lead locomotive and consist did not cause the unintended brake release. Instead, FRA determined that, after approximately three hours with the air brakes set, the air pressure slowly bled down from some of the cars' auxiliary reservoirs, likely causing localized brake releases.[1] The initiation of the brake release would enable the accelerated release functionality by taking some air from the emergency brake reservoirs and directing it back into the brake pipe resulting in a substantial number of adjacent car brakes releasing. Potentially contributing factors causing the train's unintended movement included the downhill grade, wet rail, and the train's tonnage.

Due to the potential for air brake system leaks, FRA prohibits unattended trains from depending solely on air brakes to hold equipment.[2] While the aforementioned rolling train was attended, it nevertheless engaged in an unintended movement.

Based on FRA's review of this incident, and its awareness of other train incidents involving an unintended air brake release under similar circumstances, FRA believes operating guidance is warranted to help reduce the likelihood of similar unintended air brake releases, and therefore makes the following recommendations.

Recommendations

1. Train crews should not expect a service rate or emergency brake application to indefinitely maintain application of a train's air brakes.
2. If a train is stopped with air brakes set, and the train begins moving, the crew should immediately apply the emergency brake. After the train is stopped, the crew should set a sufficient number of handbrakes to secure the train from further unintended movement before releasing the brakes and recharging the train's air brake system.
3. Each railroad should adopt and implement an air brake procedure consistent with Recommendations 1 and 2 that addresses unintended brake releases.
4. Each railroad should have an operating supervisor conduct a face-to-face meeting with each locomotive engineer and conductor to explain and reinforce the contents of this advisory.

FRA may modify Safety Advisory 2022–02, issue additional safety advisories, or take other appropriate necessary action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–28336 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–06–P

[1] FRA notes this type of prolonged pressure release would likely not be identified during a periodic single car air brake test.

[2] 49 CFR 232.103(n)(2).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0096; Notice 2]

Hercules Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: NHTSA published a document in the **Federal Register** of August 10, 2022, concerning request for comments on a petition for a decision of inconsequential noncompliance submitted by Hercules Tire & Rubber Company, (Hercules), for certain radial trailer tires that do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds), Specialty Tires, and Tires for Motorcycles.* The document contained the incorrect docket number and the incorrect FMVSS in section ''III. Noncompliance.''

DATES: The comment period for the notice published August 10, 2022, at 87 FR 48760, is extended. Comments should be received on or before January 30, 2023.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated

above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION: *Correction:* In the **Federal Register** of August 10, 2022, in FR Doc. 2022–17131, appearing at 87 FR 48760, on page 48760, in the first column, correct the docket number heading to read: [Docket No. NHTSA–2021–0096; Notice 1]

On page 48761, in the first column, correct the ''III. Noncompliance'' section to read:

III. Noncompliance: Hercules explains that the noncompliance is due to a mold error in which the subject tires contain a tire identification number (TIN) with the second and third numerical symbols in the date code transposed and therefore, do not meet the requirements of paragraph S6.5(b) of FMVSS No. 119. Specifically, the TIN on the subject tires incorrectly states the date code as ''4280,'' when it should state ''4820.''

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–28335 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–24058]

Pipeline Safety: Request for Special Permit; Portland Natural Gas Transmission System

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit renewal received from the Portland Natural Gas Transmission System (PNGTS). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations and proposes to add two (2) new pipeline segments to the existing special permit. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by January 30, 2023.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) section 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit renewal request from PNGTS, operated by TC Energy, Inc., seeking a waiver from the requirements of 49 CFR 192.611: Change in class location: Confirmation or revision of maximum allowable operating pressure and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement, pressure reduction, or new pressure tests for a Class 1 to 3 location change on two (2)

existing gas transmission special permit segments and two (2) new proposed special permit segments totaling 9,905 feet (approximately 1.876 miles). These pipeline segments, which have changed from a Class 1 to Class 3 location, are as follows:

Special permit segment No.	Special permit status	County, state	Outside diameter (inches)	Line name	Length (feet)	Year installed	Maximum allowable operating pressure (pounds per square inch gauge)
1	Renewal	Cumberland, ME	24	PNGTS Mainline	2,913	1998	1,440
2	Renewal	Cumberland, ME	24	PNGTS Mainline	4,766	1998	1,440
3	New	Coos, NH	24	PNGTS Mainline	960	1998	1,440
4	New	Coos, NH	24	PNGTS Mainline	1,266	1998	1,440

The special permit renewal request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed PNGTS pipeline segments are available for review and public comments in Docket No. PHMSA–2006–24058. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, on December 22, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–28337 Filed 12–28–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2480; 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 Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On December 21, 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.

BILLING CODE 4810–AL–P

Individuals:

1. MAROUFI, Hossein (Arabic: حسين معروفى) (a.k.a. MAROOFI, Hossein), Iran; DOB 1965 to 1966; POB Shahr-e Babak, Kerman province, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Deputy Coordinator of the Basij (individual) [IRGC] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

   Designated pursuant to section 1(a)(ii)(C) of Executive Order 13553 of September 28, 2010, "Blocking Property of Certain Persons With Respect To Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions" (E.O. 13553), 75 FR 60567, 3 CFR 2010 Comp., p. 253, for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

2. HOSSEINI, Seyed Sadegh (Arabic: سيد صادق حسينى) (a.k.a. HOSSEINI, Sadegh), Kurdistan, Iran; DOB 1963 to 1964; POB Dehloran, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; IRGC Commander in Kurdistan (individual) [IRGC] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

   Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

3. MONTAZERI, Mohammad Jafar (Arabic: محمد جعفر منتظرى), Iran; DOB 21 Jan 1949 to 19 Feb 1949; POB Qom, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; Attorney General of Iran; Prosecutor General of Iran (individual) [IRAN-HR].

   Designated pursuant to section 1(a)(ii)(A) of E.O. 13553 for being an official of the Government of Iran or a person acting on behalf of the Government of Iran (including members of paramilitary organizations) who is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, the commission of serious human rights abuses against persons in Iran or Iranian citizens or residents, or the family members of the foregoing, on or after June 12, 2009, regardless of whether such abuses occurred in Iran.

4. HASSANZADEH, Hassan (a.k.a. HASSANZADEH, Hasan (Arabic: حسن حسنزاده)), Tehran, Iran; DOB 21 Mar 1957; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; IRGC Brigadier General (individual) [IRGC] [IRAN-HR] (Linked To: ISLAMIC REVOLUTIONARY GUARD CORPS).

Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, the ISLAMIC REVOLUTIONARY GUARD CORPS, a person whose property and interests in property are blocked pursuant to E.O. 13553.

5. MOEIN, Moslem (Arabic: مسلم معين) (a.k.a. MO'IN, Moslem), Part 7, Block 25, Ground Floor, 16th Street, Sarvestan Street, Chaghamirza Phase 2 Shahid Mehrabi, Kermanshah, Iran; DOB 22 Sep 1985; POB Eslamabad, Iran; nationality Iran; Additional Sanctions Information - Subject to Secondary Sanctions; Gender Male; National ID No. 3341588477 (Iran); Birth Certificate Number 3477 (Iran) (individual) [IRAN-HR] (Linked To: BASIJ RESISTANCE FORCE).

   Designated pursuant to section 1(a)(ii)(C) of E.O. 13553 for having acted or purported to act for or on behalf of, directly or indirectly, Iran's BASIJ RESISTANCE FORCE, a person whose property and interests in property are blocked pursuant to E.O. 13553.

Entity:

1. IMEN SANAT ZAMAN FARA COMPANY (Arabic: شركت ايمن صنعت زمان فرا), Shahrak-e-Jafar Abad-e-Jangal Rd, Naseriyeh, Tehran, Iran; Number 16, Kolezar alley, Farsian Street, Shahid Rezaiee Street, Azadegan Autobahn, Tehran, Iran; Number 16, Gholshan 14, Golestan Boulevard, Negarestan Boulevard, Sham Abad, Tehran, Iran; Additional Sanctions Information - Subject to Secondary Sanctions; National ID No. 103201991293 (Iran); Business Registration Number 369541 (Iran) [IRAN-HR] (Linked To: LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN).

   Designated pursuant to section 1(a)(ii)(B) of E.O. 13553 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN, a person whose property and interests in property are blocked pursuant to E.O. 13553.

Dated: December 21, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–28290 Filed 12–28–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Persons Providing Remittance Forwarding Services to Cuba

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Office of Foreign Assets Control (OFAC) within the Department of the Treasury is soliciting comments concerning OFAC's information collection requirements for persons using remittance forwarding services related to Cuba, which are contained within the Cuban Assets Control Regulations.

DATES: Comments should be received on or before January 30, 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.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Persons Providing Remittance Forwarding Services to Cuba.

OMB Number: 1505–0167.

Type of Review: Revision of a currently approved collection.

Description: Requirements to retain records are codified in § 515.572(b) of the Cuban Assets Control Regulations, *31 CFR part 515* (the ''Regulations''). Pursuant to § 515.572(b)(1), persons subject to U.S. jurisdiction who provide authorized remittance forwarding services related to Cuba are required to maintain for at least five years from the

date of the transaction a certification from each customer indicating the section of Regulations or, if relevant, the number of the specific license, that authorizes the person to send the remittance to Cuba. The recordkeeping burden associated with § 515.572(b)(2) is addressed in 1505–0164.

The records covered by this information collection must be provided on request to the U.S. Department of the Treasury and will be used to monitor compliance with regulations governing transactions related to authorized remittances to or from Cuba using remittance forwarding service providers who are persons subject to U.S. jurisdiction.

Forms: Section 515.572(b)(1) does not specify any particular form of recordkeeping.

Affected Public: Individuals, households, businesses, non-governmental organizations and banking institutions. The likely respondents and record-keepers affected by this collection of information are persons using and providing U.S. remittance forwarding services.

Estimated Number of Unique Respondents: Based on newly acquired data and OFAC's revised methodology, the estimated number of annual respondents is 1,500,000.

Estimated Number of Records per Respondent: Based on newly acquired data and OFAC's revised methodology, the estimated number of records is approximately 1.2 records per respondent per year. (Some respondents may produce far more records; 1.2 records per respondent is an average.)

Estimated Total Number of Annual Records: Based on additional data and OFAC's revised methodology, as well as the effects of the Coronavirus Disease 2019 (COVID–19) pandemic and regulatory changes affecting remittances, the estimated total number of annual records is approximately 1,800,000.

Estimated Time per Record: OFAC assesses that there is an average time estimate of 1 minute per record.

Estimated Total Annual Burden Hours: The estimated total annual reporting burden is approximately 1,800,000 minutes or approximately 30,000 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2022–28350 Filed 12–28–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity: Servicemembers' Group Life Insurance—Traumatic Injury Protection (TSGLI) Application for TSGLI Benefits and TSGLI Appeal Request Form

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 27, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Service Members' Group Life Insurance—Traumatic Injury Protection (TSGLI) Application for TSGLI Benefits (SGLV 8600) And TSGLI Appeal Request Form (SGLV 8600a)

OMB Control Number: 2900–NEW.

Type of Review: New Collection (Request for New OMB Control Number)

Abstract: The SGLV 8600 form is used by the Department of Veterans Affairs to request information in order to adjudicate TSGLI claims for benefits. The form is filled out by members or former members of the uniformed services who have suffered a traumatic injury while in service, and the uniformed services approve or disapprove the claim. If the uniformed services approve the TSGLI claim, then the insurer for the TSGLI program, The Prudential Insurance Company of America (Prudential), pays the claim. The form is authorized by 38 U.S.C. 1980A and 38 CFR 9.20.

The SGLV 8600a form is used by the Department of Veterans Affairs to request information in order to adjudicate TSGLI appeals for benefits. The form is filled out by members or former members of the uniformed services who have suffered a traumatic injury while in service and had their TSGLI claim disapproved. The form is authorized by 38 U.S.C. 1980A and 38 CFR 9.20.

Affected Public: Individuals and households.

Estimated Annual Burden: 190 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: 1 per year.

Estimated Number of Respondents: 758.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–28324 Filed 12–28–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0875]

Agency Information Collection Activity Under OMB Review: VA-Guaranteed Home Loan Cash-Out Refinance Loan Comparison Disclosure

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: 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. Refer to ''OMB Control No. 2900–0875.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0875'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority:

Public Law 115–174; 38 CFR 36.4306.

Title: VA-Guaranteed Home Loan Cash-out Refinance Loan Comparison Disclosure.

OMB Control Number: 2900–0875.

Type of Review: Extension of a currently approved collection.

Abstract: All—VA guaranteed cash-out refinancing loans must comply with the Act and AQ42. All refinancing loan applications taken on or after the effective date that do not meet the following requirements may be subject to indemnification or the removal of the guaranty. Failure to provide initial disclosures to the Veteran within 3 business days from the initial application date and at closing may result in indemnification of the loan up to 5 years. There are three categories of refinance loans; Interest Rate Reduction Refinancing Loans (IRRRL), TYPE I Cash-Out Refinance, and TYPE II Cash-Out Refinance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 87 FR 206 on October 26, 2022, pages 64860 and 64861.

Affected Public: Individuals or Households.

Estimated Annual Burden: 40,000

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 480,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–28401 Filed 12–28–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 249 December 29, 2022

Part II

Securities and Exchange Commission

17 CFR Part 242

Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–96494; File No. S7–30–22]

RIN 3235–AN23

Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing to amend certain rules of Regulation National Market System (''Regulation NMS'') under the Securities Exchange Act of 1934, as amended (''Exchange Act'') to adopt variable minimum pricing increments for the quoting and trading of NMS stocks, reduce the access fee caps, and enhance the transparency of better priced orders.

DATES: Comments should be received on or before March 31, 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.html;* or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–30–22 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–30–22. 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 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: Kelly Riley, Senior Special Counsel, Johnna Dumler, Special Counsel, Steve Kuan, Special Counsel, Marc McKayle, Special Counsel, and Ted Uliassi, Special Counsel, at (202) 551–5500, Office of Market Supervision, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to the following rules under Regulation NMS:

Commission reference	CFR citation (17 CFR)
Rule 600(b)(59)	§ 242.600(b)(59)
Rule 600(b)(78)	§ 242.600(b)(78)
Rule 603	§ 242.603
Rule 610	§ 242.610
Rule 612	§ 242.612

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I. Introduction

Section 11A of the Exchange Act [1] directs the Commission to facilitate the establishment of a national market system in accordance with specified Congressional findings. In furtherance of this direction, the Commission adopted Regulation NMS in 2005, which includes several provisions that updated and modernized the national market system to take advantage of the data processing and communications technology that were available at that time and to address the then recent changes that had occurred in the markets. Regulation NMS was designed to achieve the objectives of section 11A of efficient, competitive, fair and orderly markets.[2]

In Section 11A of the Exchange Act, Congress recognized that new technology could ''create the opportunity for more efficient and effective market operations.'' [3] The market structure and technology available today is vastly different from what was available when Regulation NMS was adopted. Today, electronic trading has all but supplanted manual trading and electronic trading systems can handle and process data at speeds that would have been unheard of when Regulation NMS was adopted. As the national market system has evolved, the Commission has amended several aspects of Regulation NMS to address and reflect changes in the markets.[4] Most recently, in 2020, the Commission adopted rules to update and modernize the equity market infrastructure responsible for the collection, consolidation, and dissemination of equity market data in the national market system by expanding the content of NMS market data and establishing a decentralized consolidation model for NMS market data (''MDI Rules'').[5]

While the MDI Rules, in part, updated the NMS market data to enable investors to see, and more readily access, better-priced quotations,[6] the Commission believes that other aspects of Regulation NMS need to be updated in light of the current trading environment. Investors should have access to the best priced quotations available in the national market system and such prices generally should be determined by competitive market forces. Among the rules adopted under Regulation NMS, rule 610 sets forth standards governing access to quotations in NMS stocks and rule 612 establishes minimum pricing increments for NMS stocks.[7] In the current trading environment, rule 612 should be updated by reducing the minimum pricing increment for certain NMS stocks to allow market participants, including investors, to better determine the prices at which they would bid or offer. Further, rule 610 contains maximum access fee caps that were based on the trading environment in 2005. These access fee caps should be reduced in conjunction with the reduction of the minimum pricing increments under rule 612 to help to ensure that the access fee caps do not become too large in relation to the minimum pricing increments.[8] The Commission has not revised rule 610 or rule 612 since they were adopted and the Commission believes that these rules should be revised to reflect the current trading environment and so that they can continue to fulfill the goals of section 11A of the Exchange Act. The amendments proposed herein—varying and lowering the minimum pricing increments for the quoting and trading of certain NMS stocks, reducing the access fee caps, and accelerating the dissemination of information about quotations in smaller sizes—would enhance trading opportunities for all investors. They would also serve to help ensure that orders placed in the national market system reflect the best prices available for all investors.

Congress' findings promulgated in 1975 as set forth in section 11A of the Exchange Act continue to guide the Commission as it considers the issues that exist within the national market system in 2022. Among the findings that guide the Commission in overseeing the national market system, the Commission must consider the availability of ''[n]ew data processing and communications techniques [that] create the opportunity for more efficient and effective market operations'' [9] and that it is in the public interest, appropriate for investor protection and the maintenance of fair and orderly markets to assure ''economically efficient execution of securities transactions,'' ''fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets,'' and ''the practicality of brokers executing investors' orders in the best market.'' [10] These findings support our decision to propose amendments to rules 610 and 612 of Regulation NMS in light of the tremendous changes that have occurred in the markets since 2005.

Further, the MDI Rules are in the process of being implemented.[11] While the content of market data that will be made available within the national market system will provide many benefits to investors,[12] the Commission scheduled the implementation of the MDI Rules over a period of time to minimize disruption to the markets and to facilitate an orderly transition.[13] As discussed in section IV.B below, in part due to implementation delays after the adoption of the MDI Rules, the Commission believes that the transition period set forth in the MDI Adopting Release should be partially modified so that investors and market participants would be provided with some of the benefits of the MDI Rules, including greater transparency regarding the best priced orders available in the market, sooner than the originally adopted implementation schedule.[14] Section 11A of the Exchange Act provides that ''[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the availability to brokers, dealers, and investors of information with respect to

[1] 15 U.S.C. 78k–1.

[2] 15 U.S.C. 78k–1(a).

[3] 15 U.S.C. 78k–1(a)(1)(B).

[4] *See* Securities Exchange Act Release No. 84528 (Nov. 2, 2018), 83 FR 58338 (Nov. 19, 2018) (''Disclosure of Order Handling Information'' in which the Commission adopted new order handling disclosure requirements). The Commission has continually reviewed the national market system and issues related to equity market structure since Regulation NMS was adopted. In 2010, the Commission issued a Concept Release on Equity Market Structure seeking public comments on high frequency trading, order routing, market data linkages, and undisplayed liquidity. *See* Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (''Concept Release on Equity Market Structure''). In 2015, the SEC formed the Equity Market Structure Advisory Committee (''EMSAC''), which considered issues related to Regulation NMS and equity market structure. The archives of these meetings are available at *https://www.sec.gov/spotlight/emsac/emsac-archives.htm.*

[5] Securities Exchange Act Release No. 90610 (Dec. 9, 2020), 86 FR 18596 (Apr. 9, 2021) (''MDI Adopting Release'').

[6] *Id.* at 18601.

[7] *See* 17 CFR 242.610 and 17 CFR 242.612.

[8] *See infra* section III for further discussion of the relationship between access fees and minimum pricing increments.

[9] 15 U.S.C. 78k–1(a)(1)(B).

[10] 15 U.S.C. 78k–1(a)(1)(c)(i), (ii), and (iv).

[11] *See* MDI Adopting Release, *supra* note 5.

[12] *Id.*

[13] *See id.* at 18699. As discussed below, the transition to the new MDI Rules has been delayed. *See infra* note 357 and accompanying text.

[14] *See infra* sections IV, V.D.5, and V.D.6 (discussing the costs and benefits of accelerating the round lot and odd-lot information definitions).

quotations for and transactions in securities.'' [15] Acceleration of some of the MDI Rules would help to fulfill this statutory goal.

A. Rule 612—Minimum Pricing Increments

The Commission adopted rule 612 of Regulation NMS to implement minimum pricing increments (also known as minimum price variations or tick sizes) for NMS stocks. Currently, quotations for NMS stocks priced at, or greater than, $1.00 per share the minimum pricing increment is $0.01, while quotations for NMS stocks priced less than $1.00 per share the minimum pricing increment is $0.0001. Specifically, rule 612(a) states that ''[n]o national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, or accept from any person a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than $0.01 if that bid or offer, order, or indication of interest is priced equal to, or greater than, $1.00 per share.'' Rule 612(b) applies to bids, offers, orders, and indications of interest in any NMS stock priced less than $1.00 per share and specifies that the increment cannot be smaller than $0.0001. The Commission adopted rule 612 to address concerns about sub-penny quoting by protecting displayed limit orders and promoting transparent and consistent pricing. The Commission stated that the rule ''was designed to limit the ability of a market participant to gain execution priority over competing limit orders by stepping ahead by an economically insignificant amount.'' [16]

There are various issues related to market developments which suggest that the Commission should update the minimum pricing increments for the U.S. equity markets. Specifically, many NMS stocks today are constrained by the minimum pricing increment of $0.01 that is required under rule 612 and thus are not able to be priced by market forces. That is, based on liquidity and price competition, these stocks could be priced more aggressively within the spread than is possible with the current minimum pricing increment of $0.01. ''Tick-constrained'' stocks, *i.e.,* stocks that have a time weighted average quoted spread of 1.1 cents or less make up the majority of the current trading volume, and their presence suggests that the rule 612 minimum pricing increment of $0.01 may now be too large for certain stocks, which, in turn, results in the pricing of such stocks being artificially constrained.[17] Trading in tick-constrained stocks would be improved if competitive market forces could establish prices in sub-penny increments, which could reduce quoted spreads.

In addition, the competitive dynamic between trading in the certain parts of the over-the-counter (''OTC'') market and trading on national securities exchanges and alternative trading systems (''ATSs'') caused by, among other things, rule 612 has continued to shift over time.[18] Specifically, while rule 612 prohibits exchanges, ATSs and broker-dealers from displaying, ranking or accepting quotes and orders in NMS stocks that are priced at, or greater than, $1.00 per share in sub-penny increments, the rule does not prohibit trading in sub-penny increments. In application, however, certain OTC market participants are able to trade more freely in sub-penny increments than others. Specifically, while rule 612 requires an OTC market maker to only accept priced orders in a penny increment, it does not prevent OTC market makers from executing an order in a sub-penny amount. Trading on national securities exchanges and ATSs, however, largely occurs in penny increments because national securities exchanges and ATSs generally execute trades at the prices that orders and quotes must be displayed, accepted or ranked under rule 612.[19] Among other things, the ability of OTC market makers to trade more readily in finer increments (*i.e.,* offering sub-penny price improvement over the displayed quote) compared to the trading on exchanges and ATS has contributed to the increased percentage of executions that occur off-exchange.[20] Finally, since the adoption of rule 612, there have been technological advancements that enable trading and order routing systems of market participants to handle the increased message traffic that could occur if smaller or varied minimum pricing increments were implemented for NMS stocks.

Under section 11A(a)(1) of the Exchange Act, Congress found that ''[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—(i) economically efficient execution of securities transactions; [and] (ii) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. . . .'' [21] The Commission, consistent with the Congressional mandate and direction of section 11A(a)(2) of the Exchange Act to carry out these objectives, proposes to amend rule 612 to establish variable minimum pricing increments for quotations and orders in NMS stocks that are priced at, or greater than, $1.00 per share based on objective and measurable criteria and make such minimum pricing increments applicable to the trading of all NMS stocks regardless of price, subject to certain specified exceptions.[22]

As discussed in section II.F [23] the Commission is proposing to amend rule 612 in a manner that would extend

[15] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[16] *See* Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release''). *See also* Exchange Act Release No. 49325 (Feb. 26, 2004), 69 FR 11126 (Mar. 9, 2004) (''Regulation NMS Proposing Release''). The Commission issued a supplemental request for comment on proposed Regulation NMS in May 2004. *See* Securities Exchange Act Release No. 49749 (May 20, 2004), 69 FR 30142 (May 26, 2004) (''Supplemental Release''). On Dec. 16, 2004, the Commission re-proposed Regulation NMS in its entirety for public comment. *See* Securities Exchange Act Release No. 50870 (Dec. 16, 2004), 69 FR 77424 (Dec. 27, 2004) (''Re-proposing Release'').

[17] In this release, tick-constrained stocks are defined as those that have a time weighted quoted spread of $0.011 or less calculated during regular trading hours. *See infra* note 102 and accompanying text, *infra* note 448 and accompanying text and Table 4.

[18] *See infra* section II.D.

[19] Exchanges and ATSs execute orders in sub-penny increments if the price of the execution is the midpoint of the national best bid and national best offer (''NBBO''), if the orders are benchmark trades such as volume-weighted average price (''VWAP'') and time-weighted average price (''TWAP''), or if an exchange has a retail liquidity program (''RLP'') that operates pursuant to exemptions granted by the Commission that allow such programs to provide executions in tenths of a cent. *See* Regulation NMS Adopting Release, *supra* note 16, at 37556. *See also infra* section II.

[20] *See, e.g.,* Staff Report on Equity and Options Market Structure Conditions in Early 2021 (''Staff Report on Equity and Options Market Structure'') at section 2.4 for a discussion of Order Execution and Segmentation of Individual Investor Flow. Staff reports, Investor Bulletins, 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 staff 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. *See also* Edwin Hu and Dermot Murphy, ''Competition for Retail Order Flow and Market Quality'' (June 8, 2022), *available at https://ssrn.com/abstract=4070056* (retrieved from SSRN Elsevier database) (noting that approximately 27% of trading volume is routed from retail brokerages to seven internalizing broker-dealers and estimating that two of those firms handle 70% of the volume from 2017 to 2021; and concluding that promoting more competitive markets for retail order flow could save investors billions of dollars in transaction costs).

[21] 15 U.S.C. 78k–1(a)(1)(C).

[22] The proposed rule would not change the minimum pricing increment of rule 612(b), which permits sub-penny increments for quotations and orders in NMS stocks that are priced less than $1.00 per share. *See infra* section II.F.3.

[23] *See infra* section II.F.

beyond tick-constrained stocks. The Commission believes that it is timely, and consistent with section 11A of Exchange Act, to replace and modernize the current ''one-size-fits-all'' tick approach with an objectively calculated and varied approach that would determine the minimum pricing increments for particular NMS stocks in a manner that would reflect differences in their trading characteristics. The Commission believes that the proposed variable minimum pricing increments would address the issues related to tick-constrained stocks, help to prevent other stocks from becoming tick-constrained, and reduce transaction costs for many stocks without harming the displayed liquidity in, and execution quality of, NMS stocks that may be higher priced and/or trade with wider spreads. In addition, the Commission is proposing to apply the amended rule 612 minimum pricing increments to the quoting and trading of NMS stocks in order to promote fair competition and equal regulation between trading in the OTC market and trading on exchanges and ATSs, particularly as it relates to retail order flow.

The Commission believes that requiring orders to be executed in the minimum pricing increment would enhance competition among trading centers by ensuring that all trading centers would be able to compete in the same price increment. The Commission believes applying the proposed minimum pricing increments to the trading of NMS stocks regardless of trading venue would also preserve most meaningful price improvement opportunities and potentially benefit the market as increased competition for orders, and between market participants, could promote innovation.[24]

As further discussed in section II.F, the Commission is proposing to amend rule 612 such that the minimum pricing increment for quotations and orders in NMS stocks that are priced at $1.00 or more per share would be variable and no smaller than (1) $0.001, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was equal to, or less than, $0.008; [25] (2) $0.002, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.008 but less than, or equal to, $0.016; (3) $0.005, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.016 but less than, or equal to, $0.04; and (4) $0.01, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.04. Under this proposal, the primary listing exchanges would measure and calculate the Time Weighted Average Quoted Spread of each NMS stock in order to determine the applicable minimum pricing increment for such NMS stock during the months of March, June, September, and December of a particular calendar year (*i.e.,* ''Evaluation Period'') for the three months to follow. Finally, the Commission is proposing that the minimum pricing increments set forth by rule 612, subject to specified exceptions, be applicable to the trading of all NMS stocks.

B. Rule 610—Access to Quotations

The Commission adopted rule 610 to help to fulfill the statutory objectives of fair and efficient access to the individual markets that participate in the national market system.[26] The Commission described rule 610 as supporting the national market system objectives of assuring ''the practicability of brokers executing investors' orders in the best market'' [27] and ''the efficient execution of securities transactions.'' [28] Rule 610 addresses three issues related to access to quotations: (1) the means of access to quotations; (2) the fees for access to protected quotations and any other quotations that are the best bid or best offer of an exchange; and (3) locking and crossing quotations.

Rule 610 imposes a limit on the fees that can be charged for access to protected quotations.[29] For NMS stocks priced at, or greater than, $1.00 per share, a trading center [30] shall not impose, nor permit to be imposed, any fee for the execution of an order against a protected quotation that exceeds $0.0030 per share, and for NMS stocks that are priced at less than $1.00 per share, a trading center shall not impose, nor permit to be imposed, any fee for the execution of an order against a protected quotation that exceeds 0.3% of the quotation price per share. The Commission adopted the access fee caps to preserve the benefits of strengthened price protection and more efficient linkages among trading centers that could be disrupted if substantial fees for accessing quotations were charged.[31] The access fee caps were calculated based upon the then current fees that were charged by certain trading venues and reflect the minimum pricing increment of $0.01 per share.[32] The access fee caps have not changed since their adoption in 2005.

In the time since the adoption of rule 610, the national securities exchanges have adopted complex fee schedules, with fees charged and rebates paid, in part, to encourage the submission of liquidity.[33] The fee schedules of the national securities exchanges also include various volume-based tiers that seek to reward market participants for submitting a minimum level of liquidity.[34] The fees included in these schedules are largely calculated based on volume in a given month and are therefore calculated at month's end. This timing impedes the ability of market participants, including investors, to evaluate the total price of a trade at the time of execution and impedes a market participant's ability to evaluate best execution and order routing.

The Commission proposes to amend rule 610 in two ways. First, to reflect the lower variable minimum pricing increments proposed under rule 612, the Commission proposes to reduce the access fee caps for protected quotations in NMS stocks priced $1.00 or more to $0.0005 per share for NMS stocks that have a minimum pricing increment of $0.001; and $0.001 per share for NMS stocks that have a minimum pricing increment greater than $0.001 per share; and for protected quotations in NMS stocks priced less than $1.00 per share to 0.05% of the quotation price. The proposed level of the access fee caps seeks to balance the need to reduce the access fee caps to accommodate the reduction in the minimum pricing increments and preserve the ability of

[24] *See infra* sections V.D.2 and V.E.2.a.

[25] Currently, no NMS stock would qualify for this minimum pricing increment. *See infra* note 211.

[26] *See* Regulation NMS Adopting Release, *supra* note 16, at 37497, 37538.

[27] *Id.* at 37538. *See also* 15 U.S.C. 78k–1(a)(1)(C)(iv).

[28] *See* Regulation NMS Adopting Release, *supra* note 16, at 37538. *See also* 15 U.S.C. 78k–1(a)(1)(C)(i).

[29] A protected quotation is defined in rule 600(b)(71) as ''a protected bid or protected offer.'' 17 CFR 242.600(b)(71). A protected bid or protected offer is defined as ''a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) Is disseminated pursuant to an effective national market system plan; and (iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of the Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association.'' 17 CFR 242.600(b)(70).

[30] A trading center is defined in rule 600(b)(95) as ''a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.'' 17 CFR 242.600(b)(95).

[31] *See* Regulation NMS Adopting Release, *supra* note 16, at 37544.

[32] *See id.* at 37545.

[33] *See infra* section III.A.2.

[34] *See infra* section III.A.2.

the agency market business models to charge fees for access.[35] Consistent with the Commission's proposal to adopt lower variable minimum pricing increments, the Commission is proposing reduced variable access fee caps based on the minimum pricing increment and the price of the protected quotation.[36] The Commission believes the proposed fee caps are consistent with current market practices and would lead to pricing that is better aligned with today's transaction costs.[37]

Second, to facilitate the ability of market participants to understand and calculate the total price of transactions at the time of execution, the Commission proposes to amend rule 610 to require exchanges to make the amounts of all fees and rebates determinable at the time of execution.

C. Transparency of Better Priced Orders

The Commission adopted the MDI Rules, which expanded the content of data that will be made available for dissemination within the national market system and adopted a decentralized consolidation model for the collection, consolidation, and dissemination of consolidated market data.[38] One goal in expanding the data made available within the national market system was to increase transparency about better prices available in the market.[39] To accomplish this, the Commission, in the MDI Rules, adopted a new definition of round lot, which will increase transparency about smaller sized orders in higher priced stocks by assigning NMS stocks priced over $250 to round lot sizes that are less than the 100 share round lot size that is predominant today.

In addition, the MDI Rules included odd-lot information in the data that will be made available within the national market system. ''Odd-lot information'' is defined as (1) odd-lot transactions, and (2) odd-lots at a price greater than or equal to the national best bid and less than or equal to the national best offer, aggregated at each price level at each national securities exchange and national securities association.[40] Therefore, once implemented, information regarding the prices and sizes of odd-lot orders priced better than the national best bid and national best offer (''NBBO'') will be made available within the national market system and is expected to be made widely available to investors.[41] These new definitions will significantly enhance transparency about better priced orders available in the market. For the reasons explained in the MDI Adopting Release, the Commission adopted a phased transition plan for the MDI Rules that sequenced the implementation of these data elements in the later stages of the transition.[42]

The Commission proposes to accelerate implementation of the round lot and odd-lot information definitions adopted under the MDI Rules so that this information is made available to investors within the national market system sooner. Information about better priced orders available in the market is important for investors to be able to understand the current prices and liquidity in the market when entering their orders.[43] This information is also important for market participants who have best execution obligations.[44]

Furthermore, while the odd-lot information definition includes all prices better than the NBBO for which there is liquidity available in an odd-lot size, it does not identify a consolidated best odd-lot order. Establishing a defined best odd-lot order would provide further relevant information to investors and market participants. A consolidated best odd-lot order would be useful to investors in deciding the terms of an order by providing information about the price, size, and market of the best priced buy and sell orders available in the market against which their own orders could execute. Further, a best odd-lot order would be useful to investors to measure the amount of price improvement they receive for the execution of their orders. The Commission believes that amending the definition of odd-lot information to include a best odd-lot order would be consistent with section 11A of the Exchange Act, which provides, among other things, that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability of information with respect to quotations in securities.[45] Further, a best odd-lot order would be consistent with section 11A(c)(1)(B) of the Exchange Act as it would assure the usefulness of quotation information.[46] Together with accelerating the implementation of the definitions of round lot and odd-lot information, these proposed amendments would provide investors with enhanced transparency about better priced orders available in the market.

II. Amendment to Rule 612 of Regulation NMS—Minimum Pricing Increment

A. Background

Prior to implementing decimal pricing in April 2001, fractions of a dollar were utilized to represent the minimum pricing increments for the United States equity markets (*e.g.,* 1/8, 1/16, and 1/32 of a dollar).[47] The conversion to decimal pricing reduced the allowable minimum pricing increment to $0.01 and the exchanges adopted rules that established minimum pricing increments of $0.01 for equities trading.[48] However, after the conversion to decimal pricing, the display and execution of sub-penny quotes increased off-exchange.[49] The increase

[35] Agency market trading centers are those that bring together buyers and sellers and typically charge a fee for their execution services. The Commission has previously recognized that ''agency trading centers perform valuable agency services in bringing buyers and sellers together, and that their business model historically has relied, at least in part, on charging fees for execution of orders against their displayed quotations.'' *See* Regulation NMS Adopting Release, *supra* note 16, at 37545.

[36] *See infra* section III.C.1.

[37] *See infra* note 297 and accompanying text.

[38] MDI Adopting Release, *supra* note 5. Several exchanges filed petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit, which were denied on May 24, 2022. *The Nasdaq Stock Market LLC, et al* v. *SEC,* No. 21–1100 (D.C. Cir. May 24, 2022).

[39] *See* Securities Exchange Act Release No. 88216 (Feb. 14, 2020), 85 FR 16726, 16730–31 (Mar. 24, 2020) (''MDI Proposing Release''). *See infra* note 327 for a description of the data currently provided within the national market system.

[40] For example, if the national best bid for XYZ, Inc. is 100 shares at $25.00, and there are three orders of five shares and two orders of ten shares at $25.01 on Exchange A, this would be represented as ''35 shares at $25.01 on Exchange A'' pursuant to the definition of odd-lot information adopted under the MDI Rules. MDI Adopting Release, *supra* note 5, at 18613.

[41] MDI Adopting Release, *supra* note 5, at 18612–13.

[42] *See id.* at 18698.

[43] *See id.* at 18612.

[44] *Id. See also infra* note 359.

[45] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[46] 15 U.S.C. 78k–1(c)(1)(B).

[47] A tick is the minimum pricing increment that can be used to trade securities. Decimalization set the tick size to penny increments from fractional increments, such as 1/8 or 1/16 of a dollar. For a discussion of the implementation of decimal pricing, *see* Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a Tick Size Pilot Plan, Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[48] *See* Exchange Act Release No. 46280 (July 29, 2002), 67 FR 50739 (Aug. 5, 2002) (order approving proposed rule changes and amendments related to decimal pricing). In this order, the Commission approved the proposals of the then-existing exchanges and the National Association of Securities Dealers, Inc. (the predecessor to the Financial Industry Regulatory Authority, Inc. (''FINRA'')) to establish a minimum pricing increment of $0.01 for equity issues, $0.05 for option issues quoted under $3.00 a contract, and $0.10 for option issues quoted at $3.00 a contract or greater.

[49] *See* Regulation NMS Proposing Release, *supra* note 16, at 11163. *See also* Report to Congress on Decimalization, Commission (July 2012) (''Decimalization Report'') *available at https://www.sec.gov/files/decimalization-072012.pdf.*

of sub-penny quoting and trading in the OTC market raised concerns because these quotes were not readily transparent, or accessible, to many average investors.[50]

In 2004, as part of Regulation NMS, the Commission proposed rule 612 to implement minimum pricing increments for quoting in NMS stocks. The Commission stated that while the benefits of decimalization justified the costs, there was a potential for costs to investors and the markets to surpass the benefits if the minimum pricing increment decreased beyond a certain level.[51] Rule 612 was designed to ''deter the practice of stepping ahead of exposed trading interest by an economically insignificant amount,'' [52] which could discourage investors from submitting limit orders. The Commission reasoned that ''if orders lose execution priority because competing orders step ahead for an economically insignificant amount, liquidity could diminish.'' [53] Further, the Commission was concerned that sub-penny quotes could decrease market depth (*i.e.,* the number of shares of a security that is available at any given price), which in turn could increase transaction costs and cause institutions ''to rely more on execution alternatives away from the exchanges'' and ''[s]uch a trend could increase fragmentation of the securities markets.'' [54] In addition, the Commission stated that sub-penny quoting could inhibit the ability of broker-dealers to meet certain regulatory obligations by increasing the incidences of so-called ''flickering'' quotes.[55] At the time, the Commission did not believe that the potential benefits of marginally better prices offered by sub-penny increments for quotes and orders in securities priced at, or greater than, $1.00 per share were likely to justify the costs of permitting sub-penny quotes to be displayed, accepted and ranked.[56] However, the Commission acknowledged the possibility that the markets could evolve over time and cause the balance of the costs and benefits to shift.[57]

When rule 612 was adopted, the Commission considered the impact of sub-penny trading but did not believe that such trading raised the same concerns as sub-penny quoting. Specifically, the Commission stated that, unlike sub-penny quoting, sub-penny executions do not cause quote flickering, decrease depth at the inside of the market or raise systems capacity issues.[58] In addition, the Commission stated that sub-penny executions were generally beneficial to retail investors.[59]

B. Rule 612

In 2005, the Commission adopted rule 612 of Regulation NMS to establish uniform minimum pricing increments for NMS stocks. Rule 612 prohibits national securities exchanges, national securities associations, ATSs, vendors and broker-dealers from displaying, ranking, or accepting quotations, orders, or indications of interest in any NMS stock priced in an increment smaller than $0.01 if the quotation, order, or indication of interest is priced equal to, or greater than, $1.00 per share. Rule 612 also prohibits national securities exchanges, national securities associations, ATSs, vendors, and broker-dealers from displaying, ranking or accepting quotations, orders and indications of interest in an NMS stock in an increment smaller than $0.0001 if the quotation, order or indication of interest in an NMS stock is priced less than $1.00 per share. Under rule 612, an exchange, association, ATS, vendor or broker-dealer must reject a quote or order for an NMS stock that is explicitly priced in an impermissible increment.[60]

Rule 612 does not prohibit quotes and orders from being executed in sub-penny increments. In the Regulation NMS Adopting Release, the Commission stated that the rule does not prohibit a sub-penny execution resulting from a midpoint, volume-weighted algorithm, or from price improvement so long as the execution does not result from an impermissibly priced sub-penny order or quote.[61]

1. Exchange Retail Liquidity Programs (''RLPs'')

After its adoption, the Commission granted exemptions from rule 612 to various national securities exchanges to establish ''retail liquidity programs'' that allow them to accept and rank certain quotes and orders from certain participants in sub-penny increments as small as $0.001.[62] RLPs were designed to attract retail orders to exchanges by providing such orders potential price improvement at sub-penny levels because ''most marketable retail order flow is executed in the OTC markets, pursuant to bilateral agreements, without ever reaching a public exchange'' and that OTC market makers typically paid retail brokers for their order flow.[63]

The Commission stated that ''[i]nternalizing broker-dealer[s] can offer sub-penny executions, provided that such executions do not result from impermissible sub-penny orders or quotations'' by ''typically select[ing] a sub-penny price for a trade without quoting at that exact amount or accepting orders from retail customers seeking that exact price.'' [64] The Commission stated that, in contrast, exchange members, when submitting orders and quotations to exchanges, ''cannot compete for marketable retail order flow on the same basis because it would be impractical for exchange electronic systems to generate sub-

[50] *See* Regulation NMS Proposing Release, *supra* note 16 at 11164.

[51] *See id.* at 11165.

[52] *Id.* at 37553.

[53] *Id.* at 37551. Further, the Commission stated that ''[w]hen market participants can gain execution priority for an infinitesimally small amount, important customer protection rules such as exchange priority rules and [FINRA's] Manning rule could be rendered meaningless'' and that without such protections, ''professional traders would have more opportunity to take advantage of non-professionals,'' which could lead to lost executions or executions occurring at inferior prices. *Id.*

[54] *Id.* at 37552. The Commission stated that a decrease in market depth could ''lead to higher transaction costs, particularly for institutional investors (such as pension funds and mutual funds) that are more likely to place large orders,'' which ''would likely be passed on to retail investors whose assets are managed by the institutions.'' *Id.*

[55] *Id.* at 37552. The Commission described ''flickering quotations'' as occurring when the price of a trading center's best displayed quotations changes multiple times in a single second and stated that flickering quotations ''could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.'' *Id.*

[56] *Id.* at 37553 (''Even assuming that quoting in sub-penny increments would reduce spreads, the Commission continues to believe, on balance, that the costs of sub-penny quoting are not justified by the benefits.'')

[57] *Id.* (''Nevertheless, the Commission acknowledges the possibility that the balance of costs and benefits could shift in a limited number of cases or as the markets continue to evolve.'')

[58] *See* Regulation NMS Adopting Release, *supra* note 16, at 37556.

[59] *See id.*

[60] *See id. See also, e.g.,* NYSE Rule 7.6 (Trading Differentials) (''The minimum price variation (MPV) for quoting and entry of orders in securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for quoting and entry of orders is $0.0001.''); *see also* Nasdaq Rule Equity 1 Equity Definitions (a)(13) (''The term minimum price increment means $0.01 in the case of a System Security priced at $1 or more per share, and $0.0001 in the case of a System Security priced at less than $1 per share.'').

[61] *See* Regulation NMS Adopting Release, *supra* note 12, at 37556.

[62] NYSE Rule 107C; Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (approving retail liquidity programs on a pilot basis for NYSE and NYSE Amex and granting rule 612 exemption) (NYSE Retail Liquidity Program Approval Order); CBOE BYX Rule 11.24; Securities Exchange Act Release No. 68303 (Nov. 27, 2012), 77 FR 71652 (Dec. 3, 2012) (CBOE BYX Retail Pilot Program Approval Order); Nasdaq BX Rule 4780; Securities Exchange Act Release No. 73702 (Nov. 28, 2014), 79 FR 72049 (Dec. 4, 2014) (NASDAQ BX Retail Pilot Program Approval Order).

[63] *See* NYSE Retail Liquidity Program Approval Order, *supra* note 62 at 40679.

[64] *Id.* at 40862.

penny executions'' without firms ''having first submitted sub-penny orders or quotations, which the Sub-Penny Rule expressly prohibits.'' [65] The Commission found that the first RLP, which was approved on a pilot basis, was reasonably designed to benefit retail investors by providing price improvement to retail order flow and ''could promote competition for retail order flow among execution venues.'' [66]

The Commission also found that the proposed RLPs were reasonably designed to minimize the concerns raised by sub-penny quoting.[67] Specifically, using the same analytical framework as the Regulation NMS Adopting Release, the Commission reasoned that the proposed RLPs did not raise concerns related to quote flickering or reduced depth at the inside quotation because the sub-penny prices would not be disseminated through the Equity Data Plans.[68] In addition, the Commission did not believe the proposed RLPs would reduce incentives to post limit orders because market participants that display limit orders were unable to interact with marketable retail order flow that was almost entirely executed in the OTC market.[69] Exchanges proposed RLPs, in part, to address the differences in market structure that divert retail liquidity off-exchange. However, to date, the RLPs have not attracted a significant volume of retail order flow.[70]

C. Tick Size Considerations Since Regulation NMS

Minimum pricing increments have been considered several times since the Commission adopted rule 612. In 2010, the Commission issued the Concept Release on Equity Market Structure, which examined the then current equity market structure and invited public comment on various market structure issues, including high frequency trading, order routing, market data linkages, and undisplayed liquidity.[71] Among other things, the Commission discussed internalization by broker-dealers and stated that ''[t]here may be greater incentives for broker-dealer internalization in low-priced stocks than in higher priced stocks.'' [72] The Commission stated that in low-priced stocks, the one cent per share minimum pricing increment is much larger on a percentage basis than it is in higher-priced stocks.[73] In the discussion on undisplayed liquidity, the Commission sought comment on whether public price discovery and execution quality may have suffered and specifically questioned whether the minimum pricing increment should be reduced for lower priced stocks.[74] In response, the Commission received several letters opposing [75] and supporting [76] a pilot program to test sub-penny tick increments. The Commission also received letters recommending a pilot program to test a wider variety of tick sizes.[77]

In 2010, three exchange operators jointly petitioned the Commission to use its exemptive authority under rule 612(c) to allow the exchanges to implement a 6-month pilot program that would reduce the minimum pricing increment to $0.005 for a limited set of 30 NMS stocks priced from $1.00 to $20.00 (including one exchange-traded fund (''ETF'') that was trading at greater than $20.00).[78] The Joint Petition stated that at that time a significant percentage of the volume in these securities (4%) was transacting at a $0.005 increment and that a large percentage of share volume in securities priced below $20 occurred in securities that were routinely quoted at the minimum pricing increment, indicating a likelihood that price discovery was being constrained.[79] The Joint Petition also stated that ''a disproportionately high percentage of transactions in securities priced between $1 and $20 dollars are occurring away from lit markets, which [they] believe indicates a lack of quote competition.'' [80] The petitioners stated that the $0.01 minimum pricing increment resulted in artificially wide publicly-displayed quotes for certain lower-priced, liquid securities, which, in turn, negatively impacted the public price discovery process and resulted in inferior execution prices for investors.[81]

In 2012, Congress passed the Jumpstart Our Business Startups Act (''JOBS Act''), which contained provisions relating to the impact of decimalization on small and middle capitalization companies. Section 106(b) of the JOBS Act directed Commission to conduct a study on how decimalization affected the number of initial public offerings (''IPOs'') and the liquidity and trading of smaller capitalization company securities. The Commission submitted a staff study to Congress in July 2012.[82] While the Decimalization Report did not reach any firm conclusions about the impact of

[65] *Id.*

[66] *Id.* at 40679.

[67] *Id.* at 40682. *See also* CBOE BYX Retail Pilot Program Approval Order, *supra* note 62 at 71658; and NASDAQ BX Retail Pilot Program Approval Order, *supra* note 62 at 72053.

[68] NYSE Retail Liquidity Program Approval Order at 40682. There are three effective national market system plans that govern the collection, consolidation, processing, and dissemination of certain NMS information. They are: (1) the Consolidated Tape Association Plan (''CTA Plan''); (2) the Consolidated Quotation Plan (''CQ Plan''); and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'') (together, the ''Equity Data Plans''). *See also* MDI Adopting Release, *supra* note 5.

[69] *Id.* at 40680.

[70] *See, e.g.,* How Can The Buy Side Interact With Retail Flow, Rosenblatt Securities, Feb. 14, 2022, *available at https://www.rblt.com/market-reports/how-can-the-buy-side-interact-with-retail-flow* (''The various exchange retail programs consistently account for less than 0.2% of consolidated volume.''). According to NYSE, most order handling processes ignore retail interest that is available in the RLPs because resting interest in RLPs does not display price or size. *See* NYSE, Price improvement, tick harmonization & investor benefit (Aug. 22, 2022) (''NYSE Tick Harmonization Paper''), *available at https://www.nyse.com/publicdocs/nyse/NYSE_Price_Improvement_202208.pdf. See also https://www.nyse.com/data-insights/what-exchanges-can-and-cannot-offer-retail-traders. See also* NYSE Retail Liquidity Program Approval Order at 40682.

[71] *See* Concept Release on Equity Market Structure, *supra* note 4.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *See, e.g.,* Letters from Karrie McMillan, General Counsel, Investment Company Institute, dated Apr. 21, 2010; Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (''SIFMA''), dated Apr. 29, 2010; James J. Angel, Associate Professor, McDonough School of Business, Georgetown University; Lawrence E. Harris, Fred V. Keenan Chair in Finance, Professor of Finance and Business Economics, Marshall School of Business, University of Southern California; Chester S. Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Director, Center for Financial Markets, Tepper School of Business, Carnegie Mellon University, dated Feb. 23, 2010.

[76] *See, e.g.,* Letters from Eric Swanson, General Counsel, BATS Exchange, Inc., dated Apr. 21, 2010 and Eric W. Hess, General Counsel, Direct Edge, dated Apr. 28, 2010.

[77] *See, e.g.,* Letters from Janet M. Kissane, SVP—Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, dated Apr. 23, 2010; and John A. McCarthy, General Counsel, GETCO LLC, Christopher R. Concannon, Partner, Virtu Financial LLC, and Leonard J. Amoruso, General Counsel, Knight Capital Group, Inc., dated July 9, 2010.

[78] *See* Letter from Chris Isaacson, Chief Operating Officer, BATS Exchange, Inc., Eric Noll, Executive Vice President, NASDAQ OMX Group, Inc., and Larry Leibowitz, Chief Operating Officer, NYSE Euronext, Inc. to Elizabeth M. Murphy, Secretary, Commission, dated on Apr. 30, 2010 (''Joint Petition'') *available at https://www.sec.gov/spotlight/regnms/jointnmsexemption request043010.pdf.* The petitioners stated that the pilot would allow the Commission to collect data to study the impact of the reduction of the minimum increment without making a long term policy commitment. The petitioners did not propose to reduce the access fee caps under rule 610 because the $0.005 increment would have continued to be higher than the access fee cap, which would prevent the public display of a protected quote that is not accurate when the access fee is factored in. *Id.* at 7.

[79] *Id.* at 6.

[80] *Id.* at 2.

[81] *Id.* at 1.

[82] *See* Decimalization Report, *supra* note 49.

decimalization on the number of IPOs or the liquidity and trading of small capitalization companies, it did recommend that the Commission conduct a roundtable where recommendations could be presented on a pilot program that would generate data to allow the Commission to further assess decimalization's impact. Commission staff held a roundtable on February 5, 2013, during which there was broad support among panelists for the Commission to conduct a pilot program to gather information, particularly with respect to the impact of wider minimum pricing increments on liquidity in smaller capitalization companies.[83] In 2016, the Commission initiated a Tick Size Pilot for small- and mid-size capitalized stocks to test larger quoting and trading increments (''TSP'').[84] After the expiration of the 2-year pilot program, the Commission staff observed that, on average, increasing the tick size resulted in deteriorating market quality for stocks that became tick-constrained under the pilot.[85]

D. Issues Raised in the Current Market Structure

In 2005, when rule 612 was adopted, the markets were still largely typified by manual trading on exchange floors.[86] Since then, the markets have overwhelmingly transitioned to electronic trading with orders being accepted, routed, displayed, and executed via low latency trading systems.[87] Equity market structure and competitive dynamics have also changed,[88] and trading and order routing systems can handle and process an amount of data that would have been unprecedented and unfathomable in 2005.[89] NMS stocks are traded on-exchange (*i.e.,* on one or more of the 16 currently registered national securities exchanges) or off-exchange (*e.g.,* on one or more of the 33 currently registered NMS Stock ATSs [90] or by OTC market makers).[91] As of September 2022, on-exchange volume is approximately 58% while off-exchange/OTC volume is approximately 42%,[92] while in 2007, on-exchange share volume was 71% and off-exchange/OTC volume was approximately 29%.[93] The market structure of the OTC market that permits the execution of orders more readily in sub-penny amounts has been a factor that contributes to this result.

While rule 612 does not prohibit executions from occurring in sub-penny increments, there are various factors that lead to sub-penny trading occurring more frequently off-exchange compared to on-exchanges or ATSs. Specifically, exchanges and ATSs typically match quotes and orders in the penny increment in which explicitly priced quotes and orders must be submitted under rule 612. Sub-penny trading occurs on exchanges and ATSs pursuant to either: (1) exchange rules and order types that permit executions at midpoint of the NBBO or volume-weighted executions or (2) exemptions that have been granted by the Commission under rule 612(c) (*i.e.,* RLPs).[94] Accordingly exchange rules, and the requirement that such rules comply with rule 612, limit sub-penny trading on exchanges.

OTC market makers execute in sub-penny increments with more regularity as a result of their ability to offer price improvement in between the NBBO after such orders have been accepted by the OTC market maker in the permissible penny increment.[95] OTC market makers, unlike market participants on an exchange or ATS, are not limited by their market structure to generally execute orders in the minimum pricing increment that the order was accepted. Instead, OTC market makers are able to trade as principal with orders that they receive and in the increment that they determine. As a result, OTC market makers may trade more readily in sub-penny increments which helps to provide an advantage over their exchange and ATS counterparts in attracting order flow.

Today, most marketable retail order flow is executed off-exchange by OTC market makers who, in addition to not being limited by exchange rules, offer, in many cases, payment for order flow (''PFOF'') for retail orders.[96] Further, 37% of executions off-exchange are reported in sub-penny amounts that are not associated with midpoint trades.[97] As further discussed in the Economic Analysis, data suggests that of the total dollar value of sub-penny trades that are not midpoint trades, 11% occurred on-exchange while 89% occurred off-exchange.[98] While this dynamic provides retail orders that execute OTC with a measure of price improvement, the Commission is concerned that these retail orders are not exposed to competitive forces on the public market (since these retail orders are typically directed from one broker-dealer to another wholesale broker-dealer by contractual arrangement). As a result, these retail orders are not publicly displayed and do not contribute to the

[83] For a complete discussion about the Feb. 6, 2013 roundtable and the discussions that led to the implementation of the tick size pilot, *see* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014) (Order Directing the Exchange and FINRA to submit a Tick Size Pilot Plan).

[84] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (Order Approving the National Market System Plan to Implement a Tick Size Pilot Program, *available at https://www.govinfo.gov/content/pkg/FR-2015-05-13/pdf/2015-11425.pdf).*

[85] DERA Tick Size Pilot and Market Quality (Jan. 31, 2018), *available at https://www.sec.gov/dera/staff-papers/white-papers/dera_wp_tick_size-market_quality. See also* Who Provides Liquidity, And When?, Sida Li, Xin Wang, and Mao Ye, Journal of Financial Economics 141, no. 3 (2021) (finding that wider tick sizes reduce liquidity, encourage the speed race among high-frequency traders, and allocate resources to latency reduction) and Yashar Barardehi, Peter Dixon, Qiyu Liu, and Ariel Lohr, *Tick Sizes and Market Quality: Revisiting the Tick Size Pilot* (working paper, Dec. 14, 2022) *available at https://www.sec.gov/files/dera_wp_ticksize-pilot-revisit.pdf* (observing that market quality improved at the end of the pilot for stocks that were tick constrained under the TSP). Dixon, Liu, and Lohr are financial economists in the Division of Economic and Risk Analysis at the SEC. Barardehi is at the Argyros School of Business & Economics, Chapman University, and is a part-time consultant with the SEC.

[86] *See* Concept Release on Equity Market Structure, *supra* note 4.

[87] *See* MDI Adopting Release, *supra* note 5.

[88] The Concept Release on Equity Market Structure describes the transition of the modern equity trading markets away from the largely centralized, manual structure to the dispersed automated structure that exists today. *See* Concept Release on Equity market Structure, *supra* note 4. *See also* Staff Report on Algorithmic Trading in the U.S. Capital Markets (Aug. 5, 2020) (''Staff Report on Algorithmic Trading'') (this staff report updated some of the Concept Release's details and described certain developments that have occurred since 2010).

[89] *See* Staff Report on Algorithmic Trading (describing the broad use of algorithms in contemporary securities markets).

[90] *See https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.*

[91] *See* Staff Report on Equity and Options Market Structure, *supra* note 20.

[92] Source: Equity consolidated data feeds (CTS and UTDF), as collected by MIDAS; NYSE Daily TAQ.

[93] Source: Equity consolidated data feeds (CTS and UTDF), as collected by MIDAS; NYSE Daily TAQ.

[94] *See supra* section II.B.1.

[95] OTC market makers internalize orders by trading principally on the other side of the orders that they accept. *See* Staff Report on Equity and Options Market Structure, *supra* note 20.

[96] ''Payment for order flow'' is defined in Rule 10b–10 under the Exchange Act. 17 CFR 240.10b–10(d)(8). Rule 10b–10 further prescribes information that a broker or dealer must disclose to its customer on the customer's confirmation. The rule requires that the broker-dealer disclose to the customer, among other things, ''[t]he amount of any remuneration received or to be received by the broker from such customer in connection with the transaction . . .'' and ''the source and amount of any other remuneration received or to be received by the broker in connection with the transaction. . . .'' 17 CFR 240.10b–10(a)(2)(B) and (D).

[97] *See infra* section V.C.1.b and accompanying text.

[98] *See infra* section V.C.1.b and Table 8.

price competition and discovery mechanism of the lit markets. The Commission is seeking to address concerns about the competitive dynamic between exchanges/ATSs and OTC market makers because the ability of OTC market makers to more readily trade in finer sub-penny increments than exchanges and ATSs factors into the increasing percentage of equity volume that is executed off-exchange.[99]

The fact that rule 612 does not prohibit sub-penny trading and the underlying regulatory framework that results in greater opportunities to trade OTC in sub-penny increments makes it more difficult for exchanges and ATSs to compete with OTC market makers for retail order flow. The Commission believes that the contrast between on and off-exchange sub-penny trading and the competitive responses by market participants results in market complexity and inefficiencies (*e.g.,* inverted taker-maker fee structures, tiered fee structures, segmentation via RLPs, excessive fragmentation and intermediation).[100] The proposed amendments to rule 612 would level the competitive playing field in this regard by requiring market participants, regardless of trading venue, to offer price improvement to investor orders in the same minimum pricing increments, unlike today where OTC market makers are able to offer investor orders price improvement in smaller pricing increments compared to their exchange and ATS counterparts.

In addition, some NMS stocks are considered to be tick-constrained, meaning that they regularly experience a time-weighted average quoted spread of 1.1 cents or less, which indicates that these stocks are frequently quoted in the smallest increment permitted under the rule.[101] The Commission identified 1,337 NMS stocks that would be considered tick-constrained under this metric.[102] These tick-constrained NMS stocks account for 56.1% of estimated share volume and 23.2% of estimated dollar volume.[103] NMS stocks become tick-constrained because rule 612's minimum pricing increment prohibits quoting these stocks in increments smaller than provided under the rule. These stocks would experience smaller quoted spreads but for the requirement under rule 612.

Certain market participants have conducted data analysis on the effects of rule 612 and concluded that a $0.01 increment may not be appropriate for all stocks.[104] For instance, MEMX LLC (''MEMX'') issued a report in August 2021, which provided data that suggests that ''[a] significant portion of the U.S. equity market trades with a consistent penny spread throughout most of the trading day.'' [105] MEMX provided data from the first half of 2021 indicating that many tick-constrained stocks, based on MEMX's definition, are actively traded securities that ''as a group [account] for 47% of volume, 28% of trades, and 25% of notional value executed.'' [106] According to MEMX, the ''[q]uoted spreads in these securities are limited not by supply and demand, but rather by outdated regulatory constraints that apply the same tick regime to securities with different trading characteristics.'' [107]

MEMX analyzed tick-constrained stocks across different price buckets and found that tick-constraint occurs more frequently in lower-priced securities, ''where the one cent minimum increment is more ''economically significant'' relative to the price of a share of stock.'' [108] According to MEMX's analysis, ''two-thirds (66%) of all tick-constrained securities trade in the two lowest price buckets,'' which included stocks priced between $1.00 and $20.00 per share.[109] MEMX's analysis concluded that low-priced stocks are ''more likely to be tick constrained, and the impact of that tick constraint in terms of basis point spread, which is relevant when measuring the cost of entering into a transaction, is also largest in these securities.'' [110] However, MEMX stated that tick-constraint issues can occur across different price buckets, including in high-priced, actively-traded stocks.[111] MEMX's analysis also found that tick-constrained stocks typically have more liquidity at the NBBO than stocks that are not tick-constrained. The findings were similar for stocks and exchange traded products (''ETPs'') with varying notional values traded.[112]

MEMX analyzed securities that trade at least $100 million notional value each day and concluded that more than one half of equity ETPs are tick-constrained.[113] MEMX stated that tick-constrained actively-traded ETPs have spreads that are artificially wide ''despite the fact that ETPs can be priced more efficiently due to the ability to accurately derive ETP prices and an effective arbitrage mechanism that keeps ETP prices in line with those of its underlying securities.'' [114]

The New York Stock Exchange (''NYSE'') published a white paper that stated the current $0.01 minimum pricing increment is a wider tick than market forces would otherwise produce for tick-constrained stocks.[115] NYSE stated that tick-constrained stocks tend to trade with high volume, relatively low prices, and quoted spreads near $0.01, and exhibit higher levels of inaccessible liquidity (*i.e.,* order flow

[99] *See* Staff Report on Equity and Options Market Structure at 11. *See also* Kwan, Amy, Ronald Masulis, and Thomas H. McInish, ''Trading rules, competition for order flow and market fragmentation,'' Journal of Financial Economics 115, no. 2 (2015): 330–348.

[100] *See, e.g.,* Enhancing Competition, Transparency and Resiliency in U.S. Financial Markets, Citadel Securities (May 2021) *available at https://fe7a500fc6adae9c30fb.b-cdn.net/wp-content/uploads/2021/05/EnhancingCompetitionTransparencyandResiliencyinUSFinancialMarkets.pdf* (''Citadel Report'') (''This regulatorily mandated tick size impedes the ability of exchanges to compete for order flow in symbols that are highly liquid and commonly trade inside a bid-offer spread of a penny. We believe this 'constrained' tick size directly leads to complexities and inefficiencies—such as driving order flow into alternative venues, complex exchange pricing structures, and increased overall market fragmentation.''). *See also* Enhancing U.S. Equity Market Structure for Retail Investors, Committee on Capital Markets Regulation (Sept. 2021) (''CCMR Report'') *available at https://www.capmktsreg.org/wp-content/uploads/2021/09/CCMR-Enhancing-Retail-Equity-Market-Structure-09.01.2021-2.pdf.*

[101] *See infra* note 448.

[102] *See infra* note 448 and accompanying text and *infra* Table 4.

[103] *Id.*

[104] *See, e.g.,* The Tick-Constrained Stock Problem by Phil Mackintosh (Jan. 20, 2022), *available at https://www.nasdaq.com/articles/the-tick-constrained-stock-problem)* (''Nasdaq Paper''). *See also* Petition for Rulemaking to Amend Rule 612 of Regulation NMS to Adopt Intelligent Tick-Size Regime, dated Dec. 16, 2019, submitted by John A. Zecca, Executive Vice President, Chief Legal Officer & Chief Regulatory Officer, Nasdaq Inc. *available at https://www.sec.gov/rules/petitions/2019/petn4-756.pdf* (''Nasdaq Intelligent Tick Proposal''); The Impact of Tick Constrained Securities on the U.S. Equity Market (*available at https://www.nyse.com/publicdocs/Tick_Constrained_Stocks.pdf)* (''NYSE White Paper'') (no date available); and Cboe Proposes Tick-Reduction Framework to Ensure Market Structure Benefits All Investors (*available at https://www.cboe.com/insights/posts/cboe-proposes-tick-reduction-framework-to-ensure-market-structure-benefits-all-investors/)* (''Cboe Proposal'').

[105] *See* MEMX Tick Constrained Securities (Aug. 2021) (''MEMX Report'') *available at https://memx.com/wp-content/uploads/MEMX-Market-Structure-Report-Tick-Constrained-Securities.pdf.* MEMX reviewed data from the first and second quarter of 2021. MEMX data suggested that on average 998 stocks during the period were tick-constrained, which MEMX defined as those NMS stocks that had an average quoted spread of 1.1 cents or less. In addition, on Aug. 30, 2021, MEMX filed a Request for Exemptive Relief Pursuant to Rule 612(c) of Regulation NMS to Permit a Minimum Increment of $0.005 in ''Tick Constrained'' NMS Stocks. *See* Letter from Adrian Griffiths, Head of Market Structure, MEMX to Vanessa Countryman, Secretary, Commission dated Aug. 30, 2021 (''MEMX Exemption Request'').

[106] MEMX Report, *supra* note 105, at 9.

[107] *Id.* at 9.

[108] *Id.* at 10.

[109] *Id.*

[110] *Id.*

[111] *Id.* at 11.

[112] *Id.* at 15–17.

[113] *Id.* at 13.

[114] *Id.*

[115] *See* NYSE White Paper, *supra* note 104.

that is only available to select market participants)[116] which hampers transparency and price discovery.[117] NYSE stated that the uniform rule 612 minimum pricing increment of $0.01 for all NMS stocks that are priced at, or above, $1.00 per share increases inaccessible liquidity, which results in ''different market experiences for different participants.''[118]

NYSE explained that some high-volume, lower-priced securities ''trade consistently with a spread of exactly $0.01 and maintain very deep order books at the national best price.''[119] NYSE said that this dynamic makes ''it difficult for liquidity providers to receive a fill, except at undesirable times such as when the price is about to change'' and that ''queue competition contributes to high-cost infrastructure deployments'' as market participants need to develop low latency technology to be the fastest to a new price and has also led to the development of inverted fee venues, ''which allow, for a cost, liquidity providers to pay for better queue position.''[120] According to NYSE, these dynamics show that rule 612 has influenced an ''arms race'' in market technology and venue fragmentation. NYSE also stated that ''artificially wide tick sizes raise transaction costs and harm execution quality.''[121] NYSE estimated that ''trading in tick constrained securities typically increase[s] transaction costs by about one billion dollars per year . . .''[122]

NYSE developed a ''Tick Constrained Index'' based on consolidated quoted spread and NBBO coverage to identify stocks that it considered tick-constrained using data from 2019. NYSE's tick-constrained stocks represented 538 symbols in the second half of 2020, which had an average intraday volume of 4,254,664 shares per symbol, and 25.9% of intraday volume. NYSE estimated that the minimum $0.01 spread ''cost investors over $1.7 billion in the first half of 2020 . . . [and] $499 million'' in the second half of 2020.[123] NYSE also analyzed the impact of volatility in 2020 on tick-constrained stocks and concluded that tick-constrained stocks responded differently than non-tick-constrained stocks to extreme volatility. Specifically, tick-constrained stocks spreads did not widen (52.72%) as much as non-tick-constrained (163.33%), but the depth at the inside decreased significantly more in tick-constrained stocks (−73.24%) compared to non-tick-constrained stocks (−39.75%).[124] According to NYSE, market makers managed their risk in tick-constrained stocks by reducing liquidity because they could not reduce prices. NYSE also noted that exchange market makers are unable to compete with off-exchange providers in providing price improvement.[125]

More recently, NYSE published a study on price improvement and minimum pricing increments.[126] NYSE analyzed consolidated exclusive securities information processor (''SIP'') data from January 1, 2022, to June 30, 2022.[127] NYSE estimates that in the first half of 2022 approximately $72 million per day aggregated price improvement was provided and that of this amount 48% was delivered on exchange and 52% was delivered off-exchange.[128] Further, NYSE estimates that 12.4% of the total price improvement came from non-midpoint trades in either tenths or hundredths of a cent, which are increments that exchanges have limited ability to trade.[129] According to NYSE's analysis, harmonizing the trading increment across exchange and non-exchange trading ''could yield $6.3MM per day ($1.8B per year) in investor cost savings based on projected incremental savings if exchanges could offer sub-penny price improvement in a competitive manner.''[130]

NYSE stated that exchanges currently provide: (1) 1.17× the amount of off-exchange price improvement when combining the midpoint and round penny trade prices; and (2) 77% as much price improvement as off-exchange trades when spreads are wider than $0.01.[131] NYSE applied these ratios to current off-exchange sub-penny price improvement estimates to calculate an additional $7.3 million in daily price improvement.[132]

NYSE also examined data related to stocks that frequently trade with a $0.01 spread and found that trades did not frequently execute in increments as small as $0.0001, which is the increment that off-exchange market makers can use in executing trades.[133] In addition, according to NYSE, most price improvement is delivered to trades where the bid-offer spread is larger than $0.10. NYSE also examined price improvement trends during ''calm''[134] and volatile markets.[135] According to NYSE, exchanges tend to provide a larger share of the total price improvement during volatile markets, while off-exchange venues increase their share of total price improvement when volatility drops.[136]

Finally, NYSE considered the impact of allowing sub-penny quoting on market infrastructure.[137] NYSE stated that the industry is capable of accommodating an increase in message traffic that may accompany lower minimum pricing increments.[138] NYSE calculated several estimates of potential increased message traffic that resulted in increases in messages of the exchanges' best quotations between 25% and 152% and stated that these increases would ''lead to small changes in messaging levels relative to historical fluctuations and overall messaging rates that remain quite modest compared to data volumes prevalent in current-day options trading.''[139]

The Nasdaq Stock Market (''Nasdaq'') has also conducted studies on minimum pricing increments. According to Nasdaq, trading in tick-constrained stocks is more complicated and more expensive, with artificially wider spreads and longer order queues, which slows order fulfillment and leads to the increased routing to exchanges that have inverted taker/maker fee structures.[140] Nasdaq stated that as the price of the securities falls, the one penny minimum pricing increment becomes large as a percentage of value. For example, Nasdaq stated that for a stock priced above $1,000 per share, one penny is less than 0.10 basis point (one basis point is equal to 0.01% or 0.0001), while for a stock priced $1.00, one penny represents 100 basis points.

[116] NYSE stated that retail order flow is an example of inaccessible liquidity because it is largely sent to OTC market making firms that can execute such orders on a principal basis at prices inside the best displayed prices. *Id.* at 1. NYSE stated that retail order flow has increased as a percentage of the market. *Id.*

[117] *Id.* at 1.

[118] *Id.* at 2.

[119] *Id.*

[120] *Id.*

[121] *Id.*

[122] *Id.* at 12.

[123] *Id.* at 4.

[124] *Id.* at 6–7.

[125] *Id.* at 8.

[126] *See* NYSE Tick Harmonization Paper, *supra* note 70 at 2.

[127] *Id.* at 3.

[128] *Id.* at 4.

[129] *Id.*

[130] *Id.* at 2. NYSE described ''trade increment harmonization'' as ''equal trade pricing rules for all on and off exchange trading, with exchanges able to display quotes at twice the trade pricing increment.'' NYSE analyzed the possible impact of a half cent quoting increment coupled with a harmonized quarter cent trading increment. *Id.* at 5.

[131] *Id.* at 2.

[132] *Id.*

[133] *Id.* at 8.

[134] NYSE defined a ''calm'' market for purposes of its analysis as ''when there is a stable quoted market price for a restrictive 100 milliseconds before and after the trade.'' *Id.* at 9.

[135] *Id.*

[136] *Id.*

[137] *Id.* at 10–11.

[138] *Id.* at 10.

[139] *Id.* at 11.

[140] *See* Nasdaq Paper and Nasdaq Intelligent Tick at 4, *supra* note 104.

Nasdaq stated that this is harmful for smaller less liquid stocks because the minimum pricing increment represents a higher percentage of value which ends up costing investors money. Nasdaq stated that when faced with a spread constraint, market participants trade more on inverted venues to narrow the spread due to the inverted pricing structures. According to Nasdaq, substantial queue lengths result in inverted usage and stocks priced lower than $5 tend to have longer queues.

For higher priced stocks, Nasdaq stated that a tick size that is too small can result in increased volatility and less price competition which impairs price discovery. According to Nasdaq, higher stock prices from less frequent stock splits can eventually lead to wider spreads and more odd-lot trading. Nasdaq found that fill rates are generally higher for low-priced stocks, and fill rates begin to decline once a stock is priced greater than $100. Further, Nasdaq stated that a tick size that is too small can reduce the significance of time priority because traders can outbid resting orders by an economically insignificant amount. Nasdaq stated that this discourages traders from improving displayed prices and reduces incentives to post displayed liquidity. Nasdaq stated that certain high priced stocks with spreads closer to $1.00 have odd-lots inside the NBBO much more frequently than high priced stocks with spreads below $0.02. Nasdaq further stated that if high priced stocks traded at a wider tick, there would be more displayed depth at each tick increment.

Nasdaq concluded that if the minimum pricing increment is too wide (tick-constrained) or too small (stocks trading in multiple increments), the mismatch creates inefficiency that increases the issuer's cost of capital, hurting issuers and investor returns, potentially harming economic growth and retirement stability.

Recently, the Cboe Exchange, Inc. (''Cboe'') examined the NBBO of all NMS securities above $1.00 from January 3, 2022, to August 23, 2022, during regular trading hours, excluding opening and closing auctions and locked and crossed markets.[141] Cboe stated that most securities are not tick-constrained and that a one-size-fits-all finer minimum pricing increment ''risks creating a structure that attempts to solve a problem that does not exist for most securities and introduces roadblocks to the liquidity aggregation and price discovery process.'' [142]

Cboe stated that out of 10,125 securities, only 9% (877) should be considered preliminarily tick-constrained, which Cboe defined as stocks with an average quoted spread of 1.1 cents or less.[143] Cboe found that these 877 securities represent 49% of average daily volume and 22% of average daily notional value traded.[144] Cboe found that 88% of NMS stocks are quoted at spreads above $0.015 and 37% of securities representing 25% average daily notional value are being quoted at spreads above $0.10.[145]

E. Proposals by Market Participants

Various market participants have suggested that rule 612 be amended. Throughout the years, market participants have advocated that the minimum pricing increment: (1) only be reduced for NMS stocks that are tick-constrained; [146] (2) be varied based on certain objective and measurable trading characteristics of a particular NMS stock; [147] or (3) be increased for higher-priced stocks.[148] The Commission has studied and considered the alternative approaches that are described in this section, and at this time has determined to propose rule 612 amendments that would implement variable minimum pricing increments for the quoting and trading of NMS stocks priced at, or above, $1.00 per share based on the Time-Weighted Average Quoted Spread during an Evaluation Period.

As discussed more fully in section II.F., the Commission believes that the proposed amendments to rule 612 addresses the concerns that have arisen since its adoption in a manner that is consistent with the Congressional directives, set forth by section 11A of the Exchange Act, to facilitate the establishment of the national market system. Specifically, the Commission has designed the proposed rule 612 amendments to achieve the section 11A objectives of fair competition, economically efficient executions, and equal regulation by addressing concerns related to: (1) tick-constrained stocks; and (2) fair competition for retail order flow across trading venues.

1. Reduce the Tick Size to $0.005 for Tick-Constrained Stocks

Some market participants have recommended that rule 612 be amended to lower the minimum pricing increment to $0.005 only for NMS stocks that are tick-constrained.[149] Specifically, MEMX submitted a request that the Commission exercise its exemptive authority under rule 612(c) of Regulation NMS to permit market participants, including exchanges, associations, ATSs, vendors and broker-dealers, to display, rank, and accept bids or offers, orders, and indications of interest in $0.005 [150] increments for those NMS stocks that are ''tick-constrained,'' which MEMX would define as those stocks that trade with an average quoted spread of 1.1 cents or less.[151] MEMX requested that average daily spreads be calculated on a monthly basis and that a stock would have its minimum pricing increment reduced based upon a prior calendar month.[152] MEMX stated that the current increment ''is demonstrably too wide'' for certain stocks and ''imposes unnecessary costs on investors.'' [153] MEMX also stated that quoting in tick-constrained stocks is based on ''outdated regulatory constraints'' as opposed to ''supply and demand'' which in turn ''harm[s] public price discovery and increas[es] transaction costs.'' [154] Further, MEMX stated that reducing the minimum pricing increment for tick-constrained stocks would minimize implicit trading costs for investors, *e.g.,* spread costs.[155]

MEMX stated that reducing the minimum increment ''would reduce transaction costs and facilitate more robust price discovery by enabling liquidity providers to post more aggressive quotations within the current penny spread. . .'' [156] In addition, MEMX stated that reducing the minimum pricing increment for tick-constrained stocks would be in the

[141] *See* Cboe Proposal at 1, *supra* note 104.

[142] *Id.*

[143] *Id.*

[144] *Id.*

[145] *Id.*

[146] *See* Joint Petition, *supra* note 78. *See also* MEMX Exemption Request, *supra* note 105.

[147] *See* Nasdaq Intelligent Tick Proposal, *supra* note 104.

[148] *See* TSP, *supra* note 85.

[149] *See* Citadel Report, *supra* note 91 at 4 and CCMR Report, *supra* note 91 at 10. *See* MEMX Exemption Request, *supra* note 105.

[150] MEMX did not explain how MEMX arrived at the $0.005 increment. However, MEMX also requested that orders be permitted to execute at the midpoint of the NBBO.

[151] MEMX, in conjunction with its request for relief pursuant to rule 612(c) to reduce the minimum increment for tick-constrained stocks to $0.005, also requested relief pursuant rule 610(c) to limit access fees for tick-constrained stocks for any national securities exchange, national securities association, or other trading center. MEMX stated that the rule 610 access fee and the rule 612 minimum increment are ''intimately tied'' to each other. *See* MEMX Exemption Request, *supra* note 105 at 8.

[152] MEMX suggested using a calendar month calculation to be similar to the round lot calculation adopted under the MDI Rules. MEMX stated that using a similar schedule could reduce complexity. *See id.* at 3.

[153] *Id.* at 2.

[154] *Id.* at 1.

[155] *Id.* at 6.

[156] *Id.*

public interest and consistent with the protection of investors because ''the potential savings are likely to be substantial'' due to the amount of trading that occurs in tick-constrained stocks.[157]

MEMX addressed the factors that the Commission identified in the Regulation NMS Adopting Release for consideration of exemptions under rule 612(c). In the Regulation NMS Adopting Release,[158] the Commission stated that the factors it would consider and evaluate in the context of an exemption request under rule 612(c), amongst other things, would include: (1) if the security always trades with a penny spread and there is tremendous liquidity available on both sides of the market; [159] (2) whether the NMS stock was an ETF or other derivative that could be readily converted into its underlying securities or vice versa, in which case the true value of the security is derived from its underlying components and might be a sub-penny increment; (3) if there is a large volume of sub-penny executions in that security due to price improvement; and (4) if the security was low priced. Specifically, MEMX stated that ''(1) almost one thousand NMS stocks accounting for nearly half of all volume and about a quarter of all trades and notional value traded on a daily basis are tick constrained, meaning that they consistently trade with a penny increment; (2) such tick constrained NMS stocks trade with 'tremendous' liquidity at the NBBO as quoting activity is forced to cluster at the minimum increment instead of more aggressive prices that would offer improved economics to investors; (3) tick constraints occur frequently and are most impactful in (A) low-priced NMS stocks where a one cent spread is more economically significant in relation [to] the price of the security; and (B) ETPs whose prices can be appropriately derived from their underlying constituents.'' [160]

Further, MEMX stated that the objectives underlying rule 612 would not be jeopardized if the exemption was granted and the minimum pricing increment was reduced. Specifically, MEMX stated that because market participants are unable to improve displayed prices for tick-constrained stocks, the previously articulated policy concern of stepping ahead of displayed orders by ''economically insignificant amounts'' was not relevant. MEMX stated that reducing the tick size would promote price competition for those stocks that are currently hindered by regulation.[161]

Citadel also recommended that ''[t]he Commission should reduce the minimum tick size to a half-penny for symbols trading above $1.00 per share that are tick constrained (*i.e.,* have a penny spread the overwhelming majority of the time).'' [162] Citadel stated that the rule 612 minimum pricing increment ''impedes the ability of exchanges to compete for order flow in symbols that are highly liquid and commonly trade inside the bid-offer spread of a penny.'' [163] Citadel continued that tick constraints lead to ''complexities and inefficiencies,'' including ''driving order flow into alternative venues, complex exchange pricing structures, and increased overall market fragmentation.'' [164] Citadel stated that a reduced tick size for tick-constrained stocks would allow exchanges to display more aggressive prices and improve on-exchange execution quality and exchange competitiveness.[165] Citadel also suggested, without elaborating, that allowing sub-penny quoting more broadly ''could raise other concerns.'' [166]

Finally, the CCMR recommended that the Commission revise rule 612 to allow $0.005 increments in stocks that always trade with a penny spread.[167] CCMR cited the analysis conducted by MEMX to support its recommendation. CCMR, however, stated that it did not recommend a $0.001 tick size. CCMR stated that a tick size that is too narrow can harm market quality. CCMR stated that a smaller tick size that is too narrow ''can cause ''flickering quotations,'' in which a stock quote rapidly switches back and forth between prices complicating broker-dealer routing decisions and hindering their ability to get the best prices for investors.'' [168] In addition, CCMR stated that smaller tick sizes could ''enable ''stepping ahead'' whereby a trader uses an economically insignificant quote to ''step ahead'' of an existing order, reducing the likelihood that orders posted by fundamental investors will be executed,'' which would create a disincentive for the public display of orders.[169]

More recently, Cboe proposed a framework to reduce the minimum tick size to $0.005 for tick-constrained stocks that demonstrate other objective criteria.[170] Specifically, Cboe would designate a security as tick-constrained and thus eligible for a $0.005 minimum pricing increment if a stock exhibits: (1) a high quote-size-to-trade-size ratio; and (2) a high average daily notional turnover.[171] According to Cboe, a high quote-size-to-trade-size ratio demonstrates that ''even though there is an abundance of liquidity, the current $0.01 tick constraint disincentivizes investors to cross the spread due to high costs, resulting in a lack of trade executions.'' [172] Further, a high average daily notional turnover would be an objective criterion ''because it focuses the tick-reduction effort on high turnover securities that would benefit from the ability to trade in finer increments.'' [173] For each criterion, Cboe would include stocks that fall within the top 75 percentile in the lower minimum pricing increment.[174] Using its criteria and parameters, Cboe identified 67 stocks that would be eligible for a reduction in the minimum pricing increment.[175]

Cboe's proposal would include a reevaluation every quarter or bi-annually for the criteria and parameters.[176] Cboe would also decouple the quoting increments from trading increments.[177] Cboe stated that decoupling the quoting and trading increments would allow retail auctions to increase trading competition in finer increments without impacting the broader market.[178] Finally, Cboe proposed a consideration of wider ticks to facilitate enhanced liquidity

[157] *Id.*

[158] *See* Regulation NMS Adopting Release, *supra* note 16, at 37554. MEMX did not analyze whether there is large volume of sub-penny executions due to price improvement. MEMX stated that executions in sub-penny increments ''are likely to be indicative of retail internalization as opposed to market participants seeking to trade within a tick-constrained spread.'' *See* MEMX Exemption Request, *supra* note 105, at 4.

[159] *See* Regulation NMS Adopting Release, *supra* note 16, at 37554 (quoting a commenter).

[160] MEMX Exemption Request, *supra* note 105, at 6 (footnotes omitted).

[161] *See id.* at 7.

[162] Citadel Report, *supra* note 100 at 4.

[163] *Id.*

[164] *Id.*

[165] *See id.*

[166] *Id.*

[167] *See* CCMR Report, *supra* note 100 at 10.

[168] *Id.*

[169] *Id.*

[170] *See* Cboe Proposal, *supra* note 104, at 9.

[171] *See id.*

[172] *Id.* at 4.

[173] *Id.* Cboe further stated that thinly-traded securities, which would have a low notional turnover, should not be the focus of reducing minimum pricing increments.

[174] *See id.* at 6.

[175] *See id.* at 7.

[176] *See id.*

[177] *See id.*

[178] *See id.* (Cboe also proposed to accelerate the addition of odd-lot orders to the exclusive SIPs and to modernize rule 604 to increase the threshold to display block orders from 10,000 shares and $200,000 to 50,000 shares and $500,000).

aggregation of securities that trade with wider spreads.[179]

2. Variable Tick Sizes

In December 2019, Nasdaq submitted a petition for rulemaking to request that the Commission amend rule 612 to replace the current ''one-size-fits all'' tick regime with an ''intelligent tick regime'' that would utilize multiple tick sizes based on certain measurable criteria of NMS stocks.[180] Under the Nasdaq proposal: (1) stocks would trade in one of six increments ($0.005; $0.01; $0.02; $0.05; $0.10; and $0.25); (2) stocks would be categorized based upon their duration weighted average quoted spread over the measurement period; (3) stocks would be assigned the next smallest increment by quoted spread (*e.g.,* a stock with average spread of $0.12 would be in the $0.10 increment category); and (4) listing exchanges would calculate and calibrate quoted spreads, determine applicable increments, and publish stock lists. Nasdaq stated that an intelligent tick regime ''would improve markets and benefit all key stakeholders—investors, public companies, and exchange members alike.'' [181] Nasdaq stated that it is sub-optimal to apply the $0.01 increment equally ''regardless of market capitalization, volume, or share price.'' [182] Nasdaq stated that currently, under rule 612, ''a $2 stock'' quotes with the same minimum pricing increment ''as a $2,000 stock.'' [183]

According to Nasdaq, its proposal would address tick-related issues for: (1) low-priced tick-constrained securities; and (2) high-priced securities that trade with significantly wider spreads. Nasdaq stated that ''if the tick is too wide (tick constrained) or too small (stocks trading in multiple tick increments), the mismatch creates inefficiency that increases the companies' cost of capital . . . and hurts listed companies and investor returns. . . .'' [184] Specifically, Nasdaq stated that tick-constrained stocks tend to have lower prices and that ''tick-constraints create long quotation queues, [slow] fulfillment . . . [create inefficiencies] and . . . [diminish] price discovery. . . .'',[185] which drives trading ''to inverted taker-maker markets . . . where larger, lower priced, more liquid stocks tend to trade heavily.'' [186] Nasdaq stated that reducing the minimum pricing increment for tick-constrained stocks ''would reduce bid-ask spreads, [save] investors money, and make trading more efficient.'' [187]

Conversely, Nasdaq stated that high-priced stocks that trade with wider spreads ''increase[ ] investor costs, usage of odd-lots, flickering quotations, non-displayed trading that doesn't support price discovery, and price instability.'' [188] For such high-priced stocks, Nasdaq also states that ''outbidding becomes so inexpensive that time priority becomes essentially non-existent'' and ''[destroys] the reward and incentive to post passive liquidity and diminishing price discovery.'' [189]

F. Proposal To Amend Rule 612

The Commission believes that based on current market conditions it is appropriate to update and modernize the rule 612 minimum pricing increment for quotes and orders in NMS stocks priced equal to, or greater than, $1.00 per share. The proposed amendments to rule 612 would also help to ensure, among other things, the ''equal regulation of all markets for qualified securities and all exchange members, brokers, and dealers effecting transactions in such securities.'' [190] Moreover, the proposed amendments to rule 612 also would facilitate fair competition and equal regulation that would help market forces to determine the prices of NMS stocks.[191]

In the Regulation NMS Adopting Release, the Commission acknowledged the possibility that the balance of costs and benefits of sub-penny quoting and trading could shift as the markets evolved. The Commission believes such a shift has occurred and the benefits of quoting and trading in sub-pennies more broadly and consistently across the national market system would be consistent with the goals of section 11A of the Exchange Act and appropriate in today's market structure. Specifically, when rule 612 was adopted the Commission expressed concerns related to ''stepping ahead'' and quote flickering. The Commission believes that in today's market the concerns related to these issues have diminished or have been mitigated. For instance, in 2005 there was concern that quoting in sub-penny increments would allow orders to step ahead of displayed orders by economically insignificant amounts. However, data demonstrates that in today's market a significant percentage of executions occur in sub-penny increments as a result of midpoint executions and sub-penny price improvement provided by OTC market makers who internalize retail orders or RLPs on exchanges.[192] For many stocks, including those that are tick-constrained, a sub-penny execution is no longer economically insignificant. A majority of the trading volume for NMS stocks is tick-constrained, which indicates that the one cent minimum pricing increment is too large for such stocks, that a smaller sub-penny increment would be an economically meaningful increment for such stocks to be able to quote and trade, and that the current minimum pricing increment is constraining the ability of market participants to trade consistent with the principles of supply and demand. Further, the increased speed of quoting and trading has alleviated many of the concerns from 2005, as many market participants are now able to react to quote changes in microseconds.

As discussed in section V.D.1, the Commission estimates that the proposal to amend rule 612 would reduce the minimum pricing increment to $0.005 or less for 81.9% of the share volume, which represents approximately 60.2% of dollar volume that trades with a spread of approximately $0.04 or less.[193] These stocks generally have lower prices and consistent liquidity at the top of the book for both bids and offers. As a result of these characteristics, sub-penny increments, particularly in relation to the stock price, will generally be economically significant.[194] The Commission believes that because liquidity is consistently on both sides of the market for most tick and near tick-constrained securities, a smaller minimum pricing increment should be economically significant and allow market forces to better determine the appropriate price increment and depth for such stocks.

When rule 612 was adopted, the Commission was concerned about the potential for quotes to flicker if the quoting increment was too small. The Commission believes that for tick-constrained and near tick-constrained stocks, the proposed minimum pricing increments are not ''too small,'' rather,

[179] *Id.* at 9.

[180] *See* Nasdaq Intelligent Ticks, A Blueprint for a Better Tomorrow (''Nasdaq Intelligent Tick''), *available at https://www.nasdaq.com/docs/2019/12/16/Intelligent-Ticks.pdf.*

[181] *Id.* at 4.

[182] *Id.* at 4.

[183] *Id.* at 4.

[184] *Id.* at 15.

[185] *Id.* at 6.

[186] *Id.* at 6–7.

[187] *Id.* at 4.

[188] *Id.* at 4.

[189] *Id.* at 4. *See also* Cboe Proposal, *supra* note 104.

[190] 15 U.S.C. 78k–1(c)(1)(F).

[191] *See* Regulation NMS Proposing Release, *supra* note 49.

[192] *See infra* section V.C.1.

[193] *See infra* section V.D.1, Table 8.

[194] *See also* MEMX Exemption Request, *supra* note 105 at 7.

the current quoting and trading of these stocks suggest that the current minimum pricing increment is too large. Advancements in technology since 2005 should reduce flickering quotes concerns.[195] Specifically, the systems currently used in the market by exchanges and other market participants can accommodate many levels of data with extreme low latency [196] and should be able to readily adjust to any potential increase of system traffic that could result from price movements at a smaller minimum pricing increment.[197]

In the Regulation NMS Adopting Release, the Commission identified several factors that it would consider in the context of a request for an exemption from the minimum pricing increments required under the rule.[198] Specifically, the Commission said it would evaluate the following factors: (i) if an NMS stock was consistently trading with a penny spread with significant liquidity available on both sides of the market; [199] (ii) if the NMS stock is an ETF or other derivative that can be readily converted into its underlying securities or vice versa, in which case the true value of the security as derived from its underlying components might be at a sub-penny increment; [200] (iii) if a large volume of sub-penny executions in an NMS stock occurs due to price improvement; and (iv) if the NMS stocks are low-priced. Currently, there is evidence that: (1) a significant percentage of the total volume of NMS stocks is consistently tick-constrained with liquidity on both sides of the market,[201] (2) the majority of tick-constrained stocks trade at $30 or less,[202] and (3) a large volume of sub-penny executions occur in the market.[203] The Commission believes that rule 612 should be updated based on current market conditions.

The Commission proposes amendments to rule 612 to: (1) introduce a variable minimum pricing increment structure for quotes and orders in NMS stocks priced at, or greater than, $1.00 per share; and (2) require executions to occur in the minimum pricing increment, both on-exchange and OTC, subject to certain exceptions. The Commission preliminarily believes the proposed amendments to rule 612 would promote: (1) fair and orderly markets and economically efficient executions, particularly for tick-constrained NMS stocks and retail order flow; and (2) fair competition and equal regulation between OTC market makers, exchanges, and ATSs that compete for retail liquidity by requiring that NMS stocks trade with the same minimum pricing increment regardless of venue (*i.e.,* on or off-exchange). The Commission also believes that amended rule 612 would promote price discovery and price competition, particularly for tick-constrained stocks and retail order flow, by permitting the quoting and trading of certain NMS stocks in finer increments that would vary based on objective criteria but must be uniform across trading venues. The Commission believes this proposal would result in pricing that is more in accordance with the principles of supply and demand.[204]

1. Minimum Pricing Increments

Currently, rules 612(a) and (b) are structured in a parallel manner in that they both contain requirements for national securities exchanges, national securities associations, ATSs, vendors, brokers and dealers when displaying, ranking and accepting quotations, orders and indications of interest. Each paragraph establishes the minimum pricing increment based on the price of the quote, order, or indication of interest. Proposed rule 612(b), similar to current rules 612(a) and (b), would set forth when and how the minimum pricing increment requirements would be applicable to specific market participants. However, unlike current rules 612(a) and (b), proposed rule 612(b) would make the minimum pricing increment applicable to the quoting and trading of all NMS stocks. Specifically, proposed rule 612(b) would state that ''[n]o national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, accept from any person, or execute a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than the applicable increment required by paragraph (c) or (d).'' As discussed further below, proposed rule 612(c) would add the proposed variable minimum pricing increments for quotations, orders and indications of interest in NMS stocks priced equal to, or greater than, $1.00 per share and proposed rule 612(d) would contain the minimum pricing increment for quotations, orders and indications of interest in NMS stocks priced less than $1.00 per share.

2. Quotations and Orders in NMS Stocks Priced at $1.00 or More

The Commission proposes to amend rule 612 to introduce a variable minimum pricing increment model for quotations and orders in NMS stocks that are priced equal to, or greater than, $1.00 per share. The Commission preliminarily believes that a variable

[195] In the Regulation NMS Re-Proposing Release, the Commission described ''flickering'' quotes as quotes that flashed for a short period of time solely to earn market data revenues, but were not truly accessible and therefore did not add any value to the consolidated quote stream. *See* Regulation NMS Re-Proposing Release, *supra,* note 16. Since 2004, market quotation and trading systems have improved along with technological advances. Today, low latency systems and ultrafast communication protocols allow market participants to access quotes and execute trades in microseconds. Therefore, the ''flickering'' issue discussed in 2004 is largely no longer relevant today.

[196] For example, in the second quarter of 2011, the average peak message per second for Tapes A and B as reported by the CTA/CQ Plan was 339,855 and for Tape C as reported by the UTP Plan was 97,370. In the second quarter of 2022, the average peak message per second for Tapes A and B was 1,015,000 and for Tape C was 408,300. In the second quarter of 2011, the average latency reported was less than one millisecond for Tapes A and B and 5.1 milliseconds for Tape C. In the second quarter of 2022, the average latency reported for Tape A and B was 18 microseconds and for Tape C it was 13.6 microseconds. *See https://www.ctaplan.com/publicdocs/CTA_Operating_Metrics_Q22011.pdf*; *https://www.ctaplan.com/publicdocs/ctaplan/CTAPLAN_Processor_Metrics_2Q2022.pdf* and *https://www.utpplan.com/DOC/UTP_website_Statistics_Q2-2022-June.pdf. See also* MDI Adopting Release, *supra* note 5, at 18638.

[197] For example, market participants that collect options market data from the Options Price Reporting Authority (''OPRA'') can readily handle message traffic that exceeds the messages disseminated in the national market system for NMS stocks. In the second quarter of 2022, OPRA reported 36.4 million messages per second. *See* OPRA Key Operating Metrics of U.S. Options Securities Information Processor, *available at https://www.opraplan.com/document-library. See also* NYSE Tick Harmonization Paper, *supra* note 126 at 11 (stating that OPRA handles many times more messages than the equities market).

[198] *See* Regulation NMS Adopting Release, *supra* note 16, at 37554.

[199] *See id.*

[200] Rule 612 applies to NMS stocks, including ETFs. In the Regulation NMS Adopting Release, the Commission considered whether sub-penny quoting of ETFs, which are derivatively priced, raised the same concerns as other NMS stocks. The Commission stated that a basis may exist to exempt actively traded ETFs from the rule. *See* Regulation NMS Adopting Release, *supra* note 16, at 37554. MEMX stated that its data shows that ''more than half of equity ETPs and the vast majority of fixed income, commodity, and other ETPs trading at least 100 million notional each day are tick-constrained.'' MEMX Exemption Request, *supra* note 105 at 6. Further, in the Joint Petition, the petitioners requested an exemption from rule 612 to allow sub-penny quoting for one ETF, the QQQQ. *See* Joint Petition, *supra* note 78 at 1.

[201] *See* MEMX stated that, according to its research, liquidity at the quote for tick-constrained stocks is five to eight times higher for corporate securities and nine to 59 times higher for ETPs than securities trading with a spread between $0.02 and $0.03. *See* MEMX Report, *supra* note 105, at 3. *See also* MEMX Exemption Request, *supra* note 105 at 4. *See also* NYSE White Paper, *supra* note 119 at 10.

[202] MEMX provided data that approximately 80% of tick-constrained stocks traded at $30 per share or less. *See* MEMX Report, *supra* note 105 at 10.

[203] *See supra* note 192 and accompanying text.

[204] *See infra* sections V.C.1 and V.D.1.

minimum pricing increment model would allow minimum pricing increments to be better suited to the trading characteristics of the particular stocks. Since rule 612 was adopted, several commenters have suggested that the single minimum pricing increment may not be appropriate for all stocks.[205]

The Commission proposes to vary the minimum pricing increment for quotations, orders and indications of interest in NMS stocks priced equal to, or greater than, $1.00 per share based on a Time Weighted Average Quoted Spread,[206] which would be calculated by the primary listing exchange for the particular NMS stock on a quarterly basis during a month long Evaluation Period.[207] Under this proposal, the four potential minimum pricing increments for a particular NMS stock would be:

(1) $0.001, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was equal to, or less than, $0.008;

(2) $0.002, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.008 but less than, or equal to, $0.016;

(3) $0.005, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.016 but less than, or equal to, $0.04; and

(4) $0.01, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.04.

Under this proposal, because the applicable minimum pricing increment for an NMS stock for a calendar quarter would be established based on the stock's Time Weighted Average Quoted Spread during the Evaluation Period, an NMS stock could have a different minimum pricing increment every quarter of the calendar year. The Commission believes that the proposal that the applicable minimum pricing increment for a particular NMS stock be effective for a three month period is appropriate in order to balance the need to update the minimum pricing increment at regular intervals such that the increment can reflect market conditions without updating too frequently as to introduce undue complexity to the market system.[208]

Preliminarily, the Commission believes that the proposed variable minimum pricing increments would address the issues related to tick-constrained stocks and help to prevent other stocks that trade with relatively small spreads from becoming tick-constrained. The Commission also believes that the proposal would reduce transaction costs for many NMS stocks without harming the execution quality or dispersing the liquidity of stocks that are not tick-constrained and trade with wider spreads. As discussed below, assigning a small minimum pricing increment to a stock that has a wider spread can be harmful to displayed liquidity as liquidity would be spread across more price increments.[209] Minimum pricing increments that are too small can also add to complexity in trading and increase the risk of stepping ahead. The Commission believes that proposing to vary the minimum pricing increments based on the Time Weighted Average Quoted Spread represents a balancing of pricing, liquidity, complexity, and price improvement opportunities.[210]

This proposal to amend rule 612 to implement variable minimum pricing increments would reduce the minimum pricing increment to $0.001 for all NMS stocks that are priced equal to, or greater than, $1.00 per share if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was equal to, or less than, $0.008.[211] Further, proposed rule 612 would reduce the minimum pricing increment to $0.002 for all NMS stocks that are priced equal to, or greater than, $1.00 per share if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was equal to, or less than, $0.016. Proposed rule 612 is designed to directly address the concerns that the current minimum pricing increment of $0.01 creates an artificial price constraint on certain NMS stocks and prevents such stocks from reaching a natural price that would be within a penny spread. The Commission estimates that tick-constrained stocks make up over half (approximately 56.1%) of the market's share volume, which is estimated to be the equivalent of 23.2% of dollar volume.[212] While the Commission cannot estimate the number of these stocks that would have a Time Weighted Average Quoted Spread of $0.008 or less due to the $0.01 minimum pricing increment, the Commission estimates that 1,707 stocks, which make up an estimated 64% of share volume, and represent 37.9% of estimated dollar volume, have average spreads that are less than $0.016.[213] The Commission believes that reducing the minimum pricing increment to $0.001 or $0.002 for such stocks would allow a more natural price discovery process to occur and preserve meaningful price discovery opportunities between the spread. In addition, the Commission believes that investor trading costs due to spreads would be reduced as a result of the smaller increments and spreads that would be permitted for stocks that are currently tick-constrained.

Currently, approximately 2,648 stocks, which is an estimated 17.9% of share volume, and an estimated 22.3% of dollar volume, trade with a spread that is greater than $0.016 and less than or equal to $0.04.[214] This proposal would also reduce the minimum pricing increment to $.005 for NMS stocks that trade with a Time Weighted Average Quoted Spread that is greater than $0.016 and less than or equal to $0.04.[215] The Commission believes that the proposal would provide pricing flexibility for these stocks that trade with smaller spreads and prevent such stocks from becoming tick-constrained in the future. The Commission also believes that, by reducing the minimum pricing increments for these stocks that trade with smaller spreads, investor trading costs would be reduced as a result of smaller spreads while price

[205] *See supra* section II.D.

[206] Proposed rule 612(a)(i) would define ''Time Weighted Average Quoted Spread'' as ''the average dollar value difference between the NBB and NBO during regular trading hours where each instance of a unique NBB and NBO is weighted by the length of time that the quote prevailed as the NBB or NBO.'' *See infra* section II.F.2.a.i.

[207] Proposed rule 612(a)(ii) would define ''Evaluation Period'' as the last month of a calendar quarter (Mar. in the first quarter, June in the second quarter, Sept. in the third quarter and Dec. in the fourth quarter) of a calendar year during which the primary listing exchange shall measure the Time Weighted Average Quoted Spread of an NMS stock that is priced equal to or greater than $1.00 per share to determine the minimum pricing increment to be in effect for an NMS stock for the next calendar quarter, as set forth by paragraph (c).'' *See infra* section II.F.2.a.ii.

[208] MEMX suggested in its proposal that NMS stocks be evaluated on a monthly basis to determine a stock's average quoted spread. MEMX stated that a monthly evaluation would minimize complexity as it would be similar to the schedule to determine an NMS stock's round lot. *See* MEMX Exemption Request, *supra* note 105, at 3. The Commission believes that a quarterly evaluation and assignment is appropriate to reflect the current trading characteristics of an NMS stock. Further, the Commission believes that a monthly shift in the pricing of an NMS stock would be more complex and disruptive to the markets than a monthly shift in the size of a round lot. The Commission requests comment on whether a quarterly basis is the appropriate timeframe. *See infra* section II.G.

[209] *See infra* section V.C.1.

[210] *See infra* sections V.C.1 and V.D.1.

[211] Initially, no NMS stock would qualify for the $0.001 minimum pricing increment due to the current rule 612 one cent minimum pricing increment restricting the minimum possible tick size. Further, as discussed below, the Commission proposes a staggered implementation of the new minimum pricing increments. *See infra* section II.G.

[212] *See infra* section V.C.1.

[213] *See* Table 8 *infra* section V.D.1.

[214] *See id.*

[215] *See infra* section V.D.1.

improvement opportunities would be preserved.

The Commission believes that the execution quality for stocks with a Time Weighted Average Quoted Spread of equal to, or less than, $0.04 would not be harmed under the proposal (*i.e.,* NMS stocks that would quote and trade with a minimum pricing increment of $0.001, $0.002 or $0.005).[216] Further, the Commission believes that the liquidity at or near the NBBO for such stocks would not disperse or thin out across price levels because, as discussed below, the proposal is designed such that stocks priced equal to, or greater than, $1.00 per share with a Time Weighted Average Quoted Spread of less than $0.04 would generally have at least 3 to 4 price points but not have more than eight price points inside the quoted spread.[217]

As further discussed in section V.D.1 below, the Commission believes that a certain minimum number of ticks intra-spread would be beneficial to market quality in the trading of NMS stocks. The proposal would increase the number of increments between the spread for those NMS stocks that are tick-constrained. Initially, these stocks would transition from having, on average, one increment between the spread to either having 1 to 8 increments or 4 to 5 increments between the spread, depending on whether the stock would be assigned to a $0.001 or $0.002 minimum pricing increment. Thereafter, if, for instance, the Time Weighted Average Quoted Spread for one of these NMS stocks widens during an Evaluation Period, such stock would be assigned to a larger minimum pricing increment for the next quarter. Conversely, if the Time Weighted Average Quoted Spread for one of these NMS stock narrows during an Evaluation Period, such stock would be assigned to a smaller minimum pricing increment for the next quarter, if available. The proposal is designed to maintain a certain number of increments between the spread for efficient trading, without creating too many increments between the spread which could impact execution priority for an infinitesimally amount or reduce market depth. Accordingly, NMS stocks would be moved between the proposed minimum pricing increments based on their quoting characteristics. In sum, the Commission believes that the proposal will allow NMS stocks that have relatively small average quoted spreads to be priced with minimum pricing increments that are more reflective of the principles of supply and demand and mitigate the dispersion of liquidity across price points.

Under the proposal, NMS stocks that are priced equal to, or greater than, $1.00 per share that have a Time Weighted Average Quoted Spread greater than $0.04 would continue to have a minimum pricing increment of $0.01. Based on current market conditions, the Commission estimates that approximately 7,792 stocks, which is estimated to be 18.1% of share volume, and estimated to be 39.8% of dollar volume, trade with a spread that is greater than $0.04.[218] The Commission believes that the proposal would have little or no impact on these NMS stocks that would continue to quote at the $0.01 minimum pricing increment.[219] The Commission proposes to retain the current minimum pricing increment for stocks that fall into this category because these stocks are neither tick-constrained nor near constrained stocks. Stated another way, stocks that have a Time Weighted Average Quoted Spread of greater than $0.04 are able to be competitively priced based on market forces and the principles of supply and demand so would continue to have a $0.01 minimum pricing increment. Further, as described above, if these stocks were to become tick-constrained, or experience a reduction in its average quoted spread, the minimum pricing increment would be adjusted downward following the next Evaluation Period.

Although certain market participants recommend that the minimum pricing increment be reduced to $0.005 only for tick-constrained stocks,[220] the Commission believes that many stocks that currently trade with an average quoted spread of $0.011 could continue to be tick-constrained if the minimum pricing increment for such stocks were only reduced to $0.005. Accordingly, the Commission is proposing to reduce the minimum pricing increment for tick-constrained stocks as well as stocks that are near tick-constrained or otherwise have average quoted spreads less than $0.04 to either $0.001, $0.002 or $0.005, which would likely reduce the minimum quoting increment for more than 81.9% of the trading volume for NMS stocks. Overall, the Commission expects that the impact on liquidity and trade execution would be positive because tick constraints prevent market participants from quoting the prices that reflect supply and demand, and the reduction in the minimum pricing increments would lead to narrower spreads and better market quality. The Commission determined to propose the reduced minimum pricing increments of $0.001, $0.002, and $0.005, in part, because many investors will have familiarity with, or an awareness of, trades that occur in these specific increments because of how trading is conducted today. The Commission believes this because today, two of the most common increments for the price improvement of stocks that trade OTC are $0.001 and $0.002, and price improvement on exchanges and ATSs often occurs through midpoint executions in an increment of $0.005. The Commission also selected these particular pricing increments because, as described above, the proposed amendments to rule 612 are designed to: (1) correlate the Time Weighted Average Quoted Spread to the minimum pricing increments, which limits the number of potential price points within the spread, which, in turn, should mitigate the loss of liquidity that can occur when the minimum tick size is reduced and the number of pricing increments increases;[221] and (2) preserve meaningful price improvement for the majority of NMS stocks that would trade at minimum pricing increments that are $0.005 or less.

For stocks priced equal to, or greater than, $1.00 per share with Time Weighted Average Quoted Spreads equal to or less than $0.04, the Commission believes the reduction in the minimum pricing increment would be largely beneficial to the trading environment. Specifically, the Commission believes that reducing the minimum pricing increment would remove tick-constraints for a large percentage of the total trading volume, and allow market participants to quote at the prices that equate supply and demand, which in turn would lead to narrower spreads and better market quality.

The Commission also believes the proposal would increase price discovery for stocks that are tick-constrained, or near-tick-constrained, and reduce transaction costs for investors without

[216] *See infra* section V.D.1

[217] For example, if the bid for a stock is $10.00, and the stock has an average quoted spread of $0.010, it would be assigned a $0.002 minimum pricing increment and would have four price levels within the average quoted spread (*i.e.,* 10.002, 10.004, 10.006, and 10.008). *See also infra* section V.D.1. However, if that same stock trades with a spread that is wider than the average quoted spread used to determine the minimum pricing increment there would be more than four price levels. For instance, if the bid for the stock was $10.00 and the ask was $10.02 then there would be nine price levels with the quoted spread (*i.e.,* 10.002, 10.004, 10.006, 10.008, 10.01, 10.012, 10.014, 10.016. 10.018).

[218] *See infra* section V.D.1, Table 8.

[219] *See infra* section V.D.1.

[220] *See supra* section II.E.1.

[221] *Id.*

negatively impacting execution quality for stocks that are not tick-constrained. The Commission's proposal differs from the tiered approach for minimum pricing increments suggested by market participants as described in section II.E.2. The Commission's proposed variable minimum pricing increments are designed to offset the potential dilution of liquidity and depth at the top of the book while providing market participants with a range of price points (generally four to eight) between the quoted spread to provide price improvement opportunities to investor orders.

With regard to changing the minimum pricing increment, the Commission proposes to target tick-constrained stocks, and those stocks that trade with relatively smaller spreads that could become tick-constrained by reducing and varying the minimum tick size. While some market participants have suggested that the Commission impose larger minimum pricing increments for certain NMS stocks,[222] the proposed rule would not change or increase the minimum pricing increment for any NMS Stocks that trade with a Time Weighted Average Quoted Spread greater than $0.04, or separately for higher-priced stocks. The Commission believes that the current $0.01 increment for NMS stocks that trade with a Time Weighted Average Quoted Spread greater than $0.04, regardless of price, remains sufficient based on their trading characteristics.[223] Commission review of academic literature suggests that there are not consistent results as to how a larger tick size would affect market quality for stocks with wider spreads.[224] Further, the Commission believes that increasing the tick size, for example for higher priced securities, which tend to trade with wider spreads, could result in the inadvertent and unintended constraining of the pricing of such stocks.[225] The Commission does not expect the trading environment for stocks with prices lower than $1.00 per share, or Time Weighted Average Quoted Spreads greater than $0.04, to be significantly impacted because under the proposal the minimum pricing increment would not change for such stocks.

a. Proposed Definitions

Proposed rule 612(a) would define the terms ''Time Weighted Average Quoted Spread'' and ''Evaluation Period.''

i. Time Weighted Average Quoted Spread

Proposed rule 612(a)(i) would define the term ''Time Weighted Average Quoted Spread'' as ''the average dollar value difference between the NBB and NBO during regular trading hours [226] where each instance of a unique NBB and NBO is weighted by the length of time that the quote prevailed as the NBB or NBO.'' The Commission proposes to use Time Weighted Average Quoted Spread as the measure for determining the minimum pricing increment because it would directly address the issue of tick-constrained stocks.[227] The Commission believes that this metric represents what the quoted spread typically would be at any point in time during the trading day for an NMS Stock. It also represents the expected costs of trading that market participants would have experienced throughout the day. In addition, the Commission believes that the primary listing exchanges should have experience using time weighted average quoted spread as a metric, and that calculating the minimum pricing increments for NMS stocks on a quarterly basis balances the need for regular updates of the tick size for NMS Stock based on the Time Weighted Average Quoted Spread with the need to avoid undue complexity related to more frequent updates.

ii. Evaluation Period

Proposed rule 612(a)(ii) would define the term Evaluation Period as ''the last month of a calendar quarter (March in the first quarter, June in the second quarter, September in the third quarter and December in the fourth quarter) of a calendar year during which the primary listing exchange shall measure the Time Weighted Average Quoted Spread of an NMS stock that is priced equal to, or greater than, $1.00 per share to determine the minimum pricing increment to be in effect for an NMS stock for the next calendar quarter, as set forth by paragraph (c).'' The Commission proposes that the Evaluation Period be one month in order to balance the need to select a period that is: (1) long enough such that a few extreme or aberrant days of trading activity during the Evaluation Period would not unduly effect the Time Weighted Average Quoted Spread calculation; and (2) short enough such that the calculation of the Time Weighted Average Quoted Spread would likely be representative of current market conditions.

As proposed, the applicable minimum pricing increment for the quoting and trading of the particular NMS stock, based on the Time Weighted Average Quoted Spread as prescribed by amended rule 612(c), would then be established for the following quarter on the first business day following the completion of the Evaluation Period.[228] Further, the Commission proposes that the calculation to determine the particular tick for an NMS stock be done on a quarterly basis in order to balance the need for regular updates of the tick size while not introducing undue complexity to the market system by updating the tick size too frequently. MEMX suggested that the minimum pricing increment be evaluated on a monthly basis.[229] The MEMX Exemption Request, however, would only develop one additional pricing increment for NMS stocks that would become tick-constrained. The Commission's proposal would be more complex and would require the potential reclassification to four minimum pricing increments.

iii. Regulatory Data

The Commission proposes to amend the definition of regulatory data in Rule 600(b)(78) of Regulation NMS to require the primary listing exchange for each NMS stock to calculate and provide to competing consolidators, self-aggregators, and the exclusive SIPs an

[222] *See* Nasdaq Intelligent Tick Proposal, *supra* note 180 at 8.

[223] *See also infra* note 548 and accompanying text. Further, minimum pricing increments that are too large or static could frustrate the natural pricing mechanism of quotes and orders. *See also supra* note 85. The Commission requests comment on whether larger tick sizes should be imposed on certain NMS stocks. *See infra* section II.H.

[224] *Id.*

[225] *See supra* note 223. *See also supra* note 85 and accompanying text.

[226] The Commission proposes to use quotations only during regular trading hours because after hours trading is generally less liquid and more volatile.

[227] Market participants have suggested similar measurements for determining minimum pricing increments. For example, MEMX suggested looking at the average quoted spread of an NMS stock to determine if such stock should be permitted to have a smaller minimum pricing increment. *See* MEMX Exemption Request, *supra* note 105 at 3. Nasdaq suggested categorizing stocks to a minimum pricing increment based a duration weighted average quoted spread over a measurement period. *See* Nasdaq Intelligent Tick, *supra* note 180 at 8. The Commission preliminarily believes that the proposed Time Weighted Average Quoted Spread would be more precise than the suggestions from MEMX and Nasdaq, and the proposed definition would be sufficiently specific to determine a stock's average quoted spread.

[228] As proposed, minimum pricing increments would be implemented on the first business day after an Evaluation Period. The Commission requests comment on whether this would be a sufficient amount of time for the market and market participants to implement new minimum pricing increments for any NMS stock that may experience a change in its Time Weighted Average Quoted Spread. *See* section II.H.

[229] *See* MEMX Exemption Request, *supra* note 105. *See also supra* section II.E.1.

indicator of the applicable minimum pricing increment required under the proposed amendments to rule 612. The Commission believes that it is appropriate and important that the primary listing exchanges play a central role in the administration of the proposed amendments to rule 612 by calculating the Time Weighted Average Quoted Spread for each NMS stock and to provide this information to the exclusive SIPs and competing consolidators for dissemination. The primary listing exchanges are well-situated to perform these functions as they have direct and immediate access to pricing information about their own listed securities, and already perform similar calculations—and provide the results to the exclusive SIPs—today.[230] In addition, under the MDI rules, the primary listing exchanges would be required to calculate and provide several regulatory data elements to competing consolidators and self-aggregators.[231] For example, the primary listing exchange will calculate the average monthly closing price of each of its NMS stocks, assign each stock to a round lot size corresponding to that average monthly closing price, and include an indicator of the applicable round lot size in the data it makes available to competing consolidators and self-aggregators.[232]

The proposed indicator would thus be included in NMS data[233] disseminated by the exclusive SIPs and competing consolidators, which should help to ensure the wide availability of information about the applicable minimum pricing increment for each NMS stock, which in turn will enable market participants to trade in a more informed manner. Further, the Commission believes that information about the relevant minimum pricing increment should be provided to the exclusive SIPs, competing consolidators, and self-aggregators because the minimum pricing increment might change from quarter to quarter.

3. Quotations and Orders in NMS Stocks Priced Less Than $1.00

Currently, the minimum pricing increment for quotations and orders in NMS stocks that are priced less than $1.00 per share is $0.0001. When it adopted this increment, the Commission stated that the sub-penny increment would largely represent genuine trading interest for low-price stocks rather than attempts to unfairly step ahead of displayed orders and that the sub-penny increment represents a significant amount of the price of the quotation or order.[234] The Commission believes that this increment remains appropriate for these NMS stocks.

Due to the other proposed amendments to rule 612, the minimum pricing increment for quotations and orders in NMS stocks that are priced less than $1.00 per share would be set forth in proposed rule 612(d). Rule 612(d) as proposed to be amended would state that ''[e]xcept as provided in paragraph (e), the minimum increment for any bid or offer, order, or indication of interest for an NMS stock priced less than $1.00 per share shall be no smaller than $0.0001.'' Proposed rule 612(b) would make the minimum pricing increment set forth in proposed rule 612(d) applicable to the quoting and trading of NMS stocks priced less than $1.00 per share. The Commission believes, for the reasons discussed below, that the minimum pricing increment should be applied to trading as well as quoting.[235]

4. Minimum Pricing Increment for Trading

The Commission proposes that the variable minimum pricing increments of rule 612 as proposed to be amended would apply to all trading—on exchanges, ATSs, and OTC. This means that all quotes and orders, regardless of price, would be required to execute in the applicable minimum pricing increments set forth by proposed rule 612(c) or (d), subject to the specified exceptions set forth in proposed rule 612(e). Proposed amendments to rule 612(e) would provide exceptions for: (1) orders that execute, but are not explicitly priced at, the midpoint of the NBBO or the protected bid and protected offer (''PBBO'');[236] and (2) orders that execute at a price that was not based, directly or indirectly, on the quoted price of an NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made (*e.g.,* VWAP or TWAP trades).[237]

The Commission is concerned about the increase of orders that are executed OTC in price increments that exchanges and ATSs cannot practically provide,[238] and believes that harmonization of the minimum pricing increment for the quoting and trading across venues would promote competition and innovation, while preserving most meaningful price improvement opportunities.[239] The Commission believes that amending rule 612 to require executions to occur at the relevant minimum pricing increment, subject to the specified exceptions, would help to address the competitive disparity that occurs, in part, because certain OTC executions may occur more freely in sub-penny increments, while the opportunity for sub-penny executions on exchanges and ATSs are much more limited.[240]

Currently, much of the sub-penny trading that occurs OTC is a result of price improvement (*i.e.,* executions that occur between the spread). The most commonly offered sub-penny increments for price improvement are $0.0001, $0.001 and $0.002.[241] Under this proposal, price improvement of $0.0001 would no longer be available for NMS stocks that are priced equal to, or greater than, $1.00 per share, but trades would be able to occur in $0.001 and $0.002 for those stocks that are assigned to such increments.[242] Further, executions at even finer increments would still be permitted to occur at the midpoint.

The variable minimum pricing increments have also been designed to facilitate trading between the spread to accommodate price improvement opportunities.[243] The Commission believes that applying the minimum pricing increment to trading across all venues should promote equal regulation and fair competition among market participants such as exchanges, OTC

[230] *See* MDI Proposing Release, *supra* note 39, at 16762; MDI Adopting Release, *supra* note 5, at 18634–35.

[231] 17 CFR 242.600(b)(78); *see* MDI Proposing Release, *supra* note 39, at 16759–63; MDI Adopting Release, *supra* note 5, at 18633–35.

[232] *See* MDI Adopting Release, *supra* note 5, at 18633–35 *See also infra* section IV.B (discussing proposed amendments to the definition of ''regulatory data'' that would require the primary listing exchange to provide an indicator of the applicable round lot size to the exclusive SIPs).

[233] *See infra* note 324.

[234] *See* Regulation NMS Adopting Release, *supra* note 16, at 37555.

[235] *See infra* section V.C.1.b.

[236] *See* 17 CFR 242.600(b)(70) for a definition of PBBO.

[237] *See supra* note 19.

[238] *See supra* section II.D. *See also infra* section V.C.1.b and Table 3.

[239] *See infra* section V.D.2.

[240] In the European Union, minimum pricing increments are applied to quoting and trading. *See* Art. 49 of the Directive 2014/65/EU of the European Parliament and of the Council Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU and Art. 17a of the Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014.

[241] *See infra* section V.D.2.

[242] *See infra* section V.D.2.

[243] *See supra* note 217. *See also* section V.D.2.

market makers, and ATSs for retail order flow.[244]

Finally, the Commission believes that the proposed exceptions to the requirement that orders in NMS stocks be executed in the applicable minimum pricing increment would promote fair and orderly markets and economically efficient executions.[245] These proposed exceptions would codify current trading activity that is common and widespread under rule 612. Today, orders that are not explicitly priced in an impermissible sub-penny increment may execute at the midpoint of the NBBO/PBBO, even if the midpoint price would be an otherwise impermissible sub-penny quoting increment.[246] Similarly, orders that are not explicitly priced in an impermissible sub-penny increment, such as benchmark trades (*e.g.,* VWAP or TWAP trades) may execute in an otherwise impermissible quoting increment under amended rule 612.[247] Mid-point and benchmark orders are widely used and viewed by liquidity providers as important options for handling orders and implementing trading strategies that can reduce the market impact of their trades. In addition, mid-point liquidity provides price improvement opportunities for market participants on the other side of these trades.

G. Proposed Implementation Period

The Commission proposes to stagger the implementation of the variable minimum pricing increments for NMS Stocks that are priced equal to, or greater than $1.00 in order to facilitate an orderly transition for NMS stocks that would have minimum pricing increments that are less than $0.01. The implementation period would also provide for longer periods than the proposed quarterly time period between Evaluation Periods to allow the market and investors to become accustomed to the smaller increments.

Time period	Minimum pricing increment
First Implementation Period[a] ..... The first and second quarters of effectiveness ..	(1) NMS stocks with a Time Weighted Average Quoted Spread that is $0.04 or less: $0.005 increment, and (2) NMS stocks with a Time Weighted Average Quoted Spread greater than $0.04: $0.01. Minimum pricing increments would not apply to trading.
Second Implementation Period[b] ..... The third and fourth quarters of effectiveness ...	(1) NMS stocks with a Time Weighted Average Quoted Spread that is $0.016 or less: $0.002 minimum pricing increment, (2) NMS stocks with a Time Weighted Average Quoted Spread that is greater than $0.016 but less than, or equal to, $0.04: $0.005 minimum pricing increment, and (3) NMS stocks with a Time Weighted Average Quoted Spread that is greater than $0.04: $0.01 minimum pricing increment. Minimum pricing increments would not apply to trading.
Third Implementation Period[c] ..... The fifth quarter of effectiveness	Full implementation. All of the minimum pricing increments would be effective. Minimum pricing increments would apply to trading.

[a] The primary listing exchanges would calculate the Time Weighted Average Quoted Spreads for NMS stocks during the first Evaluation Period that occurs after the proposed rule's effectiveness. For example, if the proposed rule was effective in July, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads in Sept. and assign the minimum pricing increments for the fourth quarter of that year and the first quarter of the following year.

[b] For the second implementation period, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads during the month in the Evaluation Period that would fall during the second quarter of effectiveness. In the example above, the primary listing exchange would calculate the Time Weighted Average Quoted Spreads during Mar. and assign minimum pricing increments during the second and third quarters of that year.

[c] For the final implementation period, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads during the month in the Evaluation Period that would fall during the fourth quarter of effectiveness. In the example above, the primary listing exchange would calculate the Time Weighted Average Quoted Spread in Sept. and assign the minimum pricing increments for the fourth quarter of that year.

Specifically, for the first implementation period, upon effectiveness of any amendments to rule 612, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads for all NMS stocks for the first proposed Evaluation Period[248] and assign the relevant minimum pricing increments as required under proposed rule 600(b)(78). The minimum pricing increments calculated during the first Evaluation Period would be in effect for the following two quarters (*i.e.,* for six months). During the first two quarters of proposed rule 612's effectiveness, proposed rule 612 would be implemented as follows: (1) NMS stocks with a Time Weighted Average Quoted Spread of $0.04 or less would be assigned to the $0.005 increment for the first quarter of effectiveness, and (2) NMS stocks with a Time Weighted Average Quoted Spread greater than $0.04 would be assigned to remain in the $0.01 minimum pricing increment.[249] The minimum pricing increments that are less than $0.005 (*i.e.,* $0.002 and $0.001) would not be implemented during the first quarter of effectiveness.

For the second implementation period, at the end of the second quarter of effectiveness of any proposed amendments to rule 612, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads during the next Evaluation Period (*i.e.,* the month at the end of the second quarter of effectiveness) and assign the relevant proposed minimum pricing increment as required under proposed rule 600(b)(78). The minimum pricing increments calculated during the Evaluation Period would be in effect for the following two quarters (*i.e.,* for six months). During the third and fourth quarters of proposed rule 612's effectiveness: (1) NMS stocks with a Time Weighted Average Quoted Spread that is $0.016 or less would be assigned

[244] *See* 15 U.S.C. 78k–1 (a)(1)(C)(ii) and (c)(1)(F).

[245] *See* 15 U.S.C. 78k–1 (a)(1)(C)(i).

[246] *See supra* note 61.

[247] *Id.*

[248] The initial proposed Evaluation Period (Mar., June, Sept., or Dec., as applicable) would be the first full calendar month after the effectiveness of rule 612. For example, if the effectiveness would be on Feb. 14, then the initial proposed Evaluation Period would be Mar. If the effectiveness would be on Mar. 15, then the initial proposed Evaluation Period would be June.

[249] The proposed changes to rule 610 would become effective during the first stage of implementing proposed rule 612. However, the $0.0005 access fee cap would not be become relevant until the final stage of implementing proposed rule 612 when the $0.001 minimum pricing increment becomes effective. While proposed rule 610 has proposed variable access fee caps, the proposed access fee caps are based on the relevant minimum pricing increment.

to the proposed $0.002 minimum pricing increment, (2) NMS stocks with a Time Weighted Average Quoted Spread that is greater than $0.016 but less than, or equal to, $0.04 would be assigned to the proposed $0.005 minimum pricing increment, and (3) NMS stocks with a Time Weighted Average Quoted Spread of greater than $0.04 would be assigned to the proposed $0.01 minimum pricing increment. The $0.001 minimum pricing increment would not be implemented during the third and fourth quarters of effectiveness.

Finally, for the third implementation period, at the end of the fourth quarter of effectiveness of any proposed amendments to rule 612, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads during the next Evaluation Period (*i.e.,* the month at the end of the fourth quarter) and assign the relevant proposed minimum pricing increment as required under proposed rule 600(b)(78). During the fifth quarter of effectiveness of proposed rule 612, all of the variable minimum pricing increments would be effective. Accordingly, (1) NMS stocks with a Time Weighted Average Quoted Spread that is $0.008 or less would be assigned to the proposed $0.001 minimum pricing increment, (2) NMS stocks with a Time Weighted Average Quoted Spread that is greater than $0.008 but less than, or equal to, $0.016 would be assigned the proposed $0.002 minimum pricing increment, (3) NMS stocks with a Time Weighted Average Quoted Spread that is greater than $0.016 but less than, or equal to $0.04, would be assigned to the proposed $0.005 minimum pricing increment, and (4) NMS stocks with a Time Weighted Average Quoted Spread that is greater than $0.04 would be assigned to the proposed $0.01 minimum pricing increment.

The Commission proposes to implement the requirement to trade in the applicable minimum pricing increment during the fifth quarter of effectiveness of any proposed amendments to rule 612. Accordingly, during the first two implementation periods of effectiveness (*i.e.,* the first four quarters), as today, market participants would be permitted to trade in increments that differ from those that are required under rule 612 for accepting, ranking and displaying of quotes and orders.[250] The Commission believes that delaying the requirement that orders in NMS stock be executed in the minimum pricing increments until the fifth quarter of effectiveness would help to facilitate an orderly transition by allowing market participants additional time to adjust and comply with the requirement to quote and trade with the proposed minimum pricing increments set forth by the rule for a particular category of NMS stocks. As discussed in section II.F.1 above, the proposed variable minimum pricing increments have been developed so that there are increments at which market participants can trade between the spread and they are assigned based on the quoting characteristics of each NMS stock. Therefore, the Commission proposes to implement the trading requirement once all of the proposed minimum pricing increments have become effective.

Thereafter, at the end of the fifth quarter of effectiveness of proposed rule 612, the primary listing exchanges would calculate the Time Weighted Average Quoted Spreads during the next Evaluation Period and assign the relevant proposed minimum pricing increment as required under proposed rule 600(b)(78). All of the variable minimum pricing increments for quoting and trading would be effective on a going forward basis.

H. Request for Comment

The Commission requests comment on the proposed amendments to rule 612 and on other potential alternatives to the proposed minimum pricing increments.

1. Would the proposed variable minimum pricing increments for quotes and orders in NMS stocks priced equal to, or greater than, $1.00 per share address the concerns that have been raised in the market about tick-constrained stocks? If not, why not?

2. Are the proposed minimum pricing increments appropriate for NMS stocks? If not, why not, and what minimum pricing increments would be appropriate?

3. Should all NMS stocks have the same minimum pricing increment instead of the proposed variable minimum pricing increments determined by the proposed Time Weighted Average Quoted Spreads? If so, why? What should be the minimum pricing increment?

4. Are the proposed average quoted spread thresholds for each proposed minimum pricing increment appropriate? Why or why not?

5. Are the proposed minimum pricing increments economically significant for the NMS stocks that have the relevant Time Weighted Average Quoted Spread? Please explain.

6. Would the proposed minimum pricing increments cause flickering quotes? Please explain.

7. Would the proposed minimum pricing increments reduce displayed liquidity? Please explain.

8. Is the Time Weighted Average Quoted Spread the appropriate measure for assigning a minimum pricing increment for orders in NMS stocks that are priced $1.00 or more per share? If not, what would be the appropriate measure and why?

9. Is the Evaluation Period an appropriate time period to calculate the Time Weighted Average Quoted Spread? If not, what would be an appropriate time period and why?

10. Should the minimum pricing increment be modified on a quarterly basis? If not, how often should the minimum pricing increments be potentially modified, *e.g.,* on a monthly basis, on a bi-annual basis, on an annual basis?

11. Should the minimum pricing increment be uniform for all NMS stocks based on the per share price of a quote or order similar to today? Should there be more than two minimum pricing increments structures based on the price of an order or quotation of an NMS stock in rule 612? For example, should there be other price cutoffs in addition to the $1.00 price cutoff for specifying the relevant minimum pricing increment structure? If so, what should the price cutoffs be and what should be the minimum increment? If so, what should the uniform minimum pricing increment be? What should the price threshold be?

12. Is the $0.01 minimum pricing increment for quotes and orders priced equal to, or greater than, $1.00 per share or more, appropriate for some NMS stocks? If so, which NMS stocks and why?

13. Is each of the proposed Time Weighted Average Quoted Spreads that would determine the relevant minimum pricing increments appropriate for establishing the proposed minimum pricing increments? Is each of the Time Weighted Average Quoted Spread thresholds appropriate? Is each of the proposed minimum pricing increments related to the relevant Time Weighted Average Quoted Spreads appropriate? If not, why not, and what would be more appropriate measures and increments? Please explain.

14. The proposed minimum pricing increments are determined based upon proposed Time Weighted Average Quoted Spreads and have been designed to facilitate trading within the spread to accommodate price improvement opportunities. Are the proposed

[250] *See supra* section II.D.

minimum pricing increments and the proposed spread requirements appropriate to allow price improvement opportunities within the spread? If not, why not? Are there too many or not enough minimum pricing increments?

15. Should a minimum pricing increment larger than $0.01 be imposed for some NMS stocks, such as high priced stocks with wider spreads? Why or why not? If so, what should the increased minimum pricing increment be? What objective criteria should be used to identify such NMS stocks and why?

16. Should NMS stocks that have a Time Weighted Average Quoted Spread greater than $0.04 retain the $0.01 minimum quoting increment? Is the proposed $0.04 Time Weighted Average Quoted Spread appropriate for retaining the $0.01 minimum pricing increment for such stocks? If not, why not and what would be more appropriate?

17. Is the $0.0001 minimum pricing increment for quotes and orders priced less than $1.00 per share still appropriate? Should it be reduced or increased? If so, why?

18. Should the minimum pricing increment be reduced only for those NMS stocks that are tick-constrained? Why or why not? If yes, what should the minimum pricing increment for tick-constrained stocks be? If yes, what should be the criteria to determine whether an NMS stock is tick-constrained?

19. Should certain types of NMS stocks, such as ETFs or NMS stocks with smaller market capitalization, have a different minimum pricing increment? [251] If so, which types of NMS stocks should have a different minimum pricing increment and why? If so, what should the minimum pricing increment for such stocks be and why?

20. Are there other means to categorize NMS stocks for determining a minimum pricing increment? For example, should categories be based on share price, market value, trading volume, any other criterion, or a combination of criteria? As proposed, NMS stocks would be assigned a minimum pricing increment based on the Time Weighted Average Quoted Spread. How should average quoted spread be computed, over what time horizon, and how often should this criterion be updated? Should the formula for calculating Time Weighted Average Quoted Spread accommodate other elements, such as, for example, certain corporate actions like stock splits and reverse stock splits that changes the price of the shares? If so, how?

21. New minimum pricing increments would be established for the following quarter on the first business day following the completion of the Evaluation Period. Is the Evaluation Period the appropriate number of days to calculate the new minimum pricing increments? Is the proposed time to implement, *i.e.,* on the first business day following the completion of the Evaluation Period, sufficient for the markets and market participants to implement? If not, what would be a more appropriate time period to implement the new minimum pricing increment and why?

22. Should the proposed minimum pricing increments apply to trading? Should the proposed trading increments be the same as the proposed quoting increments? Please explain why or why not.

23. Do the proposed minimum pricing increments provide sufficient price levels for trading within the quoted spread? Are there sufficient levels to provide price improvement opportunities given that the trading increments would be governed by the proposed rule? Should there be different minimum pricing increments for quoting and trading? Please explain.

24. Are the proposed exceptions for trading in the minimum pricing increment appropriate? Why or why not? Should there be other exceptions from the proposed requirement to trade in the minimum pricing increment, such as for retail or segmented orders? How should other exceptions, such as retail or segmented orders, be defined? Please explain.

25. Would the proposed variable minimum pricing increments be overly burdensome or complex for the markets to implement? Please explain.

26. Would the proposed variable minimum pricing increment be confusing for investors? Would the variable minimum pricing increments add unnecessary complexity to the market? If so, please explain.

27. Should the primary listing exchange be required to provide an indicator of the applicable minimum pricing increments to competing consolidators, self-aggregators, and the appropriate exclusive SIP? Why or why not?

28. In section V.F., the Commission discusses different reasonable alternatives—uniform $0.005 tick, a two-tier alternative ($0.005 and $0.01 depending on the Time Weighted Average Quoted Spread), $0.001 for retail or segmented trades, and variable tick size based on share price. Would any of these alternatives address the concerns identified in a more appropriate manner? If so, which alternative and why?

29. Should the Commission stagger the implementation of rule 612 as proposed? If yes, are the time periods for the staggered implementation appropriate? Should the implementation phases be structured differently, and if so, how? If not, should there be an additional time period to implement rule 612 so the market and market participants can have sufficient time? Should the proposed minimum pricing increments for trading be implemented at the end of the implementation period? If not, when should the proposed minimum pricing increment be applied to trading?

III. Amendments to Rule 610 of Regulation NMS—Fees for Access to Quotations

A. Background

1. Regulation NMS

Regulation NMS, among other things, established intermarket protection against trade-throughs for all NMS stocks.[252] The Commission supplemented those requirements with rules addressing fair and efficient access to quotations and limits on fees charged to access newly protected quotations.[253] The Commission stated that access to displayed quotations, particularly the best quotations of a trading center, is ''vital for the smooth functioning of intermarket trading.'' [254] Specifically, the Commission adopted rule 610, which addresses three areas related to access to quotations: (1) the means of access to quotations; (2) the fees for access to protected quotations and any other quotations that are the best bid or best offer of an exchange or national securities association; and (3) locking and crossing quotations.

In the context of fees for access to quotations, rule 610(c) imposes an access fee cap which prohibits a trading center from imposing, or permitting to be imposed, any fees for the execution of an order against a protected quotation [255] of the trading center or any other quotation of the trading center that is the best bid or best offer of an exchange or association that exceed or accumulate to more than $0.0030 per

[251] Currently, all types of NMS stocks are subject to the existing rule 612 minimum pricing increments and rule 612 does not differentiate between different types of NMS stocks. *See also* note 200, *supra.*

[252] *See* Rule 611 of Regulation NMS; 17 CFR 242.611.

[253] *See* Regulation NMS Adopting Release, *supra* note 16, at 37538–50.

[254] *See id.* at 37539.

[255] *See supra* note 29 (defining ''protected quotation'').

share for quotations of $1.00 or more per share.[256] Rule 610(c) also imposes an access fee cap of 0.3% of the quotation price if the price of the protected quotation or other quotation is less than $1.00 per share.[257] The access fee caps apply to executions against protected quotations[258] and therefore the fees of trading centers that do not display protected quotations, such as ATSs or OTC markets makers, are not subject to rule 610(c)'s access fee caps.[259] Further, the rule 610(c) access fee caps do not apply to non-displayed interest or depth-of-book quotes.[260] The Commission adopted the rule 610(c) access fee caps in order to prevent high fees from undermining Regulation NMS's price protection and linkage requirements, while leaving trading centers otherwise free to set fees subject only to other applicable standards (*e.g.,* prohibition on unfair discrimination).[261] The access fee caps were designed to ensure that all investors would have fair and non-discriminatory access to protected quotations.[262]

At the time of adoption, the $0.0030 fee limitation was consistent with the then-prevailing market level and general business practices, as very few trading centers charged fees in excess of that amount.[263] The Commission adopted the 0.3% fee limitation on quotations priced less than $1.00 to prevent fees from constituting an excessive percentage of share price.[264] The purpose of the access fee limitation was to help ensure the fairness and accuracy of displayed quotations by establishing an outer limit on the cost of accessing such quotations.[265] In adopting the rule, the Commission sought to ''assure order routers that displayed prices are, within a limited range, true prices.''[266] Since the adoption of rule 610 in 2005, the Commission has continued to consider the impact of access fees on market structure and market quality, but has not previously proposed to modify the amount of the access fee caps despite significant changes in the equity markets.[267]

2. Exchange Fee Models

The predominant pricing structure for transactions that has developed among the equities exchanges to attract order flow is the ''maker-taker'' pricing model, in which the exchange pays a rebate to a ''maker'' or provider of liquidity and charges a fee to a ''taker'' of liquidity.[268] The exchange earns as revenue the difference between the fee paid by the ''taker'' of liquidity and the rebate paid to the provider or ''maker'' of liquidity.[269] For maker-taker exchanges, the amount of the taker fee is typically limited by the access fee caps imposed by rule 610(c) on the fees the exchange can charge to access its protected

[256] *See* 17 CFR 242.610(c). *See also* Regulation NMS Adopting Release, *supra* note 16, at 37543–46. In the Regulation NMS Proposing Release, the Commission initially proposed to cap the access fees that any individual market participant could charge for equities at $0.001 per share, with a total accumulated access fee limit of $0.0020 per share in any transaction. *See* Regulation NMS Proposing Release, *supra* note 16, at 11158–59. In its proposal, the Commission expressed concern that access fees added significant non-transparent costs to transactions, potentially encouraged locked markets, and created an unequal playing field as non-ECN broker-dealers were not permitted to charge access fees in addition to their posted quotations. *See id.* at 11157–58. The Commission ultimately adopted an access fee cap of $0.0030 in order to simplify the initial proposal and align the amount of the cap with the amount charged by most trading centers at the time, among other reasons. *See* Regulation NMS Adopting Release, *supra* note 16, at 37502 and 37545.

[257] *See* Regulation NMS Adopting Release, *supra* note 16, at 37545 n.419 (noting that ''[f]or the relatively small number of NMS stocks priced under $1.00, fees will be limited to 0.3% of the quotation price per share to prevent fees from constituting an excessive percentage of share price.'').

[258] *See supra* note 29. As stated above, rule 610(c) also applies to any other quotation of a trading center that is the best bid or offer of an exchange or association. The Commission stated that the access fee caps should apply to manual quotations that are the best bid or offer to the same extent that it applies to protected quotations to preclude any incentive for trading centers to display manual quotations as a means to charge higher access fees. *See* Regulation NMS Adopting Release, *supra* note 16, at 37546. For purposes of this discussion, references to protected quotations also include manual quotations that are the best bid or best offer of an exchange or association.

[259] If an ATS or OTC market maker displayed a protected quotation, its fees would be subject to the access fee caps under rule 610(c). However, exchange fees and the fees of non-exchange trading centers are treated very differently under the Federal securities laws. For example, one of the distinguishing features of registered national securities exchanges is that—unlike non-exchange trading centers—their fees are subject to the principles-based standards set forth in the Exchange Act, as well as the rule filing requirements thereunder. In particular, the Federal securities laws require the entirety of each and every fee, due, and charge assessed by an exchange to be transparent and publicly posted, and must be an equitable allocation of reasonable dues, fees and other charges and not be unfairly discriminatory. *See* 15 U.S.C. 78f(b)(4) and (5). Similar requirements do not apply to the fees of non-exchange trading centers that do not provide public transparency into their respective fee schedules and typically are negotiated on a customer-by-customer basis. The fees assessed by non-exchange trading centers are bespoke, and the fees paid (or not paid) by market participants to ATSs and other off-exchange venues are negotiated between each market participant and the trading venue, the result being that the number of fee permutations and differences across brokers for any single ATS could be substantial.

[260] *See* Regulation NMS Adopting Release, *supra* note 16, at 37546.

[261] *See id.* at 37543–46 (The Commission expressed concern that without a fee limitation, the adoption of the Order Protection Rule and private linkages could ''significantly boost the viability of the outlier business model.'' Such outlier markets ''might well try to take advantage of intermarket price protection by acting essentially as a toll booth between price levels'' with the high fee market likely to be the last market to which orders would be routed, but prices could not move to the next level until someone routed an order to take out the displayed price at such outlier market. Therefore, the outlier market ''might see little downside to charging exceptionally high fees, such as $0.009, even if it is last in priority.''). *Id.* at 37546.

[262] *See id.* at 37497.

[263] The $0.0030 per share cap largely codified the then-prevailing fee level set through competition among the various trading centers. *See id.* at 37545 (stating that ''the $0.003 fee limitation is consistent with current business practices, as very few trading centers currently charge fees that exceed this amount.'').

[264] *See id.* at 37544 n.406.

[265] *See id.* at 37502, 37583, and 37595.

[266] *Id.* at 37502. (The Commission stated that the fee limitation was necessary to achieve the purposes of the Exchange Act because ''[a]ccess fees tend to be highest when markets use them to fund substantial rebates to liquidity providers, rather than merely to compensate for agency services.'' Consequently, [i]f outlier markets are allowed to charge high fees and pass most of them through as rebates, the published quotations of such markets would not reliably indicate the true price that is actually available to investors or that would be realized by liquidity providers.'' Section 11A(c)(1)(B) of the Exchange Act authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information. In adopting the current fee caps, the Commission stated that, for quotations to be fair and useful, ''there must be some limit on the extent to which the true price for those who access quotations can vary from the displayed price.'' The Commission concluded that ''the $0.0030 fee limitation will further the statutory purposes of the NMS by harmonizing quotation practices and precluding the distortive effects of exorbitant fees.''). *Id.* at 37584.

[267] *See* Securities Exchange Act Release No. 84875 (Dec. 19, 2018), 84 FR 5202 (Feb. 20, 2019) (''Transaction Fee Pilot Adopting Release''). Further, the Equity Market Structure Advisory Commission also considered, among other things, whether the access fee cap should be modified. *See* Equity Market Structure Advisory Committee, Oct. 27, 2015, information *available at https://www.sec.gov/spotlight/emsac/emsac-archives.htm.*

[268] *See* SRO fee schedules, which are available on each SRO's website. *See also infra* section V.C.2, Table 5. This discussion focuses on exchange fees because, currently, only exchanges display protected quotations. If an ATS or OTC market maker displayed a protected quotation, its fees would be subject to the access fee caps under rule 610(c). However, exchange fees and the fees of non-exchange trading centers are treated very differently under the Federal securities laws. *See supra* note 259.

[269] A few exchanges have adopted a ''taker-maker'' pricing model (also called an inverted model), in which they charge a fee the provider of liquidity and pay a rebate to the taker of liquidity. *See, e.g.,* Nasdaq BX fee schedule *available at https://www.nasdaqtrader.com/trader.aspx?id=bx_pricing* (as of July 5, 2022); NYSE National fee schedule *available at https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_National_Schedule_of_Fees.pdf* (as of Jan. 1, 2022); and Cboe EDGA fee schedule *available at https://www.cboe.com/us/equities/membership/fee_schedule/edga/* (as of Apr. 1, 2022). *See also infra* section V.C.2, Table 5. For taker-maker exchanges, the amount of the maker fee charged to the provider of liquidity is not bounded by the rule 610(c) access fee cap because such fee is not a charge to access the market's best bid/offer for NMS stocks, but such fees typically are no more than $0.0030.

quotation or best bid/offer for NMS stocks. The rule 610(c) access fee caps apply to the fees assessed on an incoming order that executes against a resting protected quote, but does not address the rebates that may be paid. However, the rule 610(c) access fee caps typically indirectly limit the average amount of the rebates that an exchange offers to less than $0.0030 per share in order to maintain net positive transaction revenues. Thus, an exchange may have higher access fees to fund higher liquidity rebates [270] to attract more trading volume.

In recent years, a variety of concerns have been expressed about the prevailing maker-taker fee model, in particular the rebates exchanges pay to attract orders. For example, many have argued that the prevailing access fee structure creates a conflict of interest for broker-dealers, who must provide the best execution to their customers' orders while facing potentially conflicting economic incentives to avoid fees or earn rebates from the trading centers to which they direct those orders for execution.[271] Others have expressed concern that maker-taker access fees may: (1) undermine market transparency since displayed prices do not account for exchange transaction fees or rebates and therefore do not reflect the net economic costs of a trade; [272] (2) serve as a way to effectively quote in sub-penny increments on a net basis when the effect of a maker-taker exchange's sub-penny rebate is taken into account even though the minimum quoting increment is expressed in full pennies; [273] (3) introduce unnecessary market complexity through the proliferation of new exchange order types (and new exchanges) designed solely to take advantage of pricing models; [274] (4) drive orders to non-exchange trading centers as market participants seek to avoid the higher fees that exchanges charge to subsidize the rebates they offer to attract liquidity; [275] and (5) may benefit sophisticated market participants like market makers and proprietary traders at the expense of other market participants.[276]

Conversely, others argue that the maker-taker model may have positive effects by enabling exchanges to compete with non-exchange trading centers and by narrowing quoted spreads by subsidizing posted prices.[277] Specifically, maker-taker fees may narrow displayed spreads in some securities insofar as the liquidity rebate effectively subsidizes the prices of displayed liquidity by allowing a maker to post a more aggressive price than it may have in absence of a rebate.[278] In turn, that displayed liquidity may establish the NBBO, which is often used as the benchmark for marketable order flow, including retail order flow, that is executed off-exchange by either matching or improving upon those prices.[279] Accordingly, retail orders may benefit indirectly from the subsidy provided by maker-taker exchanges.

B. Current Rule 610(c)

Rule 610(c) under Regulation NMS prohibits trading centers [280] from imposing, or permitting to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or any other quotation of the trading center that is the best bid or best offer of an exchange or association in an NMS stock [281] that exceed or accumulate to more than $0.0030 per share if the price of the protected quotation or other quotation is $1.00 or more per share.[282] Rule 610 also imposes an access fee cap of 0.3% of the quotation price per share if the price of the protected quotation or other quotation is less than $1.00 per share.[283] As discussed above, the access fee caps apply to executions against protected

[270] This was one of the concerns the Commission identified when it approved the access fee caps. *See* Regulation NMS Adopting Release, *supra* note 16, at 37545 (''[T]he fee limitation is necessary to achieve the purposes of the Exchange Act. Access fees tend to be highest when markets use them to fund substantial rebates to liquidity providers, rather than merely to compensate for agency services.'').

[271] *See, e.g.,* Stanislav Dolgopolov, ''The Maker-Taker Pricing Model and its Impact on the Securities Market Structure: A Can of Worms for Securities Fraud?'' 8 Va. L. & Bus. Rev. 231, 270 (2014), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2399821* (retrieved from SSRN Elsevier database). One academic study of selected market data suggested that some broker-dealers route non-marketable orders to the trading center offering the highest rebate, and do so in a manner that the authors contended might not be consistent with the broker-dealers' duty of best execution. *See* Robert H. Battalio, Shane A. Corwin, and Robert H. Jennings, ''Can Brokers Have It All? On the Relation Between Make-Take Fees and Limit Order Execution Quality,'' *Journal of Finance* 71, 2193–2237 (2016), *available at https://onlinelibrary.wiley.com/doi/10.1111/jofi.12422/full* (''Battalio Equity Market Study'').

[272] *See* Letter from Richard Steiner, Global Equities Liaison to Regulatory & Government Affairs, RBC Capital Markets, to Elizabeth Murphy, Secretary, Commission, at 2–3 (Nov. 22, 2013), *available at https://www.sec.gov/comments/s7-02-10/s70210-411.pdf* (''RBC Capital Letter'') (commenting on potential equity market structure initiatives).

[273] *See* Larry Harris, ''Maker-Taker Pricing Effects on Market Quotations,'' at 24–25 (Nov. 14, 2013), *available at https://www.lexissecuritiesmosaic.com/gateway/sec/speech/hujibusiness_Maker-taker.pdf.*

[274] *See, e.g.,* Curt Bradbury, Market Structure Task Force Chair, Board of Directors, SIFMA, and Kenneth E. Bentsen Jr., President and Chief Executive Officer, SIFMA, Opinion, ''How to Improve Market Structure,'' N.Y. Times (July 14, 2014), *available at https://dealbook.nytimes.com/2014/07/14/how-to-improve-market-structure/?_r=0* (stating that the ''proliferation of order types designed to avoid access fees and capture rebates . . . adds complexity to the system, requires continuing technology changes and creates potential for market instability'' and recommending access fees charged by exchanges be ''dramatically reduced, if not eliminated''; RBC Capital Letter, *supra* note 272, at 2.

[275] *See* Menkveld, Albert J., Bart Zhou Yueshen, and Haoxiang Zhu, ''Shades of darkness: A pecking order of trading venues.'' *Journal of Financial Economics* 124, no. 3 (2017), at 503–534, *available at https://www.mit.edu/~zhuh/MenkveldYueshenZhu_2017JFE_dark.pdf;* RBC Capital Letter, *supra* note 272, at 2.

[276] *See* RBC Capital Letter, *supra* note 272, at 2–4; Letter from Mehmet Kinak, Vice President—Global Head of Systematic Trading & Market Structure, and Jonathan Siegel, Vice President—Senior Legal Counsel (Legislative & Regulatory Affairs), T. Rowe Price, to Brent J. Fields, Secretary, Commission, dated June 12, 2018, at 2, *available at https://www.sec.gov/comments/s7-05-18/s70518-3832746-162769.pdf* (*sec.gov*) (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks).

[277] *See, e.g.,* Michael Brolley & Katya Malinova, ''Informed Trading and Maker-Taker Fees in a Low Latency Limit Order Market,'' at 2 (Oct. 24, 2013), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2178102* (''If a maker rebate is introduced in competitive markets, the bid-ask spread will decline by (twice) the maker rebate.'' This article provided theoretical modelling, not empirical analysis.); Shawn O'Donoghue, ''The Effect of Maker-Taker Fees on Investor Order Choice and Execution Quality in U.S. Stock Markets'' (Jan. 23, 2015), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2607302;* and Jean-Edouard Colliard & Thierry Foucault, ''Trading Fees and Efficiency in Limit Order Markets,'' Oxford University Press, at n.13 (Sept. 1, 2012), *available at https://academic.oup.com/rfs/article/25/11/3389/1566107* (arguing that maker-taker rebates may help equities exchanges compete with off-exchange payment for order flow arrangements, in which wholesale broker-dealers purchase retail order flow for trading off-exchange).

[278] *See, e.g.,* Letter from Richie Prager, Managing Director, Head of Trading and Liquidity Strategies, BlackRock, Inc., to Mary Jo White, Chair, SEC, at 2 (Sept. 12, 2014), *available at https://www.sec.gov/comments/s7-02-10/s70210-419.pdf* (commenting on File No. S7–02–10 ''Concept Release on Equity Market Structure'' and File No. S7–01–13 ''Regulation Systems Compliance and Integrity, and Equity Market Structure Review'' by stating ''Some participants have called for elimination of rebates and maker-taker pricing in its entirety in conjunction with access fees, but BlackRock believes that incentives for providing liquidity positively impact market structure. Incentives promote price discovery in public markets, increase available liquidity and tighten spreads. Rebates compensate liquidity providers for exposing orders to adverse selection and information leakage.''). *See also infra* section V.C.2.

[279] *See, e.g.,* Concept Release on Equity Market Structure, *supra* note 4 (evaluating broadly the performance of market structure since Regulation NMS, particularly for long-term investors and for businesses seeking to raise capital, and soliciting comment on whether regulatory initiatives to improve market structure are needed).

[280] *See supra* note 30 (defining ''trading centers'').

[281] ''NMS stock'' is defined as ''any NMS security other than an option'' under 17 CFR 242.600(b)(55).

[282] *See* 17 CFR 242.610(c). *See also* Regulation NMS Adopting Release, *supra* note 16, at 37549.

[283] *See* Regulation NMS Adopting Release, *supra* note 16, at 37549.

quotations[284] and therefore the fees of non-exchange trading centers, such as ATSs or OTC markets makers that do not display protected quotations, are not subject to rule 610(c)'s access fee caps.[285]

C. Proposal To Reduce Fees for Access to Protected Quotations and Increase Fee Transparency

In light of the amendments proposed to rule 612 as well as the decrease in trading costs and increased trading efficiencies since NMS was adopted, the Commission believes that rule 610 should be amended in two ways. First, because the Commission proposes to reduce the minimum pricing increment under rule 612 and introduce a variable tick regime, the Commission also proposes to recalibrate the access fee caps that limit what a trading center could charge for the execution of orders against a protected quotation of the trading center or any other quotation of the trading center that is the best bid or best offer of a national securities exchange or association. Specifically, if the protected quotation or other quotation in an NMS stock is priced at $1.00 or more per share, the Commission proposes that the fee or fees assessed to execute against such quotation would not be permitted to exceed (1) $0.0005 per share for NMS stocks that have a minimum pricing increment of $0.001 and (2) $0.001 per share for NMS stocks that have a minimum pricing increment greater than $0.001. Further, the Commission proposes to reduce the access fee cap for an execution against a protected quotation or other quotation priced less than $1.00 per share to 0.05% of the quotation price.

The Commission's proposal with respect to the access fee caps modifies only the level of the caps and does not otherwise make any changes to its application.[286] As discussed in the Regulation NMS Adopting Release, the rule 610(c) access fee caps were ''designed to preclude individual trading centers from raising their fees substantially in an attempt to take improper advantage of strengthened protection against trade-throughs.'' [287] The Commission believes that retaining access fee caps for executions against protected quotations remains appropriate to achieve this purpose.

The Commission proposes to recalibrate the access fee caps to reflect the reduction in trading costs due to market efficiencies since rule 610 was adopted,[288] while minimizing the potential impact of reduced fees and rebates on trading centers' business models. Further, lowering the access fee caps in connection with the reduction of the minimum pricing increment, would help to ensure that the fees charged to access a protected quotation do not distort the true price that is available to investors.[289] Absent an adjustment to the current fee caps, access fees would make up a larger proportion of the per share quotation price than they do today because of the proposed decreases in the minimum pricing increments, which could lead to unintended market distortions and undermine price transparency. Second, to increase the transparency of exchange fees, and potentially help reduce broker conflicts of interest by allowing fees and rebates to more readily be passed through to customers,[290] the Commission proposes to amend rule 610 to require national securities exchanges to make the amounts of all fees and rebates determinable at the time of execution.[291] Each of these proposals is discussed below.

1. Reduce Fees for Access to Protected Quotations

The current access fee caps were designed to prevent fees from constituting an excessive percentage of the share price and reflected the then current rates that were assessed by trading centers.[292] In the intervening seventeen years since rule 610 was adopted, the markets have evolved dramatically. Market innovations and technological efficiencies have reduced transaction and trading costs (*e.g.,* lower commissions and more narrow bid/ask spreads) in the equities markets.[293] In light of the proposed changes to rule 612 discussed in section II above, and consistent with the original goals of Regulation NMS, the Commission

[284] *See supra* note 255 and accompanying text.

[285] *See supra* notes 255 and accompanying text, and 259. Non-exchange fees are not subject to the requirements applicable to exchange fees under section 19(b) and rule 19b–4. While equities exchanges charge transaction-based fees, ATSs, especially ''dark pool'' ATSs that are part of a large broker-dealer order handling business, typically do not charge separate transaction-based fees for executions in their ATSs, and instead might use bundled pricing that does not associate particular orders with particular fees. *See, e.g.,* Letter from William P. Neuberger and Andrew F. Silverman, Managing Directors and Global Co-Heads of Morgan Stanley Electronic Trading, to Brent J. Fields, Secretary, Commission (May 19, 2016), *available at https://www.sec.gov/comments/s7-23-15/s72315-37.pdf* (commenting on File No. S7–23–15 concerning regulation of NMS Stock ATSs and noting that ATS fees may be bundled with brokerage services and such commission rates are typically negotiated between the parties).

[286] Specifically, as discussed above, the access fee caps would continue to apply only to executions against protected quotations and therefore the fees of non-exchange trading centers, such as ATSs or OTC markets makers that do not display protected quotations, would continue not to be subject to Rule 610(c)'s access fee caps. *See supra* note 259 and accompanying text.

[287] Regulation NMS Adopting Release, *supra* note 16, at 37545.

[288] *See* Letter from Theodore R. Lazo, Managing Director & Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission, dated May 24, 2018, at 2 (''SIFMA Transaction Fee Pilot Letter'') (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'') at 2 (discussing cost savings due to market efficiencies and stating that SIFMA has long recommended lowering the existing access fee caps because such caps have ''not been adjusted to reflect market developments since Regulation NMS was adopted more than a decade ago'') and Letter from Theodore R. Lazo, Managing Director & Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission, dated Mar. 29, 2017), at 3 (''SIFMA 2017 Letter'') (commenting that because spreads have narrowed and commissions have decreased since Regulation NMS was adopted, the existing access fee caps have become ''outsized relative to current market realities.'') *See also infra* notes 293, 315, 316, 317, and accompanying text.

[289] *See* Regulation NMS Adopting Release, *supra* note 16, at 37545 (Section 11A of the Exchange Act ''authorizes the Commission to adopt rules assuring the fairness and usefulness of quotation information'' and stating that for quotations to be fair and useful, there ''must be some limit on the extent to which the true price for those who access quotations can vary from the displayed price.'').

[290] If broker-dealers could more easily pass-through rebates to their customers, the potential financial benefit of such rebates would inure to the customer, not the broker-dealer. Thus, the potential conflict of interest faced by a broker-dealer when routing its customers' orders to a market for execution would be reduced or eliminated because the broker-dealer would have no direct economic interest in the level of the rebate and would be able to better objectively assess best execution for each customer's order.

[291] As discussed above, exchange fees and the fees of non-exchange trading centers are treated differently under the Federal securities laws. *See supra* notes 259 and 285.

[292] *See* Regulation NMS Adopting Release, *supra* note 16, at 37544, n.406 and 37545.

[293] *See, e.g.,* Citadel Report, *supra* note 100, at 4 (stating that advances in technology and innovation since the adoption of Regulation NMS have ''markedly improved conditions for all investors, who benefit from dramatically lower trading costs and market transparency,'' but recommending the Commission undertake further reform measures); SIFMA 2017 Letter, *supra* note 288, at 3 and 8 (arguing that the $0.0030 access fee cap is too high relative to today's narrower spreads and lower commission rates'' and stating ''[w]hile net costs to execute a transaction have been largely contained since Reg. NMS was adopted, access fees have become and remain an outsized element of overall transaction costs and do not reflect today's business practices and market realities.''); U.S. Equity Market Structure: Order Routing Practices, Considerations, and Opportunities, Charles Schwab (Sept. 7, 2022) (''Schwab Whitepaper''), *available at https://content.schwab.com/web/retail/public/about-schwab/Schwab-2022-order-routing-whitepaper.pdf* (offering observations on current market structure and recommendations for reform). The Schwab Whitepaper states that Regulation NMS was a ''watershed'' moment for the securities industry and the market evolution that ensued resulted in ''significantly improved trading outcomes for investors, particularly retail investors'' who benefitted from, among other things, lower trading costs (bid/ask spreads and commissions) and faster executions. *Id.* at 5.

believes the current access fee caps should be recalibrated to ensure that they do not represent an outsized portion of the displayed quotations.[294] A reduction in the minimum pricing increment without reducing the access fee caps could permit fees to become a higher percentage of the minimum pricing increment, which could potentially undermine price transparency and exacerbate the other concerns with maker-taker fees described in section III.A.2 above.

Therefore, the Commission proposes to reduce the level of the access fee cap for protected quotations in NMS stocks priced $1.00 or more and proposes to introduce a variable access fee cap structure to reflect the variable minimum pricing increments proposed in rule 612 for quotations priced equal to or greater than $1.00 per share. Specifically, for NMS stocks that have a minimum pricing increment of $0.001, the Commission proposes a $0.0005 access fee cap, and for NMS stocks that have a minimum pricing increment greater than $0.001, the Commission proposes a $0.001 access fee cap. This proposal would balance several considerations, such as ensuring that the access fees do not exceed half the minimum pricing increment [295] while also seeking to preserve the ability of trading centers [296] to continue to operate and affording them continued flexibility to develop and utilize different fee structures. For protected quotations in NMS stocks priced less than $1.00, the fee cap would be adjusted to 0.05% of the quotation price per share to maintain the current proportional structure with the access fee caps on protected quotations that are priced $1.00 or more. The Commission believes the proposed reduction of the access fee caps is necessitated by the changes to the minimum pricing increments. The adjustments are also designed to recalibrate the access fee caps to better align pricing limitations with current transaction costs.[297] Finally, the Commission has proposed access fee cap levels that would balance the need to reduce the access fee to reflect the lower minimum pricing increments and reduced trading costs, with leaving market centers otherwise free to establish fees to preserve the agency market business model.[298]

The proposed reduction in the minimum pricing increments under rule 612 without a corresponding adjustment to the access fee caps would permit access fees to become too high in relation to the minimum pricing increment, which would potentially undermine price transparency.[299] The proposed reduction to the access fee caps would ensure that access fees continue to be appreciably below the minimum pricing increment. If the access fee cap for protected quotations that have a minimum pricing increment of $0.001 were kept at the current level of $0.0030, an access fee set at the maximum allowed under rule 610(c) would add an undisplayed additional three ticks per share to the displayed price.[300] The Commission proposes the $0.0005 access fee cap for these NMS stocks so that the access fee cap does not exceed half the minimum increment, which could disrupt quote priority and result in unintended market distortions.[301]

Further, for an NMS stock that has a proposed minimum pricing increment of $0.002, the current access fee cap would be larger than the minimum pricing increment. In addition, for an NMS stock that has a minimum pricing increment of $0.005, the current access fee cap would exceed half the minimum pricing increment. Reducing the access fee caps to the proposed levels would help to ensure that the displayed protected quotation reflects the price of the quotation, within a reasonable range, which would not be the case if the current access fee caps were not reduced. In the Regulation NMS Adoption Release, the Commission stated when adopting the current limits that, for quotations to be fair and useful, ''there must be some limit on the extent to which the true price for those who access quotations can vary from the displayed price.'' [302] The proposed change to the access fee caps should preserve transparency regarding the true prices of protected quotations consistent with the requirements under section 11A(c)(1)(B) of the Exchange Act.[303]

The Commission proposes to allow a higher access fee cap ($0.001 per share) for those NMS stocks that have a minimum pricing increment greater than $0.001. The two proposed access fee caps would allow trading centers largely to maintain their current net capture rate and not impair the agency market business models, though some

[294] The Commission recognized the importance of reducing costs when it adopted Regulation NMS, stating ''[t]he transaction costs associated with the prices at which [investor] orders are executed represent a continual drain on their long-term savings'' and noting that ''[m]inimizing these investor costs to the greatest extent possible is the hallmark of efficient markets, which is a primary objective of the NMS.'' *See* Regulation NMS Adopting Release, *supra* note 16, at 37498. *See also* note 289 and accompanying text.

[295] *See also* MEMX Report, *supra* note 105, at 3 (''coupling . . . tick size changes with a targeted reduction in the access fee cap . . . would both prevent potential market distortions that could occur when fees exceed half the minimum increment and reduce industry take fee costs. . . .).'' MEMX requested an exemption from rule 612(c) to allow a minimum pricing increment of half of one cent ($0.005) for tick-constrained stocks and a corollary reduction of the fee cap in such stocks from $0.0030 to $0.0015. *See* MEMX Exemption Request, *supra note* 105, at 1 and 7.

[296] In practice, currently, the access fee caps limit only the fees imposed by the national securities exchanges because other trading centers (*e.g.,* ATSs and OTC market makers) do not have protected quotations. If in the future, other trading centers were to execute an order against a protected quotation, such trading centers' ability to impose fees would be bounded by the access fee caps as well.

[297] As discussed in section V.C.2, trading venues that utilize a flat fee model do not offer rebates. The fees for both taking and adding liquidity on such markets are significantly lower than the current $0.0030 fee cap and therefore do not appear to be economically constrained by rule 610(c). Similarly, ATSs appear to charge fees in the range of 10 mils. This suggests that the current access fee cap may not be reflective of the actual costs trading centers incur to provide execution services against protected quotations. *See* SIFMA 2017 Letter, *supra* note 288, at 8 (stating ''a significant portion of access fees are used to subsidize rebates with the exchanges' net capture reflecting today's market norms for accessing liquidity, which is approximately 3–5 cents per 100 shares traded . . . or 3–5 mils.).'' *See also infra* notes 303, 315 and 316 and accompanying text.

[298] Imposing a $0.001 access fee cap on executions against protected quotations regardless of the minimum pricing increment could result in access fees that exceed half the minimum pricing increment, which could have a negative impact on quote priority. Therefore, the proposal would establish a $0.0005 access fee cap only for NMS stocks that have a minimum pricing increment of $0.001 to ensure that for such stocks, the maximum access fee does exceed half the minimum pricing increment. For NMS stocks that have a minimum pricing increment greater than 0.001, the access fee cap would be $0.001 to avoid interference with existing agency market business models. Thus, the Commission's proposed level of the access fee caps seeks to balance the need to reduce the access fee caps to accommodate the reduction in the minimum pricing increments and preserve the ability of the agency market business models to charge fees for access.

[299] *See supra* note 289.

[300] *See* SIFMA Transaction Fee Pilot Letter, *supra* note 288 at 2 (recommending that the Commission reduce the access fee cap to ''no more than five cents per 100 shares because the cap has not been adjusted to reflect market developments since Regulation NMS was adopted'').

[301] *See supra* note 298.

[302] Regulation NMS Adopting Release, *supra* note 16, at 37545. The Commission stated that an important purpose of the fee cap was to prevent an ''outlier'' exchange from charging an exorbitant fee to access a protected quotation. *Id.* at 37503. One market participant stated that the current cap is ''simply too high'' and dislocated from ''true prices in the marketplace.'' *See* Letter from Paul M. Russo, Managing Director, Goldman Sachs & Co. LLC, to Brent J. Fields, Secretary, Commission, at 2 (May 24, 2018), *available at https://www.sec.gov/comments/s7-05-18/s70518-3711788-162473.pdf* (''Goldman Letter'') (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'').

[303] 15 U.S.C. 78k–1(c)(1)(B). *See also* Goldman Letter, *supra* note 302, at 1 (''[A] reduction in the Fee Cap from $.0030 to $.0010 per share could be supported today and would be better calibrated with present-day trading and execution costs, which have decreased substantially since 2005 when the current Fee Cap was adopted.'').

business models may change.[304] For example, as discussed in section V.C.2, the exchanges use one of three pricing models, which result in different net capture rates. Such rates vary between $0.0002 and $0.0006 per share. However, the Commission estimates that, for the overwhelming majority of trading volume on exchanges, the average total net capture is around $0.0004 per share for all trading types and likely closer to $0.0002 for non-auction trading in stocks that have a price equal to or greater than $1.00.[305] The proposal to adopt two access fee caps for executions against protected quotations priced equal to, or greater than, $1.00 per share is designed to allow current business practices to continue while adjusting access fee levels to align with the proposed lower minimum pricing increments as well as reflect market innovations and technological efficiencies that have driven transaction costs down since rule 610(c) was adopted.[306] Reducing access fees to amounts slightly above the current net capture rates would continue to allow trading centers that choose to operate solely by charging transaction fees to continue to do so, while also minimizing the costs to investors who must access protected quotations.

The Commission took into account the then-current business models when it adopted the access fee cap levels in rule 610(c).[307] The Commission stated that ''agency trading centers perform valuable agency services in bringing buyers and sellers together, and that their business model historically has relied, at least in part, on charging fees for execution of orders against their displayed quotations.'' [308] At that time, the Commission did not want to unduly harm the agency market business model by prohibiting access fees entirely.[309] The Commission's proposal is designed to preserve the fairness and usefulness of quotes while minimizing the impact to current agency market business models. If the Commission adopted a flat $0.0005 access fee cap regardless of the minimum pricing increment, it would potentially impair certain agency market business models because such a fee level would not allow certain markets to maintain their current net capture rates.[310] Allowing a higher access fee cap for those NMS stocks that have a minimum pricing increment greater than $0.001 would preserve current agency market business models and would allow trading centers continued flexibility in structuring their businesses. The Commission's proposal seeks to balance concerns about lowering the access fee caps too far such that the reduction would jeopardize certain agency market business models while also recognizing that the access fee caps need to be reduced to accommodate the lower minimum pricing increments, capitalize on technological and cost improvements to the market that support lowering the caps, and avoid introducing market distortions.

The proposed rule would not establish individual access fee cap levels for each minimum pricing increment. Introducing four access fee caps to go along with the proposed four minimum pricing increments would introduce unnecessary complexity into the national market system. Exchange fee and rebate schedules are complex and change frequently.[311] The Commission believes that adding four access fee caps would increase the complexity of exchange fee and rebate structures.[312] The Commission believes that the two proposed access fee caps for protected quotations priced at $1.00 or more is appropriate to accommodate the reduction in the minimum pricing increments and would not introduce unnecessary complexity.

Some market participants have also suggested lowering the access fee caps, arguing that a reduction of the access fee caps to reflect the reduction in bid-offer spread may be appropriate if the Commission were to lower the minimum pricing increment.[313] Proponents of this approach maintain that a reduction in access fees that is proportionate to the tick size reduction would reduce trading costs and increase the competitiveness of on-exchange trading.[314] The Commission proposes to

[304] *See infra* section V.D.3 discussing impact of proposed lower access fee caps on exchanges' net capture. ''Net capture'' is the amount earned by the trading center for facilitating a transaction, which is typically the difference between the average access fee charged by the trading center and the average rebate paid by the trading center. One market participant stated that a review of the maker-taker exchanges fee schedules as of May 2018 indicated that the average net capture between the base level fee/rebate and the highest level fee/rebate was approximately $0.0005 per share. The market participant further stated that lowering the fee cap to $0.001 would still allow a maker-taker exchange to yield the same $0.0005 per share net capture rate. The market participant concluded that lowering the fee cap to $0.001 per share would shrink the range within which exchanges could set fees and rebates and fee schedules would likely vary less across exchanges, but exchanges could ''still choose to offer rebates to incentivize liquidity provision and maintain their current net capture rates.'' *See* Goldman Letter, *supra* note 302, at 3.

[305] *See* note 499 *infra* and accompanying text. *See also* SIFMA 2017 Letter, *supra* note 288 (stating ''the exchanges' net capture reflecting today's market norms for accessing liquidity, which is approximately 3–5 cents per 100 shares trading ($0.0003–$0.0005), or 3–5 mils.''). ATSs typically do not offer rebates, but generally do charge fees to access liquidity in the range of 10 mils, suggesting a net capture in the range of $0.001 per share. *See* Letter from Stacey Cunningham, President, NYSE, to Brent Fields, Secretary, Commission, dated Oct. 2, 2018 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' and noting that a reduction of the fee cap to $0.001 per share ''would bring the fees exchanges charge for removing liquidity in line with those charged by ATSs''). However, the suggestion that the access fee caps be reduced to $0.001 per share was made in the context of the minimum pricing increment remaining at current levels under rule 612 (*i.e.,* one cent for NMS stock quotes and orders priced $1.00 or more). Because the Commission proposes to reduce the minimum pricing increment for some NMS stocks to $0.001, the Commission is proposing a smaller access fee cap for those NMS stocks so that the maximum access fee does not have a negative impact on quote priority.

[306] *See* SIFMA Transaction Fee Pilot Letter (stating that over time, ''competitive pressures, increased efficiencies from automation, and electronic trading have each operated to reduce transaction costs throughout the markets'' but ''access fees have remained at or near 30 cents per hundred shares.'').

[307] *See* Regulation NMS Adopting Release, *supra* note 16, at 37545.

[308] *Id.*

[309] *See* Regulation NMS Adopting Release, *supra* note 16, at 37545 (stating the adopted fee limitation of $0.0030 will not impair the agency market business model). Similarly, the Commission chose not to extend the application of the fee cap to all displayed quotes of a trading center (*e.g.,* including depth-off-book quotes), but instead concluded the fee caps should apply more narrowly only to the best bid or offer of a national securities exchange or national securities association, in part, to have a ''minimal impact on competition and individual business models'' while also preserving the fairness and usefulness of quotes. *Id.* at 37546.

[310] *See infra* note 585 and accompanying text.

[311] *See infra* section V.C.2.

[312] *See infra* section V.C.2 and Table 5 and accompanying text, discussing the complexity of the existing exchange fee schedules and the number of changes thereto. The exchanges would likely need to develop at least four different fee (and corresponding rebate) levels and would be required to file proposed rule changes to accommodate the four new access fee caps.

[313] *See, e.g.,* Citadel Report, *supra* note 100, at 5 (stating ''[t]o the extent the Commission reduces the minimum tick size for certain symbols, the access fee cap should be commensurately reduced to reflect the reduction in bid-offer spreads'' and recommending reduction of the current access fee cap ''by 50% to 15 cents per 100 shares for symbols trading above $1.00 per share that are tick constrained (*i.e.,* have a penny spread the overwhelming majority of the time)''). Citadel recommended the minimum pricing increment for tick-constrained symbols trading at or over $1.00 should be $0.005. *See also* MEMX Exemption Request, *supra* note 105, at 8 (requesting a reduction in the access fee cap as a condition to MEMX's request to lower the minimum pricing increment for tick-constrained stocks noting that ''a lower fee cap may be necessary in connection with an exemption that permits certain NMS stocks to trade in $0.005 increments, as any fee charged to access quotations in such securities would make up a commensurately larger proportion of the spread'').

[314] Citadel Report, *supra* note 100, at 5. *See also* MEMX Report, at 5 (''[A] change [to the minimum pricing increment for tick constrained stocks] should also be coupled with a targeted change to the access fee cap . . . further reducing costs in these securities.''). MEMX estimates a potential savings of as much as $879 million for investors

Continued

reduce the access fee caps in conjunction with reducing the minimum pricing increment, but is not reducing them proportionally so as to not unduly impair current agency market business models within the national market system.

Further, some market participants argue that the historic access fee cap reflects a non-competitive and artificially high rate.[315] Specifically, according to one market participant, ''there is well-developed, general consensus amongst market participants that a $0.0030 per share Fee Cap is an outdated benchmark for execution costs in today's trading environment . . . and creates an upper range that is simply too high and far from representative of true prices in the marketplace.'' [316] Others have stated that current pricing models have resulted in the kind of distortive pricing that rule 610(c) was designed to prevent.[317]

The rebates exchanges pay to attract liquidity have drawn much attention over the years. Typically, brokers do not directly pass along exchange fees and rebates to customers.[318] One academic study concluded that this creates conflicts of interest that may harm customer order execution quality because brokers route customer orders to the trading venues that offer the highest rebates and not the best execution quality.[319] This may also lead to excessive intermediation, *i.e.,* excessive quoting in sufficiently liquid securities in order to earn rebates, which crowds out individual investors from being able to supply liquidity, in tick-constrained stocks. The proposed reduction in the access fee caps to reflect the proposed changes in the minimum pricing increments might have the ancillary effect of addressing some of the concerns regarding the rebates exchanges pay to attract order flow because the reduction in the access fee caps might reduce the amount exchanges could offer as rebates and thus reduce the incentives available to divert order flow to a particular venue.[320]

Finally, the Commission is also proposing to delete the references to ''The Nasdaq Stock Market, Inc.'' in rule 610(c). Since the Nasdaq Stock Market is now a national securities exchange, the language is redundant.

annually if each exchange with a take fee of more than $0.0015 were to reduce the take fee to that level in tick-constrained securities. *See* MEMX Report, *id.* at 20 n.15.

[315] *See, e.g.,* Letter from Hubert De Jesus, Global Head of Market Structure and Electronic Trading, and Joanne Medero, U.S. Head of Global Public Policy, BlackRock, Inc., to Brent J. Fields, Secretary, Commission, dated May 23, 2018, at 1 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' stating ''[T]he existing access fee cap is outdated and permits market forces to drive fees and rebates to excessive levels relative to the current magnitude of commissions and bid-ask spreads.''); Letter from Tim Gately, Managing Director, Head of Americas Equities, Citigroup Global Markets Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018, at 1–2 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' stating that ''today's 30-mil cap on access fees that the exchanges can charge to access liquidity on their venues represents a more significant percentage of the economics of each trade'').

[316] Goldman Letter, *supra* note 302, at 2 and 4 (stating there is ''broad support in favor of lowering the Fee Cap'' and noting that since the adoption of Rule 610(c), spreads have narrowed considerably and commission rates have contracted and therefore the access fee cap ''creates an upper-range that is simply too high and far from representative of true prices in the marketplace.''). *See also* Letter from Theodore R. Lazo, Managing Director & Associate General Counsel, SIFMA, to Brent J. Fields, Secretary, Commission, dated May 24, 2018, at 2 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' and recommending a reduction to the access fee cap because ''the cap has not been adjusted to reflect market developments since Regulation NMS was adopted'' and noting that over time, ''competitive pressures, increased efficiencies from automation, and electronic trading have each operated to reduce transaction costs throughout the markets—but not access fees, which have remained at or near 30 cents per hundred shares.''); Letter from Stacey Cunningham, President, NYSE, to Brent Fields, Secretary, Commission, dated Oct. 2, 2018 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' and acknowledging that ''the primary concern raised by EMSAC and many commenters'' is that ''the existing access fee cap is anachronistic'' and recommending the Commission study a reduction of the fee cap to $0.001 per share, which ''would bring the fees exchanges charge for removing liquidity in line with those charged by ATSs'').

[317] *See, e.g.,* Letter from Susan M. Olson, General Counsel, Investment Company Institute, to Brent J. Fields, Secretary, Commission, dated May 23, 2018, at 2 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' stating ''Transaction fees and rebates also undermine market transparency because the prices displayed by exchanges—and provided on trade reports—do not include fee or rebate information and therefore do not fully reflect net trade prices.''); Goldman Letter, *supra* note 302, at 3 (stating that ''displayed prices do not reflect the actual economic costs because exchange fees and rebates are not reflected in those prices''); Letter from Cynthia Lo Bessette, General Counsel & Executive Vice President, OFI Global Asset Management, Inc., et al., Oppenheimer Funds, Inc., to Brent J. Fields, Secretary, Commission, dated May 25, 2018, at 2 (commenting on File No. S7–05–18 ''Transaction Fee Pilot for NMS Stocks'' stating ''[T]o the extent that transaction fees and rebates obfuscate the actual price bid or offered for a security, the 'maker-taker' pricing model has the potential to undermine price transparency . . . .''); SIFMA 2017 Letter, *supra* note 288, at 8 (stating ''in today's trading environment, a significant portion of access fees are used to subsidize rebates'').

[318] *See* Battalio Equity Market Study, *supra* note 271, at 2194.

[319] *See id.,* at 2193–2238.

[320] *See* MEMX Report, *supra* note 105, at 20 n.14 (stating ''[a]lthough the access fee cap pursuant to Rule 610(c) does not explicitly limit rebates provided by trading centers, it imposes a practical limitation on rebates as the amount that can be recouped by the trading center is limited by the access fee that it can charge'').

2. Require That All Exchange Fees and Rebates Be Determinable at the Time of an Execution

Today, many of the fees and rebates of the exchanges are calculated at the end of the month, which impedes the ability of market participants to understand at the time of execution the full cost of their transaction. For example, the exchanges have developed complex fee and rebate schedules, some of which include tiers or other incentives based on a market participant's relative monthly trading volume or relative volume compared to the consolidated trading volume in the current month, with higher volume tiers receiving a higher (lower) per unit rebate (fee). This means that the exact fee or rebate for an order cannot be determined until the end of the month, after an execution occurs, and is not known to the parties to the trade at the time of execution. This lack of transparency impedes the ability of market participants to understand at the time of execution the full cost of their transaction. Uncertainty regarding the fee amount at the time of execution has implications for market participants conducting best execution analyses and can affect order routing decisions.

To provide further transparency regarding transaction pricing, the Commission proposes to amend rule 610 to add a new subsection (d) ''Transparency of Fees,'' which would prohibit a national securities exchange from imposing, or permitting to be imposed, any fee or fees, or providing, or permitting to be provided, any rebate or other remuneration (*e.g.,* discounted fees, other credits, or forms of linked pricing) for the execution of an order in an NMS stock unless such fee, rebate or other remuneration can be determined at the time of execution. Under the proposal, any national securities exchange that imposes a fee or provides a rebate that is based on a certain volume threshold, or establishes tier requirements or tiered rates based on minimum volume thresholds, would be required to set such volume thresholds or tiers using volume achieved during a stated period prior to the assessment of the fee or rebate so that market participants are able to determine what fee or rebate level would be applicable to any submitted order at the time of execution.[321] For example, if an

[321] National securities exchanges establish and amend their fee schedules by filing proposed fee rule changes, pursuant to section 19(b) of the Exchange Act and rule 19b–4 thereunder, for Commission review. Some national securities exchanges currently use volume calculated on a monthly basis to determine the applicable threshold or tier rate. *See, e.g.,* fee schedules of Nasdaq PSX

exchange proposed a lower fee for members that reach a certain level of trading volume in a month, the required level of trading volume would have to be achieved based on a month prior to the imposition of the fee or payment of the rebate.[322]

The Commission believes that requiring all exchange fees, rebates and other forms of remuneration to be determinable at the time of execution would have several benefits. Certainty about the cost of a transaction at the time of the trade may help broker-dealers make better order routing decisions. The proposal should reduce order routing incentives that are based on achieving a threshold in order to gain a specific fee or rebate. Today, lower fees or higher rebates based on volume achieved in a current trading month can lead to routing to exchanges solely for purposes of achieving a certain level of volume or attaining a possible tier level rather than routing to achieve best execution.[323] In addition, the proposal would allow market participants to know with certainty the cost of their transactions at the time of the trade, which would facilitate a broker-dealer's ability to pass through the fee/rebate associated with a transaction because it would know at the time of the transaction the amount of the fee/rebate that is applicable to each execution. Further, the proposal would provide more transparency into whether a broker-dealer may be routing to certain venues based on the fee/rebate that venue assesses. Investors could more readily request details about fees and rebates related to their orders. If market participants pass through exchange fees/rebates, an ancillary benefit of the proposed amendment would be that the potential inducement to broker-dealers to route orders solely based on garnering the highest rebate/paying the lowest fee would be reduced since broker-dealers would no longer directly benefit from such remuneration, but instead would pass along such fees/rebates to their customers. Although a broker-dealer could still choose not to pass along fee/rebate, the proposal would facilitate a customer's ability to ask more direct questions of its broker-dealer about how the broker-dealer handles fees and rebates, which could increase accountability of the broker-dealer, which in turn could lead to better order execution and more transparency regarding fees/rebates.

The proposed rule would enhance transparency about the cost of executing a trade at the time of execution and would allow market participants to better assess the current state of the market when making trading and order routing decisions.

D. Request for Comment

The Commission requests comment on the proposed changes to rule 610 and on other potential reasonable alternatives, including:

30. Are the proposed levels of the access fee caps appropriate? Why or why not? If not, what factors should be considered in determining the appropriate level of the access fee caps?

31. Are the current access fee caps too high? What would be the appropriate level of an access fee cap(s)?

32. Should reduction of the access fee caps be proportional to the reduction of the minimum pricing increment? Why or why not?

33. Should rule 610(c) include access fee caps for each proposed minimum pricing increment? Why or why not?

34. If an access fee cap is proportional to the minimum pricing increment, what should the proportion of the access fee cap to the minimum pricing increment be and why?

35. Would two access fee caps for executions against protected quotations priced equal to, or greater than, $1.00 per share introduce additional complexity in the market? If so, please describe.

36. How would the proposed reduction in the amount of the access fee caps affect rebates provided by exchanges?

37. Would the proposed access fee caps preserve current agency market business models and allow for sufficient flexibility in structuring innovative business models? If not, why not?

38. Do current exchange fees and rebates impact order routing decisions? Would a reduction of the current access fee caps impact order routing decisions? If so, how?

39. Would proposed rule 610(d) affect the provision of volume-based discounts or other tiered fee structures by exchanges? If so, how?

40. Proposed rule 610(d) is designed to increase transparency regarding the amount of volume-based discounts and other tiered fee structures available at the time of execution. Do volume-based discounts and other tiered fee structures affect order routing decisions? If so, please explain. Do volume-based discounts and other tiered fee structures increase market complexity, present conflicts of interest, or burden competition? Why or why not? Is proposed rule 610(d) sufficient to address these concerns? If not, why not? What would be an appropriate means to address these concerns, for example, should volume based discounts or other tiers be limited or otherwise restricted?

41. Should exchange fees based on volume be determinable at the time of execution? Why or why not?

42. Would proposed rule 610(d) cause market participants to pass through fees and rebates to their customers? Why or why not?

43. In section V.F.3, the Commission discusses different reasonable alternatives to the proposed amendment to rule 610(c) access fee caps, including, for example, implementing higher or lower access fee caps than the levels proposed; implementing access fee caps that maintain the current 30% proportional relationship to the minimum pricing increment; adopting a uniform $0.001 access fee cap regardless of the minimum pricing increment; implementing a uniform $0.0003 or $0.0004 access fee cap regardless of minimum pricing increment; banning rebates and retaining the current access fee caps; or banning rebates and reducing the current access fee caps. Would any of these reasonable alternatives address the concerns identified regarding the current access fee caps in a more appropriate manner? If so, which alternative and why?

IV. Transparency of Better Priced Orders

A. Background

On December 9, 2020, the Commission adopted the MDI Rules, which expanded the data that will be made available for dissemination within the national market system (''NMS data'') and adopted a decentralized consolidation model—pursuant to which ''competing consolidators'' will eventually replace the exclusive SIPs—for the collection, consolidation, and

available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Equity%207 (as of July 2022) (calculating fees based on ''average daily volume during the month'') and Cboe EDGA *available at https://www.cboe.com/us/equities/membership/fee_schedule/edga/* (as of Apr. 1, 2022) (calculating fees based on ''average daily volume'' and ''daily volume'' on a monthly basis).

[322] This proposal does not alter an exchange's ability to determine the measurement period during which volume is calculated (*e.g.,* a week prior, two weeks prior, prior monthly, two months prior, or quarterly with one month lead time), rather it would instead require the measurement period to be prior to the date of execution so that market participants can determine the amount of the fee at the time of execution.

[323] While tiers that are based on volume from a previous time period could still induce routing by a broker-dealer to try to secure a higher rebate/lower fee tier in the following month, the proposal would allow broker-dealers to pass those fees and rebates through to their customers and enable investors to identify whether a broker-dealer is routing to secure a higher rebate/lower fee.

dissemination of this data.[324] The MDI Rules have been adopted but have not yet been implemented.[325] Therefore, the data currently disseminated within the national market system by the exclusive SIPs [326] includes, for each NMS stock, the price, size, and exchange of each last sale, each exchange's current highest bid and lowest offer and the shares available at those prices (the ''best bid and best offer'' or ''BBO''), the NBBO, odd-lot transaction information, and certain regulatory and administrative data (''SIP data'').[327] Information on NMS stock quotations is provided in round lots, which, until the round lot definition adopted pursuant to the MDI Rules is implemented, continue to be defined in exchange rules.[328] For most NMS stocks, a round lot is defined as 100 shares.[329] Information about orders that have a size less than a round lot, *i.e.,* odd-lot orders, is available on individual exchange proprietary data feeds, and market participants interested in quotation data for individual odd-lot orders must purchase these proprietary feeds.[330]

One goal of the expansion of NMS data in the MDI Rules is to increase transparency about the best priced quotations available in the market. To accomplish this goal, the Commission amended Regulation NMS to include a definition of round lot that assigns each NMS stock to a round lot size based on the stock's share price.[331] Specifically, for NMS stocks priced $250.00 or less per share, a round lot will be 100 shares; for NMS stocks priced $250.01 to $1,000.00 per share, a round lot will be 40 shares; for NMS stocks priced $1,000.01 to $10,000.00 per share, a round lot will be 10 shares; and for NMS stocks priced $10,000.01 or more per share, a round lot will be 1 share.[332] As a result of the round lot definition, each exchange's BBO and the NBBO for an NMS stock can be based upon smaller, potentially better-priced orders,[333] which will improve transparency regarding the better priced quotations available in the market and the ability of market participants to access these quotations.[334]

In addition, to further increase the transparency and availability of better priced orders in the market, the Commission adopted a definition of odd-lot information as part of the MDI Rules.[335] Odd-lot information is defined as (1) odd-lot transactions,[336] and (2) odd-lots at a price greater than or equal to the national best bid and less than or equal to the national best offer, aggregated at each price level at each national securities exchange and national securities association.[337] Therefore, once implemented, information on odd-lot orders priced better than the NBBO [338] will be included in NMS data that is made available to market participants within the national market system.[339]

The Commission believes that this information about the best priced orders available in the market should be readily and widely available. For the reasons discussed below, as part of a broader transition period for the implementation of the MDI Rules, the Commission decided to phase in the implementation of the definitions of round lot and odd-lot information.[340] However, in light of delays in the implementation of the MDI Rules,[341] the Commission now believes that a timelier implementation of these new data elements would allow investors to benefit from greater transparency and accessibility of better priced orders and improved execution quality [342] sooner. In addition, the Commission now believes that the best priced interest available in the market, including the best odd-lot order, should be identified and made widely and readily available. Identifying the best odd-lot order would enhance the utility of NMS data for trading and order routing and facilitate the ability of investors to assess execution quality.[343] Therefore, the Commission proposes to: (1) accelerate the implementation of the previously-adopted round lot and the odd-lot information definitions; and (2) amend the definition of odd-lot information to

[324] *See* MDI Adopting Release, *supra* note 5. For purposes of this release, ''NMS data'' refers to the ''information with respect to quotations for and transactions in securities'' that is collected, consolidated and disseminated within the national market system pursuant to section 11A of the Exchange Act. *See* 15 U.S.C. 78k–1(a)(1)(C). Under the existing exclusive SIP model, this consists of SIP data. *See infra* note 327 and accompanying text. Under the decentralized consolidation model, this will consist of ''consolidated market data,'' including ''core data,'' as defined in the MDI Rules. *See* 17 CFR 242.600(b)(19), (21).

[325] *See infra* notes 344–358 and accompanying text.

[326] Currently, the Securities Industry Automation Corporation (''SIAC,'' an affiliate of the New York Stock Exchange) is the exclusive SIP for the CTA and CQ Plans, and Nasdaq is the exclusive SIP for the UTP Plan. *See* MDI Adopting Release, *supra* note 5, at 18728.

[327] *See* MDI Proposing Release, *supra* note 39, at 16730.

[328] *See id.* at 16738. A ''round lot'' is not defined in the Exchange Act and, prior to the MDI Rules, it was not defined in Regulation NMS. Exchange rules typically define a round lot as 100 shares, but they also allow the exchange, or the primary listing exchange for the stock, discretion to define it otherwise. *See, e.g.,* NYSE rule 7.5 (''A 'round lot' is 100 shares, unless specified by the primary listing market to be fewer than 100 shares.''); Nasdaq rule 5005(a)(40) (''Round Lot' or 'Normal Unit of Trading' means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares.'').

[329] According to NYSE Trade and Quote (''TAQ'') Data, as of Apr. 2022, eleven stocks had a round lot size other than 100. Nine stocks had a round lot of ten and two stocks had a round lot of one.

[330] *See* MDI Proposing Release, *supra* note 39, at 16738; MDI Adopting Release, *supra* note 5, at 18599.

[331] 17 CFR 242.600(b)(82); MDI Adopting Release, *supra* note 5, at 18617.

[332] 17 CFR 242.600(b)(82). The MDI Rules also required that a round lot indicator be included in NMS data so that market participants would know the size of a round lot for each NMS stock. Specifically, the definition of regulatory data requires the primary listing exchange to provide, among other things, an ''indicator of the applicable round lot size'' to competing consolidators and self-aggregators. 17 CFR 242.600(b)(78); MDI Adopting Release, *supra* note 5, at 18634. In addition, the MDI Rules require competing consolidators to represent quotation sizes for certain core data elements in terms of the number of shares, rounded down to the nearest multiple of a round lot. 17 CFR 242.600(b)(21)(iii); MDI Adopting Release, *supra* note 5, at 18615.

[333] As shown in the MDI Proposing and Adopting Releases, orders currently defined as odd-lots often reflect superior pricing. *See* MDI Proposing Release, *supra* note 39, at 16740 (describing analysis that found, among other things, that ''43% of [ ] odd-lot transactions [in Sept. of 2019] (representing approximately 39% of all odd-lot volume) occurred at a price better than the NBBO''); MDI Adopting Release, *supra* note 5, at 18616 (describing analysis that made similar findings using data from May of 2020). More recent data and updated analyses confirm that these pricing patterns in odd-lot trading have continued. *See infra* notes 364–369 and accompanying text.

[334] MDI Adopting Release, *supra* note 5, at 18613, 18742.

[335] 17 CFR 242.600(b)(59); MDI Adopting Release, *supra* note 5, at 18613.

[336] Odd-lot transaction information is currently collected, consolidated, and disseminated by the exclusive SIPs. *See* Securities Exchange Act Release Nos. 70793 (Oct. 31, 2013), 78 FR 66788 (Nov. 6, 2013) (order approving Amendment No. 30 to the UTP Plan to require odd-lot transactions to be reported to consolidated tape); 70794 (Oct. 31, 2013), 78 FR 66789 (Nov. 6, 2013) (order approving Eighteenth Substantive Amendment to the Second Restatement of the CTA Plan to require odd-lot transactions to be reported to consolidated tape).

[337] 17 CFR 242.600(b)(59); MDI Adopting Release, *supra* note 5, at 18613.

[338] Unlike orders in the round lot sizes adopted pursuant to the MDI Rules, odd-lots are not ''protected quotations.'' *See* 17 CFR 242.600(b)(70), (71), (11).

[339] Under the MDI Rules, competing consolidators are permitted to offer consolidated market data products that contain a subset of the information included in the definition of consolidated market data. *See* MDI Adopting Release, *supra* note 5, at 18659. The Commission, however, stated that it believed that there will be widespread demand for a product that contains all elements of consolidated market data, and particularly for the additional information included in core data. *See id.* at 18659–60.

[340] *See infra* section IV.A.1; notes 381–384 and accompanying text.

[341] *See infra* notes 356–360 and accompanying text.

[342] *See infra* notes 360–363 and accompanying text.

[343] *See infra* notes 421–425 and accompanying text.

include a new data element for the best odd-lot orders available in the market.

1. Infrastructure Implementation: Phased Transition Plan and Current Status

The Commission outlined a phased transition plan for the implementation of the MDI Rules.[344] Pursuant to the transition plan, the round lot definition is currently set to be implemented as part of the last phase and odd-lot quotation information is currently set to be implemented during a ''parallel operation period.'' [345]

The first step in the implementation of the MDI Rules was the filing of amendments to the effective national market system plan(s) as required under rule 614(e).[346] The Commission's approval of such amendments will be the starting point for the rest of the implementation schedule. While the Commission can approve NMS plan amendments within 90 days of the date of their publication in the **Federal Register** if the Commission finds them to be consistent with the standards set forth in rule 608 of Regulation NMS,[347] the Commission may, under rule 608(b)(2)(i), institute proceedings to determine whether to approve or disapprove proposed amendments, which proceedings must conclude within 180 days of notice publication of the proposed amendments but can be extended by an additional 120 days.[348] Therefore, the maximum time permitted under rule 608 for Commission action is 300 days.

After the Commission finds that the plan amendments required under rule 614(e) are consistent with the Rule 608 standards and approves such amendments,[349] the next step will be a 180-day development period, during which competing consolidators can register with the Commission. The development period is followed by a 90-day testing period.[350] Once the testing period concludes, a 180-day parallel operation period will begin during which the exclusive SIPs and the decentralized consolidation model will operate in parallel.[351]

Within 90 days of the end of the parallel operation period, the Operating Committee of the effective national market system plan(s), in consultation with relevant market participants, will make a recommendation to the Commission as to whether the exclusive SIPs should be decommissioned. The exclusive SIPs will only cease operations if the Commission approves an amendment pursuant to rule 608 to the effective national market system plan(s) to effectuate such a cessation.[352] Following the cessation of the operations of the exclusive SIPs, the changes necessary to implement the new round lot sizes will be tested for 90 days and then implemented.[353]

Therefore, based on the times provided in the transition plan for implementation of the MDI Rules, the full implementation of the MDI Rules, including the implementation of the round lot definition and the inclusion of odd-lots priced better than the NBBO based on the new round lot definition,[354] will be at least two years after the Commission's approval of the plan amendment(s) required by rule 614(e).

The Operating Committees of the CTA/CQ Plan and UTP Plan filed the MDI Plan Amendments on November 5, 2021.[355] On February 24, 2022, pursuant to rule 608(b)(2)(i), the Commission instituted proceedings to determine whether to approve or disapprove the proposed MDI Plan Amendments.[356] On September 21, 2022, the Commission disapproved the proposed amendments.[357] As a result, the participants to the effective national market system plan(s) will need to develop and file new proposed amendments pursuant to rule 608.

Accordingly, the implementation of the MDI Rules will take significantly longer than the Commission estimated when it adopted the transition plan.[358] At this time, because amendments to the effective national market system plan(s) required under rule 614(e) are not yet in place, full implementation pursuant to the phased implementation schedule likely will not occur until at least two years after new proposals are developed, filed, and approved by the Commission.

B. Accelerate Implementation of Round Lots and Odd-Lot Information

In light of the delay in the implementation of the MDI Rules, the Commission proposes to accelerate the implementation of the round lot and odd-lot information definitions. The Commission believes that the transition plan for implementing the MDI Rules should be modified so that the benefits of the round lot and the odd-lot information definitions would be made available to investors and other market participants sooner. Earlier implementation would accelerate the transparency benefits of these definitions by making information about better priced interest available in the

[344] MDI Adopting Release, *supra* note 5, at 18698–18701.

[345] *Id.* at 18700–01. *See also infra* note 351 and accompanying text (describing the parallel operation period).

[346] 17 CFR 242.614(e). The Operating Committees of CTA Plan and UTP Plan filed proposed amendments on Nov. 5, 2021, which were published for comment in the **Federal Register**. *See* Securities Exchange Act Release Nos. 93615 (Nov. 19, 2021), 86 FR 67800 (Nov. 29, 2021); 93625 (Nov. 19, 2021), 86 FR 67517 (Nov. 26, 2021); 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021); 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) (''MDI Plan Amendments'').

[347] *See* 17 CFR 242.608(b)(2) (''The Commission shall approve a national market system plan or proposed amendment to an effective national market system plan . . . if it finds that such plan or amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.'').

[348] *See* 17 CFR 242.608(b)(2). The Commission instituted proceedings to determine whether to approve or disapprove the MDI Plan Amendments. *See* Securities Exchange Act Release Nos. 94310 (Feb. 24, 2022), 87 FR 11748 (Mar. 2, 2022); 94309 (Feb. 24, 2022), 87 FR 11763 (Mar. 2, 2022); 94308 (Feb. 24, 2022), 87 FR 11755 (Mar. 2, 2022); 94307 (Feb. 24, 2022), 87 FR 11787 (Mar. 2, 2022).

[349] *See supra* note 347.

[350] *See* MDI Adopting Release, *supra* note 5, at 18699–700.

[351] During the parallel operation period, the exclusive SIPs will continue to disseminate the data that they currently disseminate and competing consolidators will be permitted to offer consolidated market data products, including odd-lot information. Because the round lot definition will be implemented during a later phase, the exclusive SIPs and competing consolidators will collect, consolidate and disseminate NMS data that will be based on the current exchange definitions of round lot. *Id.* at 18699–18701. *See also supra* note 328.

[352] MDI Adopting Release, *supra* note 5, at 18701.

[353] *Id.*

[354] Odd-lots priced better than the current round lot NBBO (typically based on orders of 100 shares or more) will be made more widely available in the national market system and could be included in the consolidated market data products offered by competing consolidators during the parallel operation period, which is scheduled to begin nine months after the Commission's approval of the plan amendment(s) required by rule 614(e). *See also supra* note 351 and accompanying text.

[355] *See supra* note 346.

[356] *See supra* note 348.

[357] *See* Securities Exchange Act Release Nos. 95848 (Sept. 21, 2022), 87 FR 58544 (Sept. 27, 2022); 95849 (Sept. 21, 2022), 87 FR 58592 (Sept. 27, 2022); 95850 (Sept. 21, 2022), 87 FR 58560 (Sept. 27, 2022); 95851 (Sept. 21, 2022), 87 FR 58613 (Sept. 27, 2022).

[358] The amendments to the effective national market system plan(s) required under rule 614(e) were published in the **Federal Register** in Nov. 2021 and, if consistent with the standard set forth in rule 608(b), could have been approved by the Commission by Feb. 2022. *See supra* notes 346–347 and accompanying text. Thereafter, the 180-day development period, 90-day testing period, and 180-day parallel operation period would have concluded by May 2023. *See supra* notes 350–351 and accompanying text. Plan amendment(s) to effectuate the cessation of the operations of the exclusive SIPs could then have been proposed and approved, and round lot testing and implementation completed, in 2024. *See supra* notes 352–353 and accompanying text.

market more widely available on a faster timetable.[359]

With respect to round lots, the Commission described in the MDI Rules that smaller sized orders in higher priced stocks are often priced better than the orders that are currently in round lots.[360] The Commission reduced the round lot size for high-priced NMS stocks to ''better ensure the display and accessibility of significant liquidity for higher-priced stocks'' and ''improve the comprehensiveness and usability of core data, facilitate the best execution of customer orders, and reduce information asymmetries.'' [361] The round lot definition will ''make these quotes [in sizes less than 100 shares for stocks priced over $250] visible . . . thereby improving transparency'' and ''narrow NBBO spreads for most stocks with prices greater than $250.'' [362] With respect to odd-lot information, the Commission stated that including better priced odd-lot orders in odd-lot information will ''help investors and other market participants to trade in a more informed and effective manner and to achieve better executions and reduce the information asymmetries that currently exist between subscribers to SIP data and subscribers to proprietary data.'' [363]

Since the adoption of the MDI Rules, the market dynamics that supported the Commission's adoption of the round lot and odd-lot information definitions have persisted. Average stock prices have continued to increase over time,[364] and odd-lot quoting and trading rates remain high, particularly for higher priced stocks.[365] Odd-lot quotes in higher priced stocks continue to offer prices that are frequently better than the round lot NBBO for these stocks,[366] and this better priced odd-lot liquidity is distributed across multiple price levels.[367] In addition, odd-lot rates have increased among lower priced stocks.[368]

Furthermore, as shown in Tables 1 and 2—which examine the portion of all corporate stock and ETP volume and trades executed on an exchange, transacted in a quantity less than 100 shares, at a price better than the prevailing NBBO, occurring in a quantity that would be defined as a round lot under the MDI Rules—the tier structure reflected in the round lot definition the Commission adopted in the MDI Rules continues to capture significant percentages of better priced odd-lot trades and volume.

[359] In addition to the round lot and odd-lot information definitions, the MDI Rules expanded the content of NMS data by, among other things, adopting definitions of ''depth of book data'' and ''auction information.'' *See* 17 CFR 242.600(b)(26), (5); *see also* MDI Adopting Release, *supra* note 5, at 18602. The Commission is proposing to accelerate the implementation of the round lot and odd-lot information definitions in particular because their inclusion in NMS data would offer investors direct opportunities to obtain price improvement by transacting against the best priced orders available in the market. Moreover, these definitions could be efficiently implemented under the current exclusive SIP model. *See infra* sections IV.B.4, V.D.5, V.D.6.c, and VI.D.

[360] *See supra* note 333.

[361] MDI Adopting Release, *supra* note 5, at 18615–16.

[362] *Id.* at 18742.

[363] *Id.* at 18612. The additional transparency resulting from the inclusion of better priced odd-lots in core data extends to lower priced stocks as well. *See id.* at 18618 (''The Commission acknowledges that increasing the minimum stock price for the first sub-100 share round lot tier from $50 to $250 will not improve odd-lot transparency for stocks priced between $50 and $250. However, as discussed above, the Commission is including information about all odd-lots priced at or better than the NBBO in core data, which will counterbalance this loss of odd-lot transparency.'') (citations omitted).

[364] *See* MDI Proposing Release, *supra* note 39, at 16739 (stating that ''between 2004 and 2019, the average price of a stock in the Dow Jones Industrial Average nearly quadrupled.''). Between Jan. of 2020 and Aug. of 2022, the average price of a stock in the Dow Jones Industrial Average increased by 18%. Sources: Equity consolidated data feeds (CTS and UTDF), as collected by MIDAS; NYSE Daily TAQ; Indices, Dow Jones Industrial Average, FINANCIAL TIMES (last visited Nov. 29, 2022), *available at https://markets.ft.com/data/indices/tearsheet/constituents?s=DJI:DJI* (describing the current constituent stocks of the Dow Jones Industrial Average); S&P Dow Jones Indices, *Salesforce.com, Amgen and Honeywell International Set to Join Dow Jones Industrial Average* (Aug. 24, 2020), *available at https://www.spglobal.com/spdji/en/documents/indexnews/announcements/20200824-1208960/1208960_aug20aaplsplitcrmxomamgnpfehonrtxdjia.pdf* (describing changes to the constituents of the Dow Jones Industrial Average in Aug. of 2020); Aparna Narayanan, *Raytheon Technologies Debuts On The Dow As Rival GE Deepens Cuts* (Apr. 3, 2020), *available at https://www.investors.com/news/raytheon-technologies-stock-debuts-dow-jones-industiral-average-ge-aviation-cuts/*(describing changes to the constituents of the Dow Jones Industrial Average in Apr. of 2020).

[365] Based on data from the SEC's MIDAS analytics tool, the daily exchange odd-lot rate (*i.e.,* the number of exchange odd-lot trades as a proportion of the number of all exchange trades) for all corporate stocks ranged from approximately 52% to 64% of trades and the daily exchange odd-lot rate for all ETPs ranged from 33% to 46% of trades in 2021. More recently, in June 2022, the daily exchange odd-lot rate for all corporate stocks averaged 65% and reached almost 41% for all ETPs in the same period. Exchange odd-lot volume as a proportion of total exchange-traded volume also rose in June 2022, reaching approximately 19% for all corporate stocks (and over 39% for the top decile by price) and approximately 7% for all ETPs. These levels are higher than the levels observed in the data from 2018 and 2019. *See* MDI Proposing Release, *supra* note 39, at 16739; MIDAS, *available at https://www.sec.gov/marketstructure/midas.html. See also* Cboe, An In-Depth View Into Odd Lots (Oct. 27, 2021), *available at https://www.cboe.com/insights/posts/an-in-depth-view-into-odd-lots/#:~:text=Odd%20lots%20currently%20make%20up,the%20beginning%20of%20the%20year* (''Odd lots currently represent 54.8% of all trades in the U.S. financial markets, up from 43% at the beginning of 2020 . . . While odd lot average daily executed share volume has decreased about 22% from the highs reached in Feb. and Mar. [of 2021], their percentage of trades continues to increase, and overall share volume remains higher than the prior year . . . As stock price increases, odd lot share volume percentage also increases. Since first-quarter 2020, the percentage of odd lots has increased across all price groups. The largest increase was in stocks priced between $100 and $499.99, where odd lots increased 3.3% to comprise 15.2% of share volume.''); Robert P. Bartlett, Justin McCrary, and Maureen O'Hara, The Market Inside the Market: Odd-lot Quotes (2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4027099* (retrieved from SSRN Elsevier database) (finding that the proportion of trades in S&P 500 stocks occurring in odd-lots increased from around 30% in 2016 to 65% in 2021 and that, based upon data from Jan. through Mar. of 2021, ''the rate of odd lot orders ranges from 5.6% of all submitted orders for less than 500 shares [for stocks priced $20 or lower] to 46.9% of all such orders [for stocks priced over $250].'').

[366] *See* Elliot Banks, BMLL Technologies, Inside the SIP and the Microstructure of Odd-Lot Quotes (observing an upward trend in odd-lot trading inside the NBBO from Jan. 2019 to Jan. 2022); Bartlett et al., *supra* note 365, at 2 (stating, based upon data from Jan. through Mar. of 2021, that ''[p]erhaps most intriguing are our results on the incidence of superior odd lot quotes relative to the NBBO. While for the lower price stocks this is only the case an average 5.1% of the time, this incidence reaches almost 30% for [stocks priced between $100 and $250] and it averages 42% for [stocks priced over $250]'').

[367] MDI Adopting Release, *supra* note 5, at 18616 (describing analysis that examined quotation data for the week of May 22–29, 2020 for stocks priced from $250.01 to $1000.00 and found that there is odd-lot interest priced better than the new round lot NBBO 28.49% of the time, and, in 48.49% of those cases, there are better priced odd-lots at multiple price levels). A similar analysis using data from all trading days in Mar. 2022 confirms that better-priced odd-lots continue to be distributed across multiple price levels.

[368] For example, odd-lot rates for corporate stock price deciles 1–3 (the lowest priced corporate stocks comprising 30% of all corporate stocks) have been higher on average in 2021 and June 2022 (34%, 39%) as compared to 2019 and 2020 (26%, 29%). Similarly, ETPs also exhibit higher average odd-lot rates in price quartiles 1 and 2 (the lowest priced ETPs comprising 50% of all ETPs) on average in 2021 and June 2022 (26%, 29%) compared to 2019 and 2020 (20%, 23%). *See* MIDAS, *available at https://www.sec.gov/marketstructure/midas.html.*

TABLE 1

Round lot tier	Round lot size	Portion of all corporate stock and ETP share volume executed on an exchange, transacted in a quantity less than 100 shares, at a price better than the prevailing NBBO, occurring in a quantity that would be defined as a round lot under the MDI Rules	
		May 2020 (%)	Mar. 25–31, 2022 (%)
$0–$250.00	100 Shares	0	0
$250.01–$1,000	40 Shares	65.35	54.77
$1,000.01–$10,000.00	10 Shares	88.28	79.36
$10,000.01 or more	1 share	100.00	100.00

Source: Equity consolidated data feeds (CTS and UTDF), as collected by MIDAS; NYSE Daily TAQ.

TABLE 2

Round lot tier	Round lot size	Portion of all corporate stock and ETP trades executed on an exchange, transacted in a quantity less than 100 shares, at a price better than the prevailing NBBO, occurring in a quantity that would be defined as a round lot under the MDI Rules	
		May 2020 (%)	Mar. 25–31, 2022 (%)
$0–$250.00	100 Shares	0	0
$250.01–$1,000	40 Shares	20.19	14.71
$1,000.01–$10,000.00	10 Shares	39.81	26.48
$10,000.01 or more	1 share	100.00	100.00

Source: Equity consolidated data feeds (CTS and UTDF), as collected by MIDAS; NYSE Daily TAQ.

Moreover, using exchange direct feed data from MIDAS for every trading day in March 2022, a simulation was conducted of a competing consolidator feed that provides quotation information for a sample of NMS stocks priced at or over $250.01 using the priced-based round lot sizes adopted in the MDI Rules as opposed to the round lot size that is applicable today (which is usually 100). Snapshots of this simulated feed were compared against snapshots of the exclusive SIP feed for that NMS stock at the same point in time. For each of the three price tiers and corresponding round lot sizes, the simulated feed showed better prices, on average, than the exclusive SIP feed. For stocks priced between $250.01 and $1,000.00 per share, which will have a round lot size of 40 under the round lot definition, the price reflected in the simulated competing consolidator feed was better than the exclusive SIP feed 21.47% of the time and worse less than .1% of the time. For stocks priced between $1,000.01 and $10,000.00 per share, which will have a round lot size of 10 under the round lot definition, the price reflected in the simulated competing consolidator feed was better than the exclusive SIP feed 64.67% of the time and worse less than .1% of the time.[369]

Since the adoption of the MDI Rules, some market participants have called for earlier implementation of the new round lot definition or otherwise welcomed its implementation.[370] In addition, the Operating Committees of the CTA and UTP Plans published a request for comment on a potential proposal to include the best priced odd-lots from each exchange, if at or better than that exchange's round lot BBO, as well as an ''Odd-Lot NBBO,'' if at or better than the round lot NBBO, on the exclusive SIP feeds.[371]

While the implementation of the MDI Rules proceeds, investors are not yet

[369] Only one stock, which is already quoted in one share round lots on the exclusive SIP feed, was priced over $10,000 per share, so the simulated feed and exclusive SIP feed showed the same prices for this stock.

[370] *See* MEMX, Why We Should Change Round Lots Now (June 2021), *available at https://memx.com/wp-content/uploads/MEMX_Round-Lots_white-paper.pdf* (''MEMX White Paper'') (''There is significant consensus among market participants on round lot reform and implementing these changes now will result in fairer and more efficient markets. Based on our analysis, it should also save investors billions in transaction costs over the next three years. As the saying goes, 'time is money' and investors will be left footing the bill if we don't act soon to expedite these changes. That's why we're asking the listing exchanges to work together with us and the industry to get round lot reform implemented ahead of schedule by voluntarily changing round lot sizes in their listed securities to match the infrastructure rule's requirements.''); letter from Citadel to CTA and UTP Plan Operating Committees (Apr. 27, 2022) *available at https://www.ctaplan.com/publicdocs/ctaplan/Citadel_Securities_Comment_Letter_on_the_Odd_Lot_Proposal.pdf* at 2 (''Citadel Odd-Lot Letter'') (stating, in response to a request for comment on a proposal from the Operating Committees of CTA and UTP Plans to add certain odd-lot quotes to SIP data, that ''[a] better solution to address the growth in odd lot trading is to recalibrate the definition of a round lot as directed by the SEC in its final Market Data Infrastructure Rule . . . we recommend that the SIP Operating Committees . . . pursue a market-led approach that is consistent with the Market Data Infrastructure Rule (including revising the round lot definition)''); Citadel Report, *supra* note 100, at 7 (''It is also important to note that the Commission recently finalized, but has yet to implement, a revised round lot definition that is tiered based on the price of a stock . . . We supported this revised round lot definition and look forward to it being implemented.'').

[371] *See* Proposal of the CTA and UTP Operating Committees Regarding Odd Lots on the SIPs (''2022 SIP Odd-Lot Request for Comment''), *available at https://www.ctaplan.com/publicdocs/ctaplan/CTA_Odd_Lots_Proposal_2022.pdf.* The 2022 SIP Odd-Lot Request for Comment would not include all odd-lot information as defined in rule 600(b)(59). Specifically, the 2022 SIP Odd-lot Request for Comment would include only the best odd-lot quote of each exchange, if at or better than that exchange's round lot BBO, and an ''Odd Lot NBBO,'' if at or better than the round lot NBBO, in SIP data. *Id.* at 2. By contrast, the Commission's definition of odd-lot information includes all odd-lot quotes priced at better than the NBBO *at every price level* (aggregated at each such price level by exchange). 17 CFR 242.600(b)(59).

receiving the benefits [372] of increased transparency of better priced orders available in the market through the distribution of NMS data. If the implementation of the definitions of odd-lot information and round lot is not accelerated, market participants—particularly those that do not subscribe to proprietary data products containing odd-lot quotation data—would not receive information about opportunities to trade against liquidity that has superior pricing, which could result in inferior executions and significant costs for investors.[373] By accelerating implementation of the round lot and odd-lot information definitions, investors and market participants would be able to receive these benefits and avoid these costs sooner and for a more extended period of time.[374] This period of time would vary depending upon the timing of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions and Commission approval of the plan amendments required under rule 614(e), but it is likely to be significant. For example, assuming 90 days after **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions and the Commission's approval of the plan amendment(s) required by rule 614(e) occur at roughly the same time, the benefits of the round lot and odd-lot information definitions would accrue to investors and other market participants approximately two years sooner.

Therefore, the Commission proposes to accelerate the implementation of the round lot and odd-lot information definitions so that market participants can reap the benefits of increased transparency and enhanced execution quality sooner than originally planned.[375] Specifically, the Commission proposes to require compliance with the round lot and odd-lot information definitions 90 days from the publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions in the **Federal Register**.

1. Odd-Lot Information

Today, information about odd-lot quotations and transactions that is defined as odd-lot information in rule 600(b)(59) is provided in several ways. Odd-lot transaction information is collected, consolidated, and disseminated by the exclusive SIPs.[376] Odd-lot quotation and transaction information is also disseminated via the individual exchange proprietary feeds.[377] Pursuant to the MDI Rules, odd-lot quotation information as defined in rule 600(b)(59)(ii) will not be required to be collected, consolidated, or disseminated by the exclusive SIPs. Rather, this information will be collected, consolidated, and disseminated by competing consolidators, beginning during the parallel operation period.[378]

To accelerate the compliance date for odd-lot information as defined in rule 600(b)(59), the Commission proposes to require self-regulatory organizations (''SROs'') to provide the data necessary to generate odd-lot information to the exclusive SIPs and to require the exclusive SIPs to collect, consolidate, and disseminate odd-lot information. Specifically, the Commission proposes to amend rule 603(b) to require the national securities exchanges and national securities associations to make all data necessary to generate odd-lot information available to the exclusive SIPs and to require the exclusive SIPs to collect, consolidate, and disseminate odd-lot information.[379]

The Commission proposes to divide rule 603(b) into three new subsections to reflect the requirements under rule 603(b) that remain in effect until the changes to rule 603(b) that were adopted under the MDI Rules are implemented. Proposed rule 603(b)(1) would govern the applicability of proposed rules 603(b)(2) and (b)(3) by describing the compliance dates set forth in the MDI Rules for each of these proposed subsections. Specifically, proposed rule 603(b)(1) would state that compliance with proposed rule 603(b)(2) is required 180 calendar days from the date of the Commission's approval of the amendments to the effective national market system plan(s) required under rule 242.614(e).[380] It would also state that compliance with proposed rule 603(b)(3) is required until the date indicated by the Commission in any order approving amendments to the effective national market system plan(s) to effectuate a cessation of the operations of the plan processors that disseminate consolidated information regarding NMS stocks. Proposed rule 603(b)(2) would govern the provision of consolidated market data by competing consolidators and self-aggregators pursuant to the decentralized consolidation model set forth in the MDI Rules, which includes the collection, consolidation, and dissemination of odd-lot information. Proposed rule 603(b)(3) would govern the provision of NMS data by the exclusive SIPs, including the new requirements regarding the collection, consolidation, and dissemination of odd-lot information.

In the MDI Adopting Release, the Commission did not require the exclusive SIPs to collect, consolidate, or disseminate odd-lot information, stating that ''requiring the existing exclusive SIPs to continue disseminating the same data that they currently do will prevent the imposition of unnecessary costs—namely, any change to the data content

[372] *See supra* notes 361–363 and accompanying text.

[373] *See* MEMX White Paper, *supra* note 370, at 6 (estimating that investors could lose up to $7.5 billion if round lot implementation is delayed by three years). *Cf.* Letter from Cboe to CTA and UTP Plan Operating Committees re 2022 SIP Odd-Lot Request for Comment (Apr. 13, 2022) *available at https://www.ctaplan.com/publicdocs/ctaplan/Cboe_Comment_Letter_2022_Odd_Lot_Proposal.pdf* at 4 (''Cboe Odd-Lot Letter'') (''[C]ontinuing to withhold Odd Lot Quotations from the SIP would needlessly deprive investors of having access to the best prices available in the market.''). *See also infra* section IV.B.1.

[374] Letter from MEMX to CTA and UTP Plan Operating Committees re 2022 SIP Odd-Lot Request for Comment (Apr. 26, 2022) *available at https://www.ctaplan.com/publicdocs/ctaplan/Odd_Lot_20220426_MEMX_Comments_SIP_Proposal.pdf* at 3 (''MEMX Odd-Lot Letter'') (''Investors would . . . benefit from this information being made available sooner than may be the case if the industry were compelled to wait for competing consolidators to begin disseminating such data.'').

[375] *See supra* notes 361–363 and accompanying text.

[376] *See supra* note 336. Odd-lot information as defined in rule 600(b)(59)(i) includes ''[o]dd-lot transaction data disseminated pursuant to the effective national market system plan or plans required under § 242.603(b) as of April 9, 2021.''

[377] *See* MDI Proposing Release, *supra* note 39, at 16738; MDI Adopting Release, *supra* note 5, at 18599. Odd-lot information as defined in rule 600(b)(59)(ii) includes ''[o]dd-lots at a price greater than or equal to the national best bid and less than or equal to the national best offer, aggregated at each price level at each national securities exchange and national securities association.''

[378] *See supra* notes 351–354 and accompanying text.

[379] While the MDI Rules do not require competing consolidators to disseminate all consolidated market data elements, such as odd-lot information, in consolidated market data products, the Commission proposes to require the exclusive SIPs to collect, consolidate, and disseminate odd-lot information. Under the decentralized consolidation model, competing consolidators will be permitted to design consolidated market data products with different elements of consolidated market data for their subscribers and subscribers will be able to choose competing consolidators and consolidated market data products that meet their needs. *See* MDI Adopting Release, *supra* note 5, at 18659; *supra* note 339 and accompanying text. Under the existing exclusive SIP model, the exclusive SIPs are the only source of consolidated NMS data and—while proprietary data products offer some of the same data content, including odd-lot quotations—subscribers would have no alternative providers of *consolidated* NMS data if such data were not required to be collected, consolidated, and disseminated by the exclusive SIPs. Therefore, the Commission proposes that the exclusive SIPs be required to disseminate odd-lot information.

[380] *See* MDI Adopting Release, *supra* note 5, at 18700, n.1355.

the SIPs currently disseminate—on the existing exclusive SIPs immediately prior to their retirement.'' [381] However, in light of the delay of the implementation of the MDI Rules and the benefits—including enhanced transparency and usability of NMS data and improved execution quality [382]—that would be provided to the market by the ready and widespread availability of odd-lot information, the Commission believes that the exclusive SIPs should be required to collect, consolidate and disseminate odd-lot information. Moreover, in light of the delay in the implementation of the MDI Rules and the corresponding extension in the amount of time that the exclusive SIPs will continue to operate, the costs imposed on the exclusive SIPs by this requirement would not represent ''unnecessary costs'' on the exclusive SIPs ''immediately prior to their retirement.'' [383]

2. Round Lots

The Commission proposes to accelerate the implementation of the round lot definition set forth in rule 600(b)(82). In the MDI Adopting Release, the Commission stated that ''sequencing [round lot implementation] after the parallel operation period is important to avoid either: (1) potential confusion and market disruption that could result from two different round lot structures operating at the same time; or (2) imposing reprogramming costs on the exclusive SIPs for a limited time period prior to their retirement.'' [384] However, in light of the delay in the overall implementation of the MDI Rules and the benefits that would be available to investors sooner if implementation of this aspect of the MDI Rules is accelerated, the Commission believes that the benefits justify the costs.[385]

The Commission also proposes to amend an element of the definition of ''regulatory data'' under rule 600(b)(78) to facilitate the accelerated implementation of the round lot definition. Specifically, the Commission proposes to add new paragraph (b)(78)(iv) to require the primary listing exchanges also to make the indicator of the applicable round lot size available to the exclusive SIPs.[386] Under the MDI Rules, the definition of ''regulatory data'' requires the primary listing exchange to make an indicator of the applicable round lot size for each NMS stock available to competing consolidators and self-aggregators, but not to the exclusive SIPs (as they were to be retired by that time).[387] The Commission stated that this indicator will ''help market participants ascertain the applicable round lot size for each NMS stock on an ongoing basis'' [388] and ''reduce confusion as market participants adjust to the new round lot sizes.'' [389] Therefore, for these same reasons, the Commission believes that this indicator should be provided to the exclusive SIPs for collection and dissemination.[390]

3. Display of Round Lots and Odd-Lot Information

Because the exclusive SIPs would be required to collect and disseminate SIP data in the new round lot sizes,[391] the Commission proposes—consistent with the quotation size representation and rounding conventions required of competing consolidators under the MDI Rules [392]—to require the exclusive SIPs to represent quotation sizes in SIP data in terms of the number of shares and to round quotation sizes, except for odd-lot quotations, down to the nearest multiple of a round lot.[393] Currently, quotation sizes are represented in SIP data in terms of the number of round lots.[394] However, after the implementation of the round lot definition, which assigns each stock to one of four round lot sizes based on its share price, this convention could be confusing because the number of round lots will represent different quotation sizes depending upon the price of the stock.[395] In addition, in the MDI Rules, the Commission adopted a provision requiring the rounding of quotation sizes,[396] except for odd-lot quotations,[397] down to the nearest multiple of a round lot to help ensure that certain core data elements, such as each exchange's BBO, ''reflect orders of meaningful size'' and that, with respect to the NBBO in particular, ''the protected portion of the order is clearly represented, which addresses concerns about impacts on investor confidence and confusion that could result from showing unprotected size at the

[381] *Id.* at 18700.

[382] *See supra* notes 360–363 and accompanying text.

[383] MDI Adopting Release, *supra* note 5, at 18700. *See also infra* sections V.D.6.c and VI.D (describing the estimated costs of the proposed requirement that the exclusive SIPs collect, consolidate, and disseminate odd-lot information). Although the scope of the odd-lot quotation data that would be included in SIP data pursuant to the 2022 SIP Odd-Lot Request for Comment is more limited than odd-lot information as defined in the MDI Rules, *see supra* note 371, the 2022 SIP Odd-Lot Request for Comment nonetheless demonstrates that the Operating Committees of the CTA and UTP Plans may be willing to enhance SIP data content for a period of time before the exclusive SIPs are ultimately retired and to incur the costs of such enhancements. Similarly, many comments submitted in response to the 2022 SIP Odd-Lot Request for Comment reflect support for earlier availability of some odd-lot quotation data via the exclusive SIPs, as opposed to waiting for odd-lot information to become available pursuant to the original implementation schedule set forth in the MDI Rules. *See generally* comment file for 2022 SIP Odd-Lot Request for Comment, *available at https://www.ctaplan.com/oddlots*.

[384] MDI Adopting Release, *supra* note 5, at 18701. The Commission stated that ''the consolidated market data products offered by competing consolidators during the initial parallel operation period would be based on the current definition of round lot.'' *Id.* at 18700. However, because the Commission now proposes to accelerate implementation of the round lot definition, the exclusive SIPs would be providing SIP data that reflects the new round lot sizes during the initial parallel operation period. Further, the acceleration of the implementation of the round lot definition would result in its use during the parallel operation period by both the exclusive SIPs and competing consolidators.

[385] *See infra* sections V.D.5.a and V.D.6.c.

[386] The Commission proposes that the compliance date for this requirement would coincide with the proposed compliance date for the round lot definition (*i.e.,* 90 days from the publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions in the **Federal Register**).

[387] *See supra* note 332.

[388] MDI Proposing Release, *supra* note 39, at 16762.

[389] MDI Adopting Release, *supra* note 5, at 18619.

[390] As discussed below, since the MDI Rules already require the primary listing exchanges to provide an indicator of the applicable round lot size to competing consolidators and self-aggregators, the Commission believes that the incremental cost of providing this indicator to the two exclusive SIPs would be low. *See infra* section VI.G.

[391] *See supra* section IV.B.2; *infra* section IV.B.4.

[392] Under the MDI Rules, the definition of ''core data'' requires competing consolidators to represent certain core data elements, including the best bid and best offer, the NBBO, and protected quotations—but not including odd-lot information—in terms of the number of shares, rounded down to the nearest multiple of a round lot. MDI Adopting Release, *supra* note 5, at 18615; 17 CFR 242.600(b)(21)(iii).

[393] This amendment would be reflected in proposed rule 603(b)(3), which would govern the provision of NMS data by the exclusive SIPs. *See supra* section IV.B.1. *See also* MDI Adopting Release, *supra* note 5, at 18615 (providing the following example of the required quotation size representation and rounding convention: ''a 275 share buy order at $25.00 for a stock with a 100 share round lot would be disseminated as ''200.'').

[394] MDI Adopting Release, *supra* note 5, at 18615 (''For example, if a 200 share bid at $25.00 establishes the national best bid, the SIP feed shows ''2'' at $25.00.'').

[395] *Id.* (''For example, an investor would have to know that, for a $300 stock, ''2'' means 80 shares pursuant to the adopted round lot sizes.'').

[396] ''Quotation size'' is defined in rule 600(b)(76). 17 CFR 242.600(b)(76).

[397] Consistent with the approach taken in the MDI Rules, *see supra* note 392, the Commission is proposing to exclude odd-lot quotations from the rounding convention that would be required of the exclusive SIPs under proposed rule 603(b)(3) because it would defeat the purpose of including odd-lots in NMS data—particularly the transparency and usability benefits associated with their inclusion—to round odd-lots down to the nearest round lot; since odd-lots are, by definition, less than a round lot, such an approach would result in ''0'' being shown rather than the number of shares associated with an odd-lot quotation.

NBBO.'' [398] For these reasons, the Commission proposes to require the exclusive SIPs to represent quotation sizes in SIP data in terms of the number of shares, rounded down to the nearest multiple of a round lot, except for odd-lot quotations.[399]

4. Proposed Compliance Date

The Commission proposes to amend the date by which market participants must comply with the odd-lot information and round lot definitions, including, as required under proposed rule 603(b)(3), that national securities exchanges and associations make the data necessary to generate odd-lot information available to the exclusive SIPs and that the exclusive SIPs disseminate odd-lot quotation information as defined in rule 600(b)(59). Specifically, the Commission proposes to require compliance with the odd-lot information and round-lot definitions 90 days from **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions. Advancing the compliance date for odd-lot information to 90 days from **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions would significantly move up the date by which this information would be more widely available in the national market system.[400] Under the implementation schedule set forth in the MDI Adopting Release, the odd-lot information definition will not be fully implemented in the near term. Specifically, odd-lot quotation information as defined in rule 600(b)(59)(ii) that is based on the definitions of round lot set forth in the rules of national securities exchanges [401] will not be made available until the ''parallel operation period,'' which does not begin until nine months after Commission approval of the amendments to the effective national market system plan(s) required by rule 614(e).[402]

Pursuant to the MDI Rules implementation schedule, the round lot definition set forth in rule 600(b)(82) will be implemented after the retirement of the exclusive SIPs, which the Commission estimates will be at least two years after the approval of the effective national market system plan(s) amendment required under rule 614(e).[403] The implementation of the round lot definition affects the full implementation of odd-lot information definition, as odd-lot information that is based on round lots as defined in rule 600(b)(82) will not occur until the round lot definition is implemented.[404] Therefore, full implementation of the odd-lot information definition will not occur until the exclusive SIPs have been retired, which, as estimated above, will be at least two years from the Commission's approval of the plan amendment(s) required by rule 614(e).[405]

The Commission preliminarily believes that a compliance date of 90 days from **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions would provide market participants with sufficient time to make the changes necessary to implement the round lot and odd-lot information definitions.[406] These changes would include reprogramming systems to facilitate the acceptance and handling of orders in the one round lot size that is not currently in use (*i.e.,* 40) and to assign the approximately 181 NMS stocks priced above $250 [407] to their relevant round lot size, and systems enhancements to support the distribution and consumption of odd-lot information.

For the round lot definition, broker-dealers would need to modify their systems to accept and handle orders in the new round lot sizes. Trading centers would need to modify their systems to accept and process orders in the new round lot sizes.[408] The exclusive SIPs would need to modify their systems to accept and process orders in the new round lot sizes. The exclusive SIPs would also have to make systems changes to represent quotation sizes in the number of shares rounded down to the nearest multiple of a round lot.[409]

For odd-lot information, broker-dealers would need to make changes to their systems that accept SIP data that would now reflect additional information, *i.e.,* certain quotations in odd-lot sizes as defined in rule 600(b)(59)(ii). The SROs would have to make systems changes to provide the information necessary for the generation of odd-lot information to the exclusive SIPs, and the exclusive SIPs would have to make systems changes to collect, consolidate, and disseminate odd-lot information. As discussed above, the SROs already provide, and the exclusive SIPs already collect, consolidate, and disseminate, transaction information for executions of odd-lot orders. Therefore, the systems changes necessary for the SROs and exclusive SIPs related to implementing the odd-lot information definition would be limited to changes necessary to accommodate quotations in odd-lots as defined in rule 600(b)(59)(ii). These systems changes would include modifications necessary to aggregate odd-lot quotes at each price better than the NBBO at each exchange.

As discussed below, the Commission does not believe that the proposed

[398] *See* rule 600(b)(21)(iii); MDI Adopting Release, *supra* note 5, at 18615.

[399] The Commission proposes that the compliance date for this requirement would coincide with the proposed compliance date for the round lot definition (*i.e.,* 90 days from the publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions in the **Federal Register**) so that the exclusive SIPs could continue the current convention of representing quotation sizes in terms of the number of round lots until such time as they would be required to provide SIP data using the new round lot definition, at which point that convention would become confusing.

[400] Currently, odd-lot quotation information is available only on the exchanges' proprietary data feeds. *See supra* note 330 and accompanying text. By moving up the compliance date for odd-lot information, this data would no longer be limited to the exchanges' proprietary data products.

[401] *See supra* note 328.

[402] *See supra* note 351 and accompanying text. ''Odd-lot'' is defined as ''an order for the purchase or sale of an NMS stock in an amount less than a round lot.'' 17 CFR 242.600(b)(58). Hence, until the round lot definition is implemented, odd-lot quotation information will reflect the existing, exchange-based definition of round lot. *See also* MDI Adopting Release, *supra* note 5, at 18700 (''The consolidated market data products offered by competing consolidators during the initial parallel operation period would be based on the current definition of round lot.'').

[403] *See supra* note 354 and accompanying text. Further, this time frame could potentially be considerably longer depending upon a number of factors, including the evaluation of the performance of the decentralized consolidation model during the parallel operation period by the Operating Committee of the effective national market system plan(s), the timing of when an NMS plan amendment to effectuate the cessation of the exclusive SIPs is submitted to the Commission, and whether and when the Commission approves such an amendment.

[404] *See supra* note 402.

[405] *See supra* note 354 and accompanying text.

[406] *Cf. supra* note 371 and accompanying text (comparing the scope of odd-lot data that the exclusive SIPs would disseminate pursuant to the 2022 SIP Odd-Lot Request for Comment with the data included in the definition of odd-lot information adopted as part of the MDI Rules); 2022 SIP Odd-Lot Request for Comment, *supra* note 371, at 1 (stating that the Operating Committees of the CTA and UTP Plans anticipate that certain odd-lot data could be made available through the exclusive SIPs by the first half of 2023); MDI Adopting Release, *supra* note 5, at 18701 (''For a period of 90 days starting with the date of the cessation of the operation of the exclusive SIPs, the changes necessary to implement the new round lot sizes will be tested. At the end of the 90 day test period, the new round lot sizes will be implemented.'').

[407] Based on average closing prices on the primary listing exchange in Mar. 2022, there are 181 NMS stocks priced over $250.

[408] The exchanges that have defined round lots in their rules would need to file proposed rule changes pursuant to section 19(b) of the Exchange Act and rule 19b–4 thereunder to change their rules to reflect the implementation of rule 600(b)(82). *See supra* note 328.

[409] *See supra* note 399 and accompanying text.

accelerated compliance date for the round lot and the odd-lot information definitions—rather than implementing these definitions under the implementation schedule set forth in the MDI Adopting Release—would greatly increase the costs of implementing these definitions.[410] The acceleration of the implementation of the round lot and odd-lot information definitions, however, would impose costs on the exclusive SIPs that would not have resulted from the MDI Rules. The exclusive SIPs would have to make systems changes in order to collect, consolidate, and disseminate SIP data that reflects the round lots as defined in rule 600(b)(82) and odd-lot quotation information. The Commission believes that the costs of these changes would be relatively modest. First, round lot sizes of 100, 10, and 1 are already in existence today, so the exclusive SIPs can already accept information in three out of the four new round lot sizes, which would limit the scale of the necessary reprogramming. Further, the round lot definition affects a relatively low number of NMS stocks. Based on pricing during March 2022, only 181 stocks would have been assigned a new round lot size as a result of having a share price that is $250 or higher.[411] However, representing quotation sizes in terms of the number of shares, rounded down to the nearest multiple of a round lot, would be a departure from the current convention of representing quotation sizes in terms of the number of round lots, and would require the exclusive SIPs and the users of SIP data to modify their systems.[412]

For odd-lot information, the exclusive SIPs would have to modify their systems to collect, consolidate, and disseminate quotations that are included in the definition of odd-lot information. The additional odd-lot information would likely increase message traffic coming in to the exclusive SIPs and in the exclusive SIP feeds.[413] Therefore, the exclusive SIPs would have to modify their systems to accommodate increased message traffic and to calculate odd-lot information. The Commission believes that the benefits of implementing the round lot definition and providing odd-lot information would justify the costs of the necessary technological changes.[414]

C. Request for Comment

The Commission requests comment on all aspects of the proposed accelerated implementation of the round lot and odd-lot information definitions. In particular the Commission solicits comment on the following:

44. Should the implementation of the round lot definition adopted as part of the MDI Rules be accelerated? Why or why not?

45. If so, by how much time should the round lot definition be accelerated? Does the proposal to require compliance with the new definition within 90 days of **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions provide market participants with sufficient time to make necessary changes and adjustments? Please explain the specific modifications that each type of market participant—including, but not limited to, broker-dealers, trading centers, and the exclusive SIPs—would have to make to comply with the round lot definition. In addition, please explain the amount of time each type of market participant would need to make such modifications and whether a timeframe shorter or longer than the proposed compliance date of 90 days from **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions would be more appropriate?

46. Should the exclusive SIPs be required to represent quotation sizes in terms of the number of shares, rounded down to the nearest multiple of a round lot, rather than the number of round lots? Why or why not? If not, would investors be confused by representing quotation sizes in the number of lots? Please describe any systems changes to the exclusive SIPs, SIP data users, or other market participants that would be necessary to represent quotation sizes in terms of the number of shares, rounded down to the nearest multiple of a round lot.

47. Should the primary listing exchange be required to provide an indicator of the applicable round lot size for each NMS stock to the appropriate exclusive SIP? Why or why not?

48. Should the implementation of the definition of odd-lot information, which would include odd-lots priced better than the NBBO in NMS data, be accelerated? Why or why not?

49. If so, by how much time should the odd-lot information definition be accelerated? Does the proposal to require compliance with the new definition 90 days after publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions in the **Federal Register** provide market participants with sufficient time to make necessary changes and adjustments? Please explain the specific modifications that each type of market participant—including, but not limited to, broker-dealers, trading centers, and the exclusive SIPs—would have to make to comply with the odd-lot information definition. In addition, please explain the amount of time each type of market participant would need to make such modifications and whether a timeframe shorter or longer than the proposed compliance date of 90 days from **Federal Register** publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions would be more appropriate.

50. Should the round lot and odd-lot information definitions be accelerated by different amounts of time (as opposed to requiring compliance with both definitions 90 days after publication of any Commission adoption of an earlier implementation of the round lot and odd-lot information definitions in the **Federal Register**, as proposed)? For example, would the modifications necessary to comply with the round lot definition take longer to implement than the modifications necessary to comply with the odd-lot information definition (or vice-versa)? Please explain.

51. Do the costs or benefits of the round lot or odd-lot information definitions depend upon when they are implemented? Please explain.

D. Proposed Definition of Best Odd-Lot Orders

As discussed above, in the MDI Rules, the Commission defined odd-lot

[410] *See infra* sections V.D.5 and V.D.6.

[411] *See supra* note 407 and accompanying text.

[412] *See* MEMX White Paper, *supra* note 370, at 8 (''Specifically, the infrastructure rule requires: (1) the dissemination of an indicator that displays the applicable round lot size for the security; and (2) that information disseminated in consolidated market data be represented in actual shares. Of these two changes, the potential implementation burden rests almost entirely with the dissemination of actual shares, which would require systems changes for both the SIPs and downstream users of SIP data whose systems may also need to be coded to the new specifications.'').

[413] *Cf.* 2022 SIP Odd-Lot Request for Comment, *supra* note 371, at 4 (''The OCs project that this proposal will result in a 35% increase in the amount of quotation traffic sent to the SIPs each day, as well as a 35% increase in the quotation messages generated during peak periods.''). As the exclusive SIPs already collect and disseminate odd-lot transaction data, *see supra* note 336 and accompanying text, accelerated implementation of the odd-lot information definition would impose no additional costs on the exclusive SIPs with respect to odd-lot transaction data.

[414] *See infra* sections V.D.5 and V.D.6. *Cf.* Cboe Odd-Lot Letter, *supra* note 373, at 3 (''[T]he technology efforts needed to manage Odd Lot Quotations on the SIPs will be far outweighed by the benefits Odd Lot Quotations will provide to today's investors.'').

information to include odd-lots at a price greater than or equal to the national best bid and less than or equal to the national best offer, aggregated at each price level at each national securities exchange and national securities association.[415] The Commission stated that ''this better-priced odd-lot liquidity needs to be reflected in core data because it will help investors and other market participants to trade in a more informed and effective manner and to achieve better executions and reduce the information asymmetries that currently exist between subscribers to SIP data and subscribers to proprietary data.''[416]

The Commission proposes to amend the definition of odd-lot information to include a specified best odd-lot order to buy and best odd-lot order to sell.[417] Specifically, for each NMS stock, the best odd-lot order to buy would mean the highest priced odd-lot order to buy that is priced higher than the national best bid, and the best odd-lot order to sell would mean the lowest priced odd-lot order to sell that is priced lower than the national best offer.[418] Similar to the definition of the NBBO, in the event that two or more national securities exchanges or associations provide odd-lot orders at the same price, the exclusive SIPs, competing consolidators and self-aggregators would be required to determine the best odd-lot order by ranking all such identical odd-lot buy orders or odd-lot sell orders (as the case may be) first by size (giving the highest ranking to the odd-lot buy order or odd-lot sell order associated with the largest size), and then by time (giving the highest ranking to the odd-lot buy order or odd-lot sell order received first in time).[419]

The Commission believes that proposing to require the identification and dissemination of the best odd-lot orders to buy and sell[420] consolidated across all national securities exchanges and national securities associations is consistent with the goals set forth in section 11A of the Exchange Act because it would make information about quotations in NMS stocks available to broker-dealers and investors[421] and would enhance the usefulness of odd-lot information.[422] Although odd-lot liquidity better than the NBBO often resides at multiple price levels and information reflecting all of these odd-lot prices is already included in the definition of odd-lot information,[423] requiring the identification and dissemination of *the best* of all such inside the NBBO odd-lots on both the buy and sell side would help inform market participants of the best possible prices at which their orders (or their customers' orders) could—in whole or in part—be executed. The identification and dissemination of the price, size, and market of the best odd-lot orders would enhance the ability of market participants to make effective trading and order routing decisions using NMS data and facilitate best execution.[424]

Moreover, including the best odd-lot order in odd-lot information would help to ensure the wide availability of a useful metric against which investors could assess the execution quality of their orders. For example, rule 605 execution quality statistics[425] could leverage this data point to provide more meaningful information, such as the quantity of orders that are executed at, outside, or with price improvement with respect to the best odd-lot order. Using the best odd-lot orders as a benchmark in this manner could provide investors with an enhanced view of how their orders are handled and executed.

The Commission proposes a compliance date of 90 days from **Federal Register** publication of any Commission adoption of an amended definition of odd-lot information to include the best odd-lot orders in NMS data. The Commission preliminarily believes this timeframe should be sufficient to make the systems changes necessary to implement this data element because the process of determining and disseminating the best odd-lot quote at a given time from among the odd-lot quotes submitted to the exclusive SIPs by the national securities exchanges and associations is fundamentally similar to the process of determining and disseminating the prevailing NBBO, which the exclusive SIPs already do today based on the quotation information they receive from national securities exchanges and associations.[426]

E. Request for Comment

The Commission requests comment on all aspects of the proposed definition of best odd-lot order. In particular, the Commission solicits comment on the following:

52. Should the definition of odd-lot information include the best odd-lot order to buy and best odd-lot order to sell? Why or why not?

53. How would market participants use information about the best odd-lot orders to buy and sell? Do commenters believe this information would be useful for market participants? How so? Would it promote more informed trading or facilitate best execution? Please explain.

54. Should rule 605 require the reporting of execution quality statistics in which the best odd-lot order is used as a benchmark? If so, what specific statistics would be most useful? Please explain.

55. Should the definition of ''consolidated display''[427] be amended so that rule 603(c), known as the ''Vendor Display Rule,'' would require the best odd-lot orders to buy and sell to be provided in contexts in which a trading or order-routing decision can be implemented? Please explain the costs and benefits of such a requirement.

56. Should national securities exchanges and associations be required

[415] *See* 17 CFR 242.600(b)(59); *see also supra* note 335 and accompanying text.

[416] MDI Adopting Release, *supra* note 5, at 18612.

[417] The best odd-lot order would not be a ''protected quotation'' for purposes of Regulation NMS, including rules 611 (order protection rule) and 610 (access to quotations). 17 CFR 242.611, 610. The term ''protected quotation'' is defined in rule 600(b)(71) as a protected bid or protected offer; the term bid or offer is further defined in rule 600(b)(11) and is limited to round lots. *See* 17 CFR 242.600(b)(11), (71).

[418] The best odd-lot order to buy (sell) will only be included in NMS data when it is priced higher (lower) than the NBB (NBO). Because the best odd-lot order will be defined as odd-lot information, the proposed amendments to rule 603(b) to require SROs to provide the data necessary to generate odd-lot information to the exclusive SIPs and to require the exclusive SIPs to disseminate odd-lot information, *see supra* note 379, will require the SROs to provide the data necessary to generate the best odd-lot order to the exclusive SIPs and the exclusive SIPs to disseminate the best odd-lot order.

[419] *See* 17 CFR 242.600(b)(50) (defining NBBO and setting forth the manner in which the NBBO is determined ''in the event two or more market centers transmit to the plan processor, a competing consolidator or a self-aggregator identical bids or offers for an NMS security'').

[420] *See supra* note 418.

[421] 15 U.S.C. 78k–1(a)1)(C)(iii).

[422] 15 U.S.C. 78k–1(c)(1)(B).

[423] *See supra* note 367 and accompanying text; 17 CFR 242.600(b)(59).

[424] The 2022 SIP Odd-Lot Request for Comment contains an ''odd-lot NBBO,'' similar to this proposal's best odd-lot order. *See supra* note 371 and accompanying text. *See also* comment file for 2022 SIP Odd-Lot Request for Comment, *available at https://www.ctaplan.com/oddlots*.

[425] 17 CFR 242.605 (requiring market centers to make available standardized, monthly reports of statistical information concerning their order executions). The Commission has issued a proposal to amend rule 605, which includes execution quality metrics based on the best odd-lot order. Securities Exchange Act Release No. 96493 (Dec. 14, 2022) (File No. S7–29–22) (Disclosure of Order Execution Information). The Commission encourages commenters to review that proposal to determine whether it might affect their comments on this proposing release.

[426] MDI Proposing Release, *supra* note 39, at 16738–39; 17 CFR 242.600(b)(50). In addition, the proposed definition of best odd-lot order and the method by which it is determined from among the information submitted by national securities exchanges and associations is modelled upon and parallel to the definition of NBBO. *See supra* notes 418–419 and accompanying text.

[427] *See* 17 CFR 242.600(b)(17).

to provide the data necessary to generate odd-lot information, including the best odd-lot orders to buy and sell, to the exclusive SIPs, and should the exclusive SIP be required to identify and disseminate this information? Why or why not? By how much would such a requirement increase message traffic for the exclusive SIP feeds?

57. Is 90 days from **Federal Register** publication of any Commission adoption of an amended definition of odd-lot information to include the best odd-lot orders in NMS data an appropriate amount of time for the exclusive SIPs to make any changes necessary to calculate and disseminate the best odd-lot orders? Would other market participants—including, but not limited to, broker-dealers and trading centers—need to make modifications to facilitate the calculation, dissemination, or use of the best odd-lot orders? Please describe any such modifications and the amount of time each type of market participant would need to make such modifications and whether a timeframe shorter or longer than 90 days from **Federal Register** publication of an amended definition of odd-lot information to include the best odd-lot orders in NMS data would be more appropriate.

V. Economic Analysis

A. Introduction

The Commission has considered the economic effects of the proposed Rule and, wherever possible, the Commission has quantified the likely economic effects of the proposed Rule.[428] The Commission is providing both a qualitative assessment and quantified estimates of the potential economic effects of the proposed Rule where feasible. The Commission has incorporated data and other information to assist it in the analysis of the economic effects of the proposed Rule. However, as explained in more detail below, because the Commission does not have, and in certain cases does not believe it can reasonably obtain, data that may inform the Commission on certain economic effects, the Commission is unable to quantify certain economic effects. Further, even in cases where the Commission has data, it is not practicable to quantify certain economic effects due to the number and type of assumptions necessary, which render any such quantification unreliable. Our inability to quantify certain costs, benefits, and effects does not imply that such costs, benefits, or effects are less significant. The Commission requests that commenters provide relevant data and information to assist the Commission in quantifying the economic consequences of the proposed Rule.

The Commission believes that the proposed amendments to rule 612 establishing a variable minimum pricing increment, where the tick size would be determined by the stock's Time-Weighted Average Quoted Spread, would result in lower transaction costs for the subset of affected stocks. The Commission expects lower transaction costs primarily because the proposed tiered tick size regime would help mitigate the impact of some mechanical impediments currently preventing the market from realizing otherwise more competitive bid and ask prices. Thus, the proposal prescribes a tick size reduction to the NMS stocks that have Time-Weighted Average Quoted Spread of $0.04 or less.[429]

The Commission believes it is reasonable to assume that the proposed changes to rule 612 to apply a minimum pricing increment to trade executions, subject to exceptions, could result in greater competition between exchanges and ATSs with other OTC market makers,[430] including wholesalers,[431] while still preserving opportunities for economically meaningful price-improvement.[432] Due to their greater reliance on quotations, harmonizing the minimum pricing increment for the quoting and trading would allow exchanges and ATSs to better compete on price for order flow with OTC market makers. When taken together with harmonization, the proposed changes to the tick size are expected to maintain sufficient intra-spread price levels to allow OTC market makers to continue to provide economically meaningful price improvement over the best displayed quotes.

The Commission expects that the proposed amendments to rule 610, which would lower the access fee caps, would also lower transaction costs and promote market efficiency. Lowering the access fee caps would lower the total amount of access fees collected and rebates distributed, reducing, though not eliminating, any distortionary effects of exchange rebates on order routing and likely improving market efficiency.[433] The reduction in access fees would lower transaction costs for liquidity demanders.[434]

The Commission preliminarily believes that the primary impact of earlier implementation of the definition of round lots and including odd-lot information in NMS data would be to accelerate some, but not all, of the benefits articulated in the MDI Adopting Release.[435] Given the delay in the full implementation of the MDI Rules, the Commission believes that putting off longer the benefits of those provisions is not justified and, as a result, the Commission is now proposing to accelerate the implementation of those portions of the MDI Rules.[436] The Commission expects that the proposed amendments to accelerate the implementation of the new definition of round lot and the inclusion of odd-lot information in NMS data, would improve price transparency and facilitate monitoring execution quality.[437]

The Commission expects that the proposed amendments to specify the best odd-lot orders to buy and sell (BOLO) would further facilitate execution quality monitoring by providing a standard benchmark with which to compare trades. Odd-lot trades make up an increasingly important part

[428] Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and 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 would promote efficiency, competition, and capital formation. Additionally, section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition. Exchange Act section 23(a)(2) 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.

[429] *See infra* sections V.D.1 and V.E.1 for a discussion of the effects of the proposed changes to tick size on trade execution and market efficiency.

[430] *See infra* section V.E.2.a for a discussion of the effects of tick size harmonization on competition for execution services.

[431] Wholesalers are OTC market makers that, according to CAT analysis, execute around 90% of the dollar volume of individual investor NMS stock orders on a principal basis via internalization. There are currently 6 wholesalers in the U.S. handling NMS stock orders.

[432] *See supra* section II.F.4 for a description of the possible exceptions.

[433] Absent a reduction in the 30 mil access fee cap, distortions could increase because the access fee could, in some instances, exceed the spread. *See infra* note 713.

[434] *See infra* section V.C.2 for a discussion of the effects of access fees and rebates on the markets. *See infra* section V.D.3 for a discussion of the benefits of the proposed lower access fee cap.

[435] *See* MDI Adopting Release, *supra* note 5.

[436] For the reasons explained in the MDI Adopting Release, when adopting the MDI Rules the Commission decided not to implement the adopted provisions for the round-lot definition and incorporating odd-lot information into NMS data until after the competing consolidator model came online. *See* MDI Adopting Release, *supra* note 5, at 18701.

[437] As the proposal would not accelerate the implementation of the decentralized consolidation model adopted pursuant to MDI Rules, it would not result in the acceleration of the benefits of the decentralized consolidation model, including the consolidation and dissemination to market participants of NMS data at lower latencies.

of the market.[438] However only round-lot quotes are disseminated as part of the NMS data; having a standardized price for the best available odd-lot orders would provide a more relevant benchmark than the round-lot NBBO for odd-lot trades. As the Commission anticipates that the BOLO will be an important benchmark for estimating the execution quality of some trades, requiring the exclusive SIPs and competing consolidators to compute and disseminate the BOLO would promote standardization.[439]

Lastly, the proposed amendments would make fees and rebates determinable at the time of trade. Certainty about the cost of transactions at the time of trade could help broker-dealers make better order routing decisions.[440] Second, being able to determine the fees and rebates at the time of trade would make it easier for customers to ask more direct questions of broker-dealers and facilitate broker-dealers passing on fees and rebates to end customers if they so desire.[441] Passing fees and rebates through to end customers may mitigate or eliminate the potential conflicts of interest caused by exchange rebates.[442]

The proposal would result in a number of costs. For affected stocks, the proposed smaller tick size may increase the cost of executing large orders by fragmenting liquidity across multiple price levels and increasing the complexity of locating shares for the orders.[443] The Commission expects the proposed reduction in the access fee caps would decrease the overall net capture of exchanges primarily due to the decreased fees from sub-$1.00 stocks.[444] Rebate disbursement is expected to decrease under the proposal, and so firms that profit from rebates, such as high-frequency trading firms that specialize in rebate capture trading strategies, would experience revenue declines and some that rely on rebates could exit the market.[445] Reduced access fees could increase the amount of volume routed to exchanges compared to off exchange by making exchanges less expensive venues to transact and potentially causing some order flow that was previously directed off exchange to avoid high fees to revert to exchanges.

There would be implementation and ongoing compliance costs associated with the proposal. Exchanges and market participants would need to update systems to account for the new tick sizes. Market participants would need to reconfigure order routing strategies to account for the different tick sizes and lower access fees. Additionally, market participants would experience an acceleration of many of the costs associated with odd-lot information articulated in the MDI Adopting Release including the need for exchanges to adjust and maintain systems to provide odd-lot information to the NMS data feed. The exclusive SIPs would need to adjust and maintain systems to receive and disseminate odd-lot information, and market participants receiving SIP data would need to adjust systems to receive odd-lot information.[446]

B. Market Failure

The Commission is proposing to update regulations that set and apply a minimum pricing increment (tick size), reduce the access fee caps to better improve the market's capacity for efficient price competition, and promote more efficient order routing by resolving deficiencies in the information available to market participants. Current tick sizes for NMS stocks restrict price competition in stocks for which the tick size may be too large, leading to greater transaction costs. The lack of harmonization between minimum quoting and trading increments has also restricted the degree to which exchanges and ATSs can compete on price with OTC market makers including wholesalers.

The minimum achievable bid-ask spread for a stock is constrained by the minimum pricing increment and limits price competition. A high tick size can artificially increase transaction costs, keeping the bid-ask spread wider than it might otherwise be. Consider, for example, a stock that would trade at an ask price of $10.005 absent the $0.01 tick, should the tick size be $0.005. If forced to trade at a $0.01 tick size, the prevailing ask price would most likely be $10.01, namely a half cent worse.[447] Stocks that would otherwise trade with a spread less than the tick size, were they allowed to do so, are considered to be tick-constrained. Because these stocks cannot trade with spreads less than the tick size, they typically trade with spreads that are at or near the minimum tick size.[448] A stock that is near-tick-constrained is one that has a reasonable probability of becoming tick-constrained in the course of normal trading, or one for which the tick is a substantial portion of the spread.[449] Even if a stock is not tick-constrained but is near-tick-constrained, Commission analysis suggests that the tick size increases transaction costs for market participants. This may be because the tick constraint sometimes binds for these stocks, or because there may be market participants who want to

[438] One academic paper, examining order book data from 2009 to 2011, finds that odd-lot trades make up 24% of trades in the median stock. *See* Maureen O'Hara, et al., *What's Not There: Odd Lots and Market Data,* 69 J. Fin. 2199 (Oct. 2014). Another, more recent study, finds evidence that odd-lot quotes provide valuable information to traders with access to the data. *See* Bartlett, et al. (2022), *supra* note 365. *See also* MDI Adopting Release, *supra* note 5, at 18729.

[439] This would also avoid other market participants having to estimate their own BOLO, as they would currently do if using it as a benchmark.

[440] Broker-dealer fees and rebates are generally tied to the monthly aggregate trading volume of the broker-dealer on different exchanges.

[441] Under Rule 606(b)(3), broker-dealers are required to provide a customer, upon request, a report on the broker-dealer's handling of that customer's NMS stock orders, which includes information on the average fees and rebates paid/received from those orders. If fees and rebates were determinable at the time of execution, customers could more easily evaluate the 606(b)(3) disclosures or request additional, more specific information. *See* Disclosure of Order Handling Information, *supra* note 4.

[442] If broker-dealers had to internalize and could not pass through fees (but were free to pass through rebates), a potential conflict of interest would still exist as there would exist an incentive to minimize fees at the potential expense of other factors important to order execution.

[443] *See* section V.D.1 for a discussion of the potential costs of a smaller tick size.

[444] *See* section V.D.3.

[445] *See* section V.D.3 and section V.E.2.a.

[446] Some of these adjustments might constitute new rather than accelerated costs if they are incompatible with future data feeds under MDI's competing consolidator model.

[447] This thought experiment considers only the direct effect of the reduction in spread on the tick size in order to define what it means to be tick-constrained. Note that the spread is unlikely to ever be zero due to inventory costs, adverse selection risks, the direct costs associated with providing liquidity, and trading rules meant to prevent the locking and crossing of markets. *See* P.C. Kumar, *Bid-Ask Spreads in U.S. Equity Markets,* 43 Q. J. Bus. & Econ 85 (2004).

[448] For the purpose of empirically identifying stocks that are constrained by the $0.01 tick; tick-constrained stocks are those with time weighted quoted spreads equal to $0.011 or less calculated during regular trading hours on a given day. *See supra* note 17 and accompanying text defining ''tick-constrained'' for the release, and *infra* Table 4 and accompanying text. Because of the $0.01 minimum pricing increment for NMS stocks priced equal to or greater than $1.00 per share, a stock cannot have a quoted spread less than $0.01 unless markets become locked or crossed. The existence of locked and crossed markets can in some cases result in time weighted quoted spread that are very slightly lower than $0.01. Even for stocks with spreads most constrained by the tick, a large trade can exhaust liquidity deeper in the limit order book such that the stock's quoted spread temporarily increases from $0.01. Thus, time weighed quoted spreads will virtually always be greater than $0.01. Consequently, the Commission has selected the threshold of $0.011 as the threshold that identifies stocks that are likely tick-constrained. These stocks quote at $0.01 most of the time and thus could be considered tick-constrained.

[449] Empirically, near-tick-constrained stocks are defined as those with time average quoted spreads between $0.011 and $0.02 during regular trading hours.

improve the price and offer a narrower spread, but not to the point where they are willing to narrow the spread by an entire tick. In the first 5 months of 2022 approximately 56% of share volume transacted in NMS stocks was considered to be tick-constrained while an additional 16% traded in stocks that was considered to be near-tick-constrained.[450] Thus, approximately 72% of share volume transacted in stocks that are tick or near-tick-constrained during that time period.

Access fees and their associated rebates tend to increase transaction costs for demanders of liquidity as well as exacerbate a problem of liquidity oversupply for stocks with narrow spreads while doing very little to enhance liquidity in stocks with wide spreads.[451] Broadly speaking, spreads reflect a price of liquidity and, when they are constrained to be wider than they could otherwise be, a greater amount of liquidity will be supplied at the constrained price point. This extra liquidity supply corresponds to longer limit order queues, which makes it more difficult for non-high-frequency traders to execute their trades via passive orders. Thus, they will resort to using liquidity-demanding orders more frequently, thus increasing transaction costs.[452] In the current predominant maker-taker structure, where demanders of liquidity pay an access fee while providers of liquidity receive a rebate, the fee and rebate effectively widen the spread. In other words, the distortion from being tick-constrained is exacerbated by adding the access fee and rebates, which further effectively widens an already too wide spread.

The lack of harmonization between quoting and trading increments has also restricted the degree to which exchanges and ATSs can compete on price with OTC market venues.[453] This competitive disparity is particularly acute in competition for order-flow in tick-constrained and near-tick-constrained stocks where the ability to publicly quote a more competitive price is restricted.

Some minimum pricing increment is necessary for proper functioning of markets.[454] The problem of coordinating across multiple venues and participants suggests a role for setting a price increment through regulation rather than leaving it to market forces. In principle, variation in fees and rebates across trading venues could allow for a degree of intra-tick pricing, though it has offsetting costs in terms of fragmentation and complexity, making it an inefficient solution.[455]

The Commission does not believe that exchanges will lower access fees or their associated rebates absent the proposed regulatory action to lower the access fee cap. Contrasted with marketable orders, market participants have greater discretion in the routing of liquidity-supplying orders. Under rule 611, the NBBO restricts the routing behavior of marketable orders and often forces liquidity demanders to pay the access fee to trade against a NBBO order. Exchanges are thus incentivized to attract more competitively priced liquidity with large rebates, which are funded by similarly large access fees, in order to capture more trading volume. The effects of these incentives are evident: both average fees and rebates have remained near the 30 mil access fee cap introduced in 2005, despite technological and market structure changes.[456] The Commission believes that the exchanges do not lower their access fees and rebates because a unilateral reduction in rebates would likely cause market participants to route their competitive liquidity-providing orders to another exchange.[457]

C. Baseline

A significant fraction of total trading volume occurs in stocks that are tick- or near-tick-constrained, which can cause them to trade at spreads wider than they would otherwise.[458] Access fees, which are frequently used to fund rebates to liquidity providers, increase the relative cost of demanding liquidity, particularly for stocks with narrower spreads. Exchange access fees and rebates are also complex. Lastly, the delay in the implementation of the MDI Rules postpones their anticipated benefits.

1. Tick Sizes

Rule 612 of Regulation NMS establishes tick sizes and applies to ranking, accepting, and displaying quotes. In determining what tick size is optimal for any given stock, there is a tradeoff between price competition on the one hand, and incentives for liquidity provision on the other. A smaller tick allows liquidity providers to better compete on price. On the other hand, a smaller tick can also leads to

[450] *See supra* note 17 for a definition of tick-constrained, and *supra* note 449 for a definition of near-tick-constrained. *See infra* note 458 for discussion of near-tick-constrained stocks. *See also* Table 4 and surrounding text for a further discussion of volumes associated with tick-constrained and near-tick-constrained stocks.

[451] The effect of access fees and rebates as incentives becomes less pronounced as spreads widen. For example, if the spread is 10 cents wide, an access fee of 30 mils would represent only 6% of the half spread. Thus, as spreads widen the effectiveness of rebates to induce liquidity provision diminishes.

[452] *See infra* sections V.C.1.c and V.C.2 for additional discussion on why the trading environment of tick-constrained stocks tends to favor high-frequency traders.

[453] *See* section V.C.1.b and section V.C.1.a for discussion of how applying a minimum pricing increment to quotes but not trades limits price competition between exchanges and ATSs and other OTC market venues.

[454] *See, e.g.,* Lawrence E. Harris, *Minimum Price Variations, Discrete Bid–Ask Spreads, and Quotation Sizes,* 7 Rev. Fin. Stud. 149 (1994). *See also* Anne Dyhrberg, et al., *When Bigger is Better: The Impact of a Tiny Tick Size on Undercutting Behavior,* J. Fin. & Quantitative Analysis (2022).

[455] For example, consider the case of one maker-taker and one inverted exchange, both with rebates and fees equal to 20 mils with both exchanges quoting a 1.01x1.02 spread. Using net-fee/rebate prices, the maker-taker exchange would effectively be quoting at 1.008x1.022 whereas the inverted exchange would be quoting at 1.012x1.018. The degree of intra-spread pricing would be limited to the number of exchanges and the variation in their fees and rebates. For example, a market with 3 exchanges could collectively make possible only 3 intra-spread levels to any one market participant at a time. *See infra* section V.D.3 for a discussion of intra-tick pricing. *See infra* section V.C.2 for a discussion of current state of the fees and rebates and the variation in pricing structure across exchanges.

[456] Technological advances that would improve the efficiency of exchange functions such as matching trades, as well as changes in the market environment such as the proliferation of high frequency market making that increases the amount of trading volume, could increase the feasibility for exchanges to lower fees and/or rebates without reducing revenues.

[457] The Commission believes that the exchanges do not lower their access fees and rebates because doing so may cause the exchange to lose market share. Notably, research surrounding a NASDAQ experiment where it unilaterally lowered fees and rebates found that NASDAQ lost market share to other maker-taker venues with a higher rebate. *See, e.g.,* Yiping Lin, et al., *A Model of Maker-Taker Fees and Quasi-Natural Experimental Evidence* (working paper Feb. 8, 2021), *available at https://ssrn.com/abstract=3279712* (retrieved from SSRN Elsevier database). Consequently, it could be harmful to an exchange to unilaterally reduce access fees and their associated rebates if other exchanges do not follow suit. Further, even if each of the exchanges lowered its fees, there would be the risk that a new exchange would see the opportunity and enter the market with high fees and rebates and thus capture market share, inducing the other exchanges to abandon their low fee models to remain competitive.

[458] As a concept, the degree to which a stock is tick-constrained lies on a continuum. At one end of the continuum are stocks that would always trade narrower if the tick size constraint was relaxed, and on the other are stocks that would only rarely trade narrower than the current tick size given a smaller tick. For empirical purposes tick-constrained stocks are defined as in *supra* note 17. *See also* section I.A, and *supra* note 448 for additional details. We define near-tick-constrained stocks as those with time average quoted spreads less than two ticks wide ($0.02) but greater than $0.011 (the threshold for being defined as tick-constrained) during regular trading hours. *See supra* note 449. In contrast to tick-constrained stocks which quote at the tick size all or most of the time, near-tick-constrained stocks will alternate between quoting at the tick size or at one tick size wider implying that that they are sometimes tick-constrained and other times not tick-constrained. *See also* Table 4 and surrounding text for a further discussion of volumes associated with tick-constrained and near-tick-constrained stocks.

pennying, which reduces the economic gains to posting liquidity, leading to a lower incentive to post liquidity.[459] The tick size determines the minimum amount of price improvement required to gain priority over existing quotes, as the tick size gets smaller the value of time priority at a price becomes less important.[460] Other considerations include market complexity and the spreading of liquidity over more price levels (though it is also the case that market complexity may increase with wider ticks, as participants adjust to inefficient pricing), and the fact that too small ticks may inefficiently award speed.[461] As discussed below in Section V.C.1.c, the Commission estimates that 72% of share volume and 45% of dollar volume in U.S. equity markets occurs in stocks that are tick or near-tick-constrained stocks, suggesting that for many stocks the tick size may be a hindrance to market quality.

a. Current Regulations

Rule 612 of Regulation NMS, which was adopted on April 6, 2005, and had a compliance date of January 31, 2006, prohibits a national securities exchange, national securities association, ATS, vendor, or broker or dealer from displaying, ranking, or accepting quotations, orders, or indications of interest in any NMS stock priced in an increment smaller than $0.01 if the quotation, order, or indication of interest is priced equal to or greater than $1.00 per share. If the quotation, order, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001. Most listing exchanges require stocks listed on their exchanges to maintain a price greater than $1.00 per share, and consequently $0.01 is the prevailing tick size for most quotes and orders for NMS Stocks.[462] Regulation NMS effectively establishes $0.01 as the minimum spread that can be quoted for stocks priced equal to, or greater than, $1.00 per share because the NBBO is determined by the best displayed round lot quotes, and locked and crossed markets are prohibited.

b. Sub-Penny Transactions

While NMS stocks cannot be quoted in a sub-penny increments, they may trade in sub-penny increments.[463] Sub-penny trading on exchanges and ATSs occurs in limited circumstances while sub-penny trading by off-exchange market makers occurs more often. Sub-penny trading on exchanges and ATSs occurs primarily as a result of midpoint orders and benchmark trades. Benchmark trades, such as VWAP and TWAP orders, may not be explicitly priced in an impermissible sub-penny increment, but the ultimately determined execution price may be in a sub-penny increment. Additionally, ATSs sometimes offer order types where the execution price is determined to be some fraction of the way between the prevailing midpoint and the NBB or NBO. Sub-penny trading on registered exchanges may also occur as a result of their RLPs. Since 2012, the Commission has offered limited exemptive relief from rule 612 for these programs so that they may offer qualifying retail trades price improvement relative to the NBBO, usually in increments of $0.001.[464] Exchanges established RLPs as a competitive response to the various market structure and trading dynamics that divert retail order flow from exchanges to OTC market makers, referred to as wholesalers, who can trade more readily in sub-penny increments.[465]

ATSs also offer sub penny transactions separate from midpoint or benchmark trades. Some ATSs offer order types which effectively split the distance between the NBB or NBO and the midpoint. These trades offer price improvement to the liquidity demander—though not at the same levels as a midpoint trade—while still enabling the liquidity provider to earn at least some spread on the transaction. They are a form of pre-set price-improvement trades.

Trading at sub-penny increments also occurs as a result of broker-dealers, including some OTC market makers known as wholesalers, internalizing customer order flow at sub-penny prices.[466] OTC market makers, including wholesalers, receive market orders and offer price improvement over the NBBO for the orders they receive, which often originate from individual investors, often in sub-penny increments.[467] For example, if a broker-dealer acting as a wholesaler, has two customers, and one submits a market order to buy a stock while the other submits a market order to sell a stock, the wholesaler is not required to send those orders to an exchange or ATS for execution. Rather, the broker-dealer can internalize the two trades by executing both against internal inventory; it could also cross the two trades internally at a price that is within the NBBO because doing so would not involve a quote subject to rule 612, or it could route some or all of the trades to an exchange or ATS for execution. If the wholesaler chooses to act in a principal capacity and transact both orders against its own inventory—earning the bid-ask spread in the process—the wholesaler can execute the order in any pricing increment that it chooses so long as the wholesaler meets its best execution obligation.[468] Increments of $0.01, $0.001 and $0.0001 are typical in off-exchange trading.[469] Using data from FINRA for the first quarter of 2022, we estimate that wholesalers internalized approximately 24% of all share volume.[470]

[459] The term 'pennying' refers to when a market participant gets to the front of the queue by posting an economically trivial price improvement.

[460] *See* text at *infra* note 478 for a further discussion of this effect.

[461] *See* Barardehi, et al. (2022), *supra* note 85, for additional analysis of this tradeoff.

[462] *See, e.g., NYSE Continued Listing Standards, § 802.01C, available at https://www.nyse.com/listings/resources* (last visited Sept. 29, 2022); *The Nasdaq Stock Market LLC Rules, § 5400, available at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules* (last visited Sept. 29, 2022).

[463] *See supra* section II.F.4.

[464] NYSE Retail Liquidity Program Approval Order, *supra* note 62. *See supra* note 62 and accompanying text for a discussion regarding exchange RLPs. *See also* Pankaj K. Jain, et al., *An Examination of the NYSE's Retail Liquidity Program,* 80 Q. Rev. Econ. Fin. 367 (2021), for a discussion of and analysis of NYSE's RLP.

[465] *See* Sean Foley, et al., *Tick Size Wars: The Market Quality Effects of Pricing Grid Competition* (working paper Dec. 2, 2021), *available at https://ssrn.com/abstract=2866943* (retrieved from SSRN Elsevier database).

[466] The term ''wholesaler'' is not defined in Regulation NMS, but commonly refers to a broker-dealer acting as an OTC market maker that primarily focuses on attracting orders from broker-dealers that service the accounts of a large number of individual investors, referred to in this release as ''retail brokers.''

[467] Based on analysis of retail broker rule 606(a)(1) reports, there are six broker-dealers classified as wholesalers.

[468] If the wholesaler uses proprietary data feeds that offer a more complete view of the market than the SIP feeds offers—for example—for their own trades, then FINRA would expect that wholesaler to use that same data to determine the range of prices at which the broker can internalize trades. *See* FINRA, Regulatory Notice 15–46, 1, 3 n.12 (2015) (''The exercise of reasonable diligence to ascertain the best market under prevailing market conditions can be affected by the market data, including specific data feeds, used by a firm. For example, a firm that regularly accesses proprietary data feeds, in addition to the consolidated SIP feed, for its proprietary trading, would be expected to also be using these data feeds to determine the best market under prevailing market conditions when handling customer orders to meet its best execution obligations.''). *See also* Securities Exchange Act Release No. 65895 (Dec. 5, 2011), 76 FR 77042 (Dec. 9, 2011) (approving FINRA Rule 5310 on best execution).

[469] However, research suggests that $0.0001 is a common increment used by wholesalers. *See* Ekkehart Boehmer, et al., *Tracking Retail Investor Activity,* 76 J. Fin. 2249 (Oct. 2021).

[470] FINRA OTC (Non-ATS) Transparency Data Monthly Statistics provides monthly information on wholesaler execution volumes. This data, is combined with Cboe historical market volume data,

Not all price improvement occurs in sub-penny increments. A trade receives price improvement if it transacts at a price superior to the NBBO. Trades can transact inside the NBBO on an exchange due to an odd-lot order priced better than the NBBO or due to hidden orders. Table 3 provides price improvement statistics for the first half of 2022.[471] Summing the total dollar value of price improvement associated with trades that execute in sub-penny increments that are not midpoint trades (rows 5, 7, 9, and 11) reveals that approximately 18% of the daily dollar value of price improvement, or approximately $12 million, was from trades which transacted at a sub-penny pricing increment and was not associated with a midpoint or VWAP trade—*i.e.,* trades that make use of the fact that rule 612 does not apply to trading.[472] Of this value, 11% occurred on exchange, and the remaining 89% occurred off exchange. Extrapolating from these estimates, by multiplying the $12 million of price improvement in trades which executed at sub-penny pricing increments by 252 trading days, suggests that sub-penny pricing enabled by rule 612 not applying to trades offers investors price improvement relative to the NBBO of approximately $3 billion per year.

TABLE 3—PRICE IMPROVEMENT STATISTICS DAILY AVERAGE JAN. TO JUNE 2022 [a b]

Panel A: Price Improvement Volume

Row	Midpoint	On or off exchange	Odd or round lot	Sub-penny	Number of trades (millions)	Share volume (millions)	Dollar volume (billions)
1	Yes	On	Odd		3.8	85.9	7.3
2	Yes	On	Round		2.9	488.8	23.8
3	Yes	Off	Odd		2.1	35.9	3.7
4	Yes	Off	Round		2.4	735.1	37.3
5	No	On	Odd	Sub-Penny	0.4	9.5	0.6
6	No	On	Odd	Penny	12.5	249.7	42.0
7	No	On	Round	Sub-Penny	0.7	130.2	4.7
8	No	On	Round	Penny	2.8	369.9	38.9
9	No	Off	Odd	Sub-Penny	3.7	64.6	7.8
10	No	Off	Odd	Penny	1.5	27.9	6.0
11	No	Off	Round	Sub-Penny	2.6	1413.3	60.0
12	No	Off	Round	Penny	0.9	219.4	22.9

Panel B: Daily Average Price Improvement Total

Row	Midpoint	On or off exchange	Odd or round lot	Sub-penny	PI (millions of dollars)	Total (%)	PI (BPS)
1	Yes	On	Odd		2.0	3.0	5.7
2	Yes	On	Round		6.3	9.3	7.6
3	Yes	Off	Odd		1.5	2.3	7.0
4	Yes	Off	Round		14.1	20.8	8.2
5	No	On	Odd	Sub-Penny	0.2	0.3	5.9
6	No	On	Odd	Penny	11.5	16.9	4.8
7	No	On	Round	Sub-Penny	1.1	1.6	7.1
8	No	On	Round	Penny	10.7	15.8	7.0
9	No	Off	Odd	Sub-Penny	1.4	2.0	3.1
10	No	Off	Odd	Penny	1.7	2.5	6.2
11	No	Off	Round	Sub-Penny	9.2	13.6	3.7
12	No	Off	Round	Penny	8.0	11.8	8.9

and U.S. historical market volume data FINRA data. *See OTC Transparency Data,* FINRA, *available at https://otctransparency.finra.org/otctransparency/OtcData* (last visited Sept. 29, 2022); *see also Historical Market Volume Data,* Chi. Bd. Options Exch., *available at https://cboe.com/us/equities/market_statistics/historical_market_volume/* (last visited Sept. 29, 2022).

[471] The analysis uses data from prior to the implementation of the MDI Rules and once implemented, the changes to the current arrangements for consolidated market data may impact the numbers reported in Table 3 and throughout, including by reducing those for realized spread, effective spread, and amount of price improvement. The NBBO will likely tighten in stocks priced greater than $250 because it will be calculated based on a smaller round lot size. A tighter NBBO spread could increase the number of NMS stocks which are considered tick-constrained or near-tick-constrained. *See infra* section V.C.3. The effects on effective and realized spreads is more uncertain, because they are measured against the NBBO midpoint, which may not change if both the NBB and NBO decrease by the same amount. However, if marketable orders are more likely to be submitted when there are imbalances on the opposite side of the limit order book (*i.e.,* more marketable buy orders are submitted when there is more size on the offer side of the limit order book than the bid side), then the NBBO midpoint may change such that it is closer to the quote against which the marketable order executes, which may decrease the effective and realized spreads in stocks above $250 when the MDI Rules are fully implemented. It is also uncertain how or to what degree these changes would affect the proportion of trading volume that executes off-exchange. This analysis is qualitatively and quantitatively similar to the analysis provided by NYSE in its NYSE Tick Harmonization Paper, *supra* note 70.

[472] For the purposes of this analysis a sub-penny transaction is any regular trade for which the execution price of the trade is not a multiple of $0.01. *See* Table 3 note a.

TABLE 3—PRICE IMPROVEMENT STATISTICS DAILY AVERAGE JAN. TO JUNE 2022 [a] [b]—Continued

Row							
Total PI.	.....	.....	.....	.....	67.8	100	.....

[a] This table provides estimates of the average daily volume of trades receiving some form of price improvement from Jan. 2022 to June 2022, as well as estimates of the magnitude of the price improvement received. For purposes of this table, a trade is determined to have received price improvement if it occurred within the prevailing NBBO at the time of the trade. The numbers in the table represent daily averages. Panel A provides statistics for the total number of trades as well as the total share and dollar volume of trades that receive some form of price improvement while Panel B provides estimates of the total dollar value of the price improvement that is received. Price improvement statistics are computed for 12 categories of trade representing a unique combination of trading volume associated with midpoint, on versus off exchange, round versus odd-lot, and sub-penny versus penny transactions. The analysis includes all normal trades that execute during normal trading hours from TAQ. Normal trades are identified in TAQ data by sale conditions "blank, @, E, F, I, S, Y" which correspond to regular trades, intermarket sweep orders, odd lot trades, split trades, and yellow flag regular trades. A trade receives price improvement if it executes inside the prevailing NBBO. Price improvement for trades that occur above the prevailing midpoint is equal to the (NBO − price)*number of shares transacted, for trades that occur below the prevailing midpoint price improvement is equal to the (price − NBB)*number of shares transacted. For trades that occur at the midpoint price improvement is equal to one half the spread between the NBO and NBB multiplied by the number of shares transacted. Estimates are provided based on midpoint, location of the trade, odd-lot status, and sub-penny status. A trade is defined as a midpoint trade if it occurs at exactly the midpoint of the NBB and NBO at the time of the trade. Off exchange trades are those with exchange code 'D' attached to the trade. Odd-lot trades are trades in sizes other than multiples of 100, and sub penny trades are those executing in prices with three or more decimal places.

[b] *See* MDI Adopting Release, *supra* note 5. The effect of amending the definition of odd-lot information to include the best odd-lot quotes and accelerating the inclusion of odd-lot information might be marginal should the proposal described in a Mar. 2022 request for comment by the SIPs, CTA/UTP SIP Odd-Lot Request for Comment (*available at https://www.ctaplan.com/publicdocs/ctaplan/CTA_Odd_Lots_Proposal_2022.pdf*), be filed with the Commission as a proposed Plan amendment and approved. Even if that proposal were filed with the Commission and approved, however, it would result in the provision of less odd-lot information than would become available under this proposed rule. *See supra* notes 374, 386.

c. Tick Sizes and Quoted Spreads

Table 4 presents data on trading volume in the first five months of 2022 based on average time weighted quoted spreads. The analysis breaks trading volume each day into one of 16 average quoted spread buckets. The first bucket is for tick-constrained stocks, which we define empirically as stocks that have time weighted quoted spreads less than or equal to $0.011 on a given day.[473] The second bucket is for near-tick-constrained stocks with quoted spreads less than $0.02. Each succeeding bin increases the spread by $0.01 until the last bin which contains all stocks with quoted spreads greater than $0.15. This analysis indicates that 56% of share trading volume (23% of dollar volume) occurs in stocks that are tick-constrained. That is, in the absence of a one cent tick, these stocks would likely have quoted spreads that are narrower than what they currently experience. Table 4 also reports that 15% of share volume (22% of dollar volume) occurs in stocks that are near-tick-constrained. Table 4 also reports the daily average number of stocks in each bin.

TABLE 4—SHARE VOLUME BY QUOTED SPREAD JAN. TO MAY 2022 [a]

Quoted spread	Share volume (%)	Dollar volume (%)	Average # stocks
Quoted Spread < $0.011	56.1	23.2	1,337
$0.011< Quoted Spread <= $0.02	15.5	21.7	1,093
$0.02 < Quoted Spread <= $0.03	7.8	9.8	1,170
$0.03 < Quoted Spread <= $0.04	4.2	5.7	946
$0.04 < Quoted Spread <= $0.05	2.5	3.2	762
$0.05 < Quoted Spread <= $0.06	1.8	2.5	629
$0.06 < Quoted Spread <= $0.07	1.2	1.8	531
$0.07 < Quoted Spread <= $0.08	1.2	2.1	468
$0.08 < Quoted Spread <= $0.09	1.0	1.7	426
$0.09 < Quoted Spread <= $0.10	0.9	1.5	383
$0.10 < Quoted Spread <= $0.11	0.8	1.3	337
$0.11 < Quoted Spread <= $0.12	0.7	1.1	279
$0.12 < Quoted Spread <= $0.13	0.6	1.0	243
$0.13 < Quoted Spread <= $0.14	0.5	0.9	214
$0.14 < Quoted Spread <= $0.15	0.5	0.8	190
$0.15 < Quoted Spread	4.8	21.6	2,500

[a] This table provides share volume by stocks with different quoted spread profiles. To create this table, for each day the universe of stocks covered in the WRDS Intra-Day Indicators data are assigned into one of the 16 quoted spread bins based on that days' time-weighted quoted spread as computed by WRDS Intra-Day Indicators. Then all share and dollar trading volume across all trading days in Jan.–May 2022 is aggregated for each of the 16 quoted spread bins. Percentages based on these totals are then computed. This table also presents the daily average number of stocks in each bin. To compute this variable, for each trading day in Jan.–May 2022 the number of stocks in each bin is tabulated, then the average across all trading days is presented here. Certain items in this Table 4 may also be affected by the MDI Rules once they are fully implemented. *See* Table 3 note b.

[473] Other studies may define tick-constrained stocks differently. *See also supra* note 17 and *supra* note 448 and accompanying text defining and discussing "tick-constrained" for the release.

For tick-constrained stocks, spreads are potentially wider than they would otherwise be. Wider quoted spreads mean greater cost to liquidity demanders and greater revenue to liquidity suppliers.[474] An artificially wide spread due to the tick constraint subsidizes liquidity provision. Because the compensation is above what would exist in a competitive market there is an increased incentive to provide liquidity via limit orders, so queues of limit orders tend to be longer, wait times to get a limit order executed also tend to be longer, and, thus the likelihood that the market moves away from an investor's limit order increases, leading to lower overall fill rates for limit orders.[475] These dynamics mean that some investors who might originally have wanted to trade using a limit order and earn the quoted spread instead trade using a marketable order and pay the quoted spread.[476] There is also evidence that when tick sizes are too wide volatility can increase.[477]

When a stock is tick-constrained or near-tick-constrained it is particularly important for a liquidity provider to get its quote to the front of the queue (*i.e.,* establish price/time priority on an order book). Stock exchange priority rules give greater priority to better priced orders and generally factor order entry time into the priority of limit orders at the same price. Because liquidity providers cannot establish price priority in when the NBBO spread is one tick, establishing time priority becomes more important.[478] Consequently, an environment where stocks are tick-constrained with artificially wider spreads and longer order queues tends to favor traders who are better able to establish positions more quickly so they can be at the front of the queue. Often the key differentiator to get to the front of the queue, and to avoid unfavorable executions once there, is speed.[479] If a liquidity provider is too slow to establish a new quote, then that quote could be buried in the queue. Conversely, even with a favorable position in the queue, if the market moves in an economically disadvantageous manner to a liquidity provider, it will seek to avoid an adverse execution (*e.g.,* by canceling an order) and adjust its order to account for the new prevailing price of the NBB (NBO). Liquidity providers that are too slow run the risk of having their now-stale quote ''sniped.'' [480] Sniping is costly to those liquidity providers who get sniped and, so, effectively adds to adverse selection risk for slower liquidity providers.[481]

Trading quality among stocks that are near-tick-constrained, can also be significantly affected by the tick size.[482] For example, consider a stock that would otherwise trade at an offer price of $10.015 and a bid of $10.005 absent the $0.01 tick. This stock would have a spread of $0.01. However, due to tick constraints the stock will quote at the best feasible ask price above $10.015 [483] which is $10.02 and the best feasible bid price below $10.005 which is $10.00.[484] Consequently, due to the tick constraint, the stock's actual quoted spread is $0.02 instead of $0.01, or 100% wider than the spread would otherwise be. According to the analysis in Table 4 approximately 16% of trading volume occurs in stocks that are near-tick-constrained. Combining this volume with the 56% of trading volume that occurs in tick-constrained stocks means that approximately 72% of share trading volume in current markets occurs in stocks that are tick-constrained or near-tick-constrained.

2. Access Fees

The market for trading services in NMS stocks where traders either demand or supply liquidity is primarily served by the national equity exchanges and ATSs along with 6 wholesalers who internalize large portions of individual investor order flow. Exchanges and ATSs charge an access fee or pay a rebate to either those demanding liquidity or to those supplying it. Liquidity is typically provided through the provision of passive limit orders, which commit to execute against marketable orders that take liquidity. Rebates are typically captured by traders, such as market makers and some high-frequency traders, which specialize in the provision of liquidity and access fees are typically paid by demanders of liquidity.

Rule 610(c) limits exchange fees for accessing protected quotations with prices of $1.00 per share or greater to $0.0030 per share (or 30 cents per 100 shares). This level is commonly referred to as 30 mils. The rule also prohibits access fees in excess of 0.3% of the price for stocks priced less than $1.00 per share. The 30 mil fee cap was adopted as a part of Regulation NMS in conjunction with the order protection rule and was implemented to prevent exchanges from charging excessive fees to orders that were required to trade with a protected quote. The 30 mil fee

[474] Market participants can use inverted exchanges or ISO orders to help ameliorate some of the negative effects of tick size constraints.

[475] *See e.g.,* Barbara Rindi and Ingrid M. Werner, *U.S. Tick Size Pilot* (working paper Mar. 4, 2019), *available at https://ssrn.com/abstract=3041644* (retrieved from SSRN Elsevier Database); Mao Ye and Chen Yao, *Tick Size Constraints, Market Structure and Liquidity* (working paper Dec. 26, 2019), *available at https://ssrn.com/abstract=2359000* (retrieved from SSRN Elsevier database); Phil Mackintosh, *Why Ticks Matter,* Nasdaq (May 19, 2022), *available at https://www.nasdaq.com/articles/why-ticks-matter;* and MEMX Report, *supra* note 105.

[476] *See, e.g.,* Roberto Riccó et al., *Optimal Market Asset Pricing* (working paper Feb. 4, 2021), *available at https://ssrn.com/abstract=3779195* (retrieved from SSRN Elsevier database) (showing in a theoretical model that rebates can be optimal for exchanges because they both induce and attract high-frequency trading activity).

[477] *See, e.g.,* Edwin Hu, et al., *Tick Size Pilot Plan and Market Quality* (DERA White Paper, Jan. 31, 2018), *available at https://www.sec.gov/files/dera_wp_tick_size-market_quality.pdf;* Hendrick Bessembinder, *Trade Execution Costs and Market Quality After Decimalization,* 38 J. Fin. & Quantitative Analysis 747 (2003); and Tavy Ronen and Daniel G. Weaver, *Teenies Anyone?,* 4 J. Fin. Mkt. 231 (2001).

[478] An order with time priority is executed first when multiple orders are at the best price, regardless of how many orders are at the best price. In longer order queues, liquidity-providing orders deeper in the queue, which do not have time priority, are less likely to be filled in a timely manner and, conditional on being filled, the probability of the order having been adversely selected tends to be greater compared to orders with greater fill priority. Typically, liquidity providers compete to gain priority over other resting orders by quoting a better price but tick-constraints make doing so difficult. In the case when the spread is constrained to a single tick, it would be impossible to improve on the displayed price without locking markets. Even for near-tick-constrained stocks, when the quoted spread may be greater than a single tick, improving the price by an entire tick may be too much in the sense that doing so may narrow the spread beyond what the liquidity providers could tolerate. A narrower tick de-emphasizes time priority on a stock exchange by making it easier to compete on price. *See* Hu, et al. (2018), *supra* note 477; and Todd G. Griffith and Brian S. Roseman, *Making Cents of Tick Sizes: The Effect of the 2016 U.S. SEC Tick Size Pilot on Limit Order Book Liquidity,* 101 J. Banking Fin. 104 (2019).

[479] *See, e.g.,* Chen Yao and Mao Ye, *Why Trading Speed Matters: A Tale of Queue Rationing Under Price Controls,* 31 Rev. Fin. Stud. 2157 (2018).

[480] Sniping occurs when prices move against a quote and a very fast market participant executes the now stale quote before the quote submitter can cancel the now stale quote. *See* Sida Li, et al., *Who Provides Liquidity, and When?,* 141 J. Fin. Econ. 968 (2021).

[481] *Id.*

[482] *See supra* notes 449 and 458 for the empirical definition and discussion of near-tick-constrained stocks. Near-tick-constrained stocks are those with time average quoted spreads greater than $0.011 and less than $0.02.

[483] This assumes that stock prices are expected to revert to the next worse level. This may occur because standard economic theory suggests that in a competitive market liquidity providers will compete to provide liquidity until the spread—*i.e.,* their compensation for providing liquidity—is equal to the break-even point for liquidity provision. *See also* Jonathan Brogaard and Corey Garriott, *High-frequency Trading Competition,* 54 J. Fin. & Quantitative Analysis 1469 (2019) (documenting that as more high-frequency liquidity providers enter the market, spreads decrease until they converge to competitive levels).

[484] The range of infeasible quoting prices narrows somewhat in the presence of rebates for liquidity providers. Section V.C.2 discusses these effects.

cap was also determined based on existing market practices.[485] Rule 610(c) only regulates fees to access protected quotes; it does not regulate fees to access non-protected quotes, nor does it regulate rebates that exchanges can offer. However, the 30 mil fee cap has become a central component of the structure of fees and rebates as access fees for non-protected quotes generally do not exceed the 30 mil fee cap, nor do average rebates.

Fee/rebate schedules can be quite complex, and the fee schedules change frequently.[486] The actual fee or rebate that an investor is assessed on most exchanges also generally depends on which tier a market participant falls into based on trading volume in that month, with higher volume market participants receiving a higher rebate or a lower fee.[487] Exchanges file their fee and rebate schedules with the Commission and post them on their websites, which means that the rebate and fee rates associated with each volume based tier can be known at the time a market participant trades. However, market participants may not know which volume based tier they would fall under at the time of the trade (and thus the fee or rebate rate that would apply to their particular trade) because the volume tier they would fall under is determined based on their trading volume during the current month, which is not finalized until the end of the month.[488] More specifically, the volume based fees or rebates a market participant receives from an exchange are often determined by a market participant's average total daily traded share volume on the exchange during the month as a percentage of either the average total daily market volume reported by one of the consolidated tapes during the month or as a percentage of the average total daily market volume reported by all consolidated tapes during the month.[489]

Some information on average exchange fees and rebates is also available through reports available under rule 606. With respect to held orders, rule 606(a)(1) requires broker-dealers to produce quarterly public reports regarding their routing of non-directed orders[490] in NMS stocks that are submitted on a held basis. Along with other information, these reports require the broker-dealer to report both the total dollar amount and per share average of net transaction fees paid and net transaction rebates received for different order types for each trading venue to which the broker-dealer reports routing orders.[491] Additionally, rule 606(b)(3) requires broker-dealers to produce reports pertaining to order handling upon the request of a customer that places, directly or indirectly, one or more orders in NMS stocks that are submitted on a not held basis, subject to a de minimis exception.[492] For each venue to which the broker-dealer routed the customer's orders, these reports require the broker-dealer to disclose, among other things, the average net execution rebate or fee for shares of orders providing liquidity and the average net execution rebate or fee for shares of order s removing liquidity.[493] However, these reports only provide market participants with information on historical average transaction fees and rebates and may not accurately reflect the current exchange fees and rebates a market participate would encounter at the time of its transaction.[494]

The fee structure on an exchange can take one of three forms. The most common is maker-taker, in which liquidity demanders (*i.e.,* takers) are assessed the access fee and liquidity providers (*i.e.,* makers) are offered a rebate. Exchanges can also be inverted (also known as taker-maker), in which liquidity demanders are offered a rebate and liquidity providers are assessed an access fee. The last form of fee structure is flat; a flat exchange either charges one or both sides a fee but does not offer rebates. While the exchanges are free to subsidize rebates beyond what they earn through collecting access fees, in practice this does not appear to happen.[495] The difference between the average access fee charged and the average rebate paid is the net capture earned by the exchanges for facilitating a transaction.

The regulatory access fee cap is most relevant for maker-taker markets where the trader accessing a protected quote must pay the access fee. This is because the access fee cap applies only to fees for accessing protected quotations and does not apply to fees for posting quotations. Therefore, on an inverted venue the exchange is not restricted by rule 610 in terms of the rebate that it can offer to access a protected quote or the fee to post a protected quote.[496] Flat rate

[485] *See* Regulation NMS Adopting Release, *supra* note 16, at section I.C.2 (page 28 in the SEC version) which states that the selection of the access fee cap was chosen because ''it will not seriously interfere with current business practices'' and ''[i]n the absence of a fee limitation, some 'outlier' trading centers might take advantage of the requirement to protect displayed quotations by charging exorbitant fees to those required to access the outlier's quotations.''

[486] *See* Table 5 for information on how often exchanges amend their fees.

[487] *See* Letter from Richard Steiner, Electronic Trading Strategist, RBC Capital Markets, to Brent Fields, Secretary, Commission (Oct. 16, 2018), *available at https://www.sec.gov/comments/s7-05-18/s70518-4527261-176048.pdf* (commenting on the transaction fee pilot).

[488] *See* Chester Spatt, *Is Equity Market Exchange Structure Anti-Competitive?,* (Dec. 28, 2020) (unpublished manuscript), *available at https://www.cmu.edu/tepper/faculty-and-research/assets/docs/anti-competitive-rebates.pdf.* However, not all exchanges offer volume-based tiers in their fee structures. For example, LTSE does not charge fees to transact and IEX does not offer volume based tiering. For exchanges like these, it is possible to determine with certainty the cost to transact prior to executing a trade.

[489] The Equity Data Plans disseminate SIP data over three separate networks: (1) Tape A for securities listed on the New York Stock Exchange (''NYSE''); (2) Tape B for securities listed on exchanges other than NYSE and Nasdaq; and (3) Tape C for securities listed on Nasdaq. These tapes are referred to as the ''consolidated tapes.'' The CTA Plan governs the collection, consolidation, processing, and dissemination of last sale information for Tape A and Tape B securities. The CQ Plan governs the collection, consolidation, processing, and dissemination of quotation information for Tape A and Tape B securities. Finally, the UTP Plan governs the collection, consolidation, processing, and dissemination of last sale and quotation information for Tape C securities. For details on exchange volume based fees and rebates, *see, e.g., Add and Remove Rates,* NASDAQ, *available at https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2; New York Stock Exchange Price List 2022,* NYSE, *available at https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf; and Cboe U.S. Equities Fee Schedules EDGX Equities,* Chi. Bd. Options Exch., *available at https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*

[490] A ''non-directed order'' means any order from a customer other than a directed order. *See* 17 CFR 242.600(b)(56). A ''directed order'' means an order from a customer that the customer specifically instructed the broker or dealer to route to a particular venue for execution. *See* 17 CFR 242.600(b)(27).

[491] Rule 606(a)(1) requires broker-dealers to report separate information for market orders, marketable limit orders, non-marketable limit order, and other orders. *See* 17 CFR 242.606(a)(1) for the items that need to be disclosed in reports under rule 606(a)(1).

[492] *See* 17 CFR 242.606(b)(3). In addition, under rule 606(b)(5)'s customer-level de minimis exception, broker-dealers need not provide upon request execution quality reports for customers that traded on average each month for the prior six months less than $1,000,000 of notional value of not held orders in NMS stocks through the broker-dealer. *See* 17 CFR 242.606(b)(5).

[493] *See* 17 CFR 242.606(b)(3)(iii) and (iv).

[494] Reports under rule 606(a)(1) are produced by broker-dealers at the end of the quarter and disclose information on average fees and rebates for each month in that quarter. Reports issued by broker-dealers to their customers under rule 606(b)(3) disclose summarized information on the handling of the customer's orders for each calendar month over the prior six months. The broker-dealer must issue these reports to the customer within seven business days of receiving the customer's request.

[495] *See infra* section V.D.1 for more discussion on why exchanges may not subsidize rebates from other sources of revenue. *See also* Eric Budish, et al., *A Theory of Stock Exchange Competition and Innovation: Will the Market Fix the Market?* (working paper May 22, 2019) *available at https://ssrn.com/abstract=3391008* (retrieved from SSRN Elsevier database).

[496] As can be seen from Table 5, which presents information on access fees and rebates for the 16 operating exchanges, in practice the fee that is charged on an inverted fee venue to post liquidity

venues, which do not offer rebates, do not appear to be economically constrained by rule 610(c) as their fees for both taking and adding liquidity are significantly lower than the 30 mil fee cap.

Table 5 provides an analysis of current fee and rebate schedules based on rule 19b–4 filings with the Commission for each of the equity exchanges operating in the United States as of June 1, 2022 as well as a review of the transaction prices that each exchange posts.[497] What becomes apparent from this analysis is that the current structure of fees and rebates is complex and consistently changing. On average, each exchange filed 11.4 rule 19b–4 filings per year with the Commission. Market participants interacting with all exchanges had to adjust to an average of 155 fee changes per year across all exchanges. Exchanges also tend to have numerous fee and rebate categories. The effect of the 30 mil fee cap as an anchor point is also apparent. For most exchanges the maximum fee assessed, presumably for non-protected quotes, is close to the 30 mil fee cap for protected quotes. The maximum rebate is generally in the vicinity of 30 mils, further suggesting the 30 mil access fee cap effectively limits what the exchanges offer as rebates.

Panel B provides information on the exchange's fee schedules for stocks priced lower than $1.00. For these transactions the fee schedules tend to be simpler. Most exchanges do not offer a rebate for transactions lower than $1.00 even if the exchange offers rebates for other transactions—only two exchanges offer any sort of baseline rebate.[498] Additionally, the exchanges tend to charge the maximum access fee of 0.3% of the share price. A few exchanges charge a fee to both sides to transact with one exchange charging 0.3% to both sides of a transaction.

TABLE 5—SUMMARY OF TRANSACTION-BASED FEE SCHEDULES FOR U.S. NATIONAL EQUITIES EXCHANGES AS OF MAY 2022 [a]

Panel A: Fees and Rebates for Transactions Greater than $1.00

Exchange	Fee model	Number of revisions Jan 2018–June 2022 (per year)	Date of fee schedule	Fees (number of categories)	Rebates (number of categories)
Cboe BZX [b]	Maker-Taker	98 (21.8)	4/1/2022	$0.0030 (5)	[$0.0000–$0.0032] (11)
Cboe BYX [c]	Inverted	42 (9.3)	5/2/2022	[$0.0010–$0.0030] (10)	[$0.0000–$0.0015] (6)
Cboe EDGA [d]	Inverted	26 (5.8)	4/1/2022	[$0.0008–$0.0030] (12)	[$0.0000–$0.0024] (9)
Cboe EDGX [e]	Maker-Taker	71 (15.8)	5/2/2022	[$0.0000–$0.0030] (7)	[$0.0000–$0.0032] (14)
BX [f]	Inverted	45 (10.0)	10/12/2021	[$0.0010–$0.0030] (9)	[$0.0000–$0.0021] (15)
Phlx (PSX) [g]	Maker-Taker	48 (10.7)	1/2/2022	$0.0030 (1)	[$0.0005–$0.0020] (5)
Nasdaq [h]	Maker-Taker	83 (18.4)	4/12/2022	[$0.0004–$–$0.0030] (3)	[$0.0000–$0.00325] (7)
NYSE Arca [i]	Maker-Taker	77 (17.1)	5/1/2022	[$0.0000–$0.0030] (15)	[$0.0000–$0.0032] (21)
NYSE American	Maker-Taker	11 (2.4)	5/1/2022	[$0.0010–$0.0030] (9)	[$0.0020–$0.0030] (10)
NYSE	Maker-Taker	82 (18.2)	5/1/2022	[$0.0000–$0.0030] (50)	[$0.0000–$0.0030] (69)
NYSE National	Inverted	27 (6.0)	1/2/2022	[$0.0022–$0.0029] (16)	$0.0000 (1)
NYSE Chicago	Maker-Taker	7 (1.6)	5/1/2022	[$0.0010–$0.0010] (5)	$0.0010 (6)
IEX [j]	Flat	19 (4.2)	4/1/2022	[$0.0006–$0.0010] (2)	[$0.000 (1)
Members MEMX [k]	Maker-Taker	NA	6/1/2022	[$0.0000–$0.0030] (3)	[$0.0018–$0.0035] (4)
Miami MIAX [l]	Maker-Taker	NA	9/24/2020	$0.0028 (1)	[$0.0022–$0.0028] (2)
Long Term LTSE [m]	Free	NA	N/A	$0.0000 (1)	$0.0000 (1)

Panel B: Fees and Rebates for Transactions Under $1.00

Exchange	Fee model	Rebate	Fee	Charged both sides
Cboe BZX	Maker-Taker	0	0.30	
Cboe BYX	Inverted	0	0.10	
Cboe EDGA	Inverted	0	0.30	

is generally very close to the 30 mil access fee cap even though not constrained by rule 610.

[497] Panel A of Table 5 provides the category of exchange, maker-taker, inverted, or flat/free, the number of fee revisions since Jan. 2018 as indicated by the number of transaction fee specific rule 19b–4 filings that the exchange has filed with the Commission, the date that each exchange's website states that the fee schedule posted there is effective and the range of fees and rebates along with the number of categories of fees and rebates for transactions priced equal to, or greater than, $1.00 per share.

[498] The two are Cboe EDGX and Members MEMX.

Exchange	Fee model	Rebate	Fee	Charged both sides
Cboe EDGX	Maker-Taker	0.00009 (per share)	0.30	
BX	Inverted	0	0.30	
Phlx (PSX)	Maker-Taker	0	0.20	
Nasdaq	Maker-Taker	0	0.30	
NYSE Arca	Maker-Taker	0	0.30	
NYSE American	Maker-Taker	0	0.25	
NYSE	Maker-Taker	0	0.30	
NYSE National	Inverted	0	0	
NYSE Chicago	Maker-Taker	0	0.10	Yes.
IEX	Flat	0	0.30	Yes.
Members MEMX	Maker-Taker	0.10% (of value)	0.25	
Miami (MIAX)	Maker-Taker	0	0.30	
Long Term (LTSE)	Free	0	0.30	

[a] The number of fee revisions is obtained by counting each rule 19b–4 filing for each exchange that is not clearly marked for a non-transaction fee related purpose such as connectivity fees, listing fees, options fees, etc. To determine the fee and rebate information each exchange's webpage was searched for its current posted access fee and rebate schedule and collected information only on access fees and rebates pertaining to non-auction trading in stocks priced equal to, or greater than, $1.00 per share. Sources for Current Access Fee Data were effective on the dates shown in Panel A of Table 5, and were accessed during May 2022 at the websites shown beneath the table.
[b] *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*
[c] *https://www.cboe.com/us/equities/membership/fee_schedule/byx/.*
[d] *https://www.cboe.com/us/equities/membership/fee_schedule/edga/.*
[e] *https://www.cboe.com/us/equities/membership/fee_schedule/edgx/.*
[f] *https://listingcenter.nasdaq.com/rulebook/bx/rules/BX%20Equity%207.*
[g] *https://listingcenter.nasdaq.com/rulebook/phlx/rules/phlx-equity-7.*
[h] *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules/Nasdaq%20Equity%207.*
[i] All NYSE Exchange Family fees: *https://www.nyse.com/markets/fees.*
[j] *https://exchange.iex.io/resources/trading/fee-schedule/.*
[k] *https://info.memxtrading.com/fee-schedule/.*
[l] *https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_PEARL_Equities__Initial_FS_09242020.pdf.*
[m] *https://ltse.com/trading/faqs.*

Complex fee schedules and volume based tiers mean that it is difficult to determine the net capture on a given exchange (the difference between average fees levied and rebates paid). Additionally, financial statements for exchange groups generally do not break down performance on a per venue level and they generally combine auction access fees collected with regular trading access fees. Furthermore, some exchanges are privately held and thus do not release the same financial statements that public exchanges do. Using information from the financial statements of the three major exchange groups which collectively account for the overwhelming majority of trading volume on exchanges, the Commission estimates that the average total net capture is around 4 mils for all trading types.[499] However, the Commission understands based on Staff conversations with industry members that the net capture for non-auction trading in stocks that have a price equal to or greater than $1.00 is likely close to 2 mils, and in further analysis where the net capture needs to be assumed, we use 2 mils. This analysis suggests that the primary reason that access fees remain near 30 mils on most exchanges is to fund rebates. For stocks trading below $1.00 the Commission estimates an average net capture of around 0.28% of the transaction volume.[500] This amount is very close to the 0.30% access fee cap and arises because, as seen in Panel B of Table 5, most exchanges set their baseline fee at 0.30% but do not offer baseline rebates for transactions under $1.00 and some charge fees to both sides of the transaction leading to more than 0.30% per trade earned by the exchange.

Table 6 presents tabulations of the total share (Panel A) and dollar (Panel B) trading volume executed on the 16 exchanges in the first six months of 2022. This table provides estimates for the total volume that executed below $1.00 and that which executed above $1.00. These numbers represent an estimate of the total number of shares that would have been subject to the access fees and rebates discussed in this release.

TABLE 6—TRADING VOLUME BY EXCHANGE, EXCHANGE TYPE, AND EXCHANGE GROUP JAN. TO JUNE 2022 [a]

Panel A: Share Volume

Exchange name	Exchange type	<$1 Volume (billions)	>=$1 Volume tick-constrained (billions)	>=$1 Volume non-tick-constrained (billions)	% of exchange volume
Off Exchange		67.6	258.1	296.6	
Nasdaq	Maker-Taker	13.3	111.8	169.2	26.5

[499] Intercontinental Exchange, the parent firm of NYSE, reports on page 51 of its 2021 Form 10–K filing that their net capture for U.S. equity transactions was approximately 4.2 mils in 2021. Nasdaq did not report its net capture in its Form 10–K filing, however Nasdaq provides information on its investor relations web page which, when we average the relevant 2021 volumes, indicates that the average net capture across all Nasdaq platforms for U.S. equity transactions was 5.9 mils (*see Nasdaq 2022/2021 Monthly Volumes,* NASDAQ, *available at https://ir.nasdaq.com/static-files/465d2157-c476-4546-a9f7-8d7ad0c9be77*). Cboe reports in its Form 10–K filing that its net capture for U.S. equity transactions was approximately 2 mils.

[500] The estimate for the 0.28% net capture is obtained by taking the estimated net transaction fee for each exchange and multiplying it by the dollar trading volume presented in Panel B of Table 6 below.

TABLE 6—TRADING VOLUME BY EXCHANGE, EXCHANGE TYPE, AND EXCHANGE GROUP JAN. TO JUNE 2022 [a]—CONTINUED

Exchange name	Exchange type	<$1 Volume (billions)	>=$1 Volume tick-constrained (billions)	>=$1 Volume non-tick-constrained (billions)	% of exchange volume
NYSE Arca	Maker-Taker	8.7	62.2	53.5	14.1
NYSE	Maker-Taker	1.2	48.8	54.9	12.9
Cboe BZX	Maker-Taker	2.8	45.3	38.3	10.6
EDGX	Maker-Taker	7.1	38.8	40.7	10.3
MEMX	Maker-Taker	1.9	36.8	22.9	7.6
IEX	Flat	0.5	14.7	26.0	5.2
EDGA	Inverted	0.7	13.1	9.6	2.9
Cboe BYX	Inverted	0.7	14.1	6,.5	2.6
MIAX Pearl	Maker-Taker	0.4	10.6	4.0	1.9
NYSE National	Inverted	0.2	10.9	3.0	1.8
Nasdaq OMX PSX	Maker-Taker	0.08	9.3	3.9	1.6
Nasdaq OMX BX	Inverted	0.2	4.2	4.1	1.0
NYSE American	Maker-Taker	0.7	3.8	2.5	0.9
NYSE Chicago	Maker-Taker	0.02	0.5	1.9	0.1
LTSE	Free	0.002	0.003	0.01	0.0
Total		106.0	683.1	737.6	
Exchange Total		38.4	425.1	441.0	

Panel B: Dollar Volume

Exchange name	Exchange type	<$1 Volume (billions)	>=$1 Volume tick-constrained (billions)	>=$1 Non-tick-constrained (billions)	% of exchange volume
Off Exchange		$31.5	$5,947.1	$23,715.1	
Nasdaq	Maker-Taker	6.6	2,896.6	15,518.6	30.2
NYSE Arca	Maker-Taker	4.0	1,953.9	5,274.7	15.1
NYSE	Maker-Taker	0.6	1,080.5	4,034.4	11.5
Cboe BZX	Maker-Taker	1.2	1,278.2	3,807.3	11.3
EDGX	Maker-Taker	3.5	857.5	3,213.9	8.9
MEMX	Maker-Taker	1.0	841.3	1,588.8	5.5
IEX	Flat	0.2	387.7	2,356.1	6.3
EDGA	Inverted	0.4	373.0	802.4	2.7
Cboe BYX	Inverted	0.4	319.8	626.2	2.1
MIAX Pearl	Maker-Taker	0.2	285.2	424.8	1.6
NYSE National	Inverted	0.09	280.4	209.4	1.1
Nasdaq OMX PSX	Maker-Taker	0.04	270.7	411.5	1.5
Nasdaq OMX BX	Inverted	0.09	139.1	438.9	1.3
NYSE American	Maker-Taker	0.3	90.0	222.9	0.7
NYSE Chicago	Maker-Taker	0.01	20.3	351.5	0.3
LTSE	Free	0.001	0.1	1.0	0.0
Total		50.1	17,021.7	62,997.5	
Exchange Total		18.6	11,074.6	39,282.4	

[a] This table is created by aggregating all trade information from the TAQ database for every trading day in Jan. to June 2022. Only trading volume reflecting normal trades during regular trading. Normal trades are identified in TAQ data by sale conditions ''blank, @, E, F, I, S, Y'' which correspond to regular trades, intermarket sweep orders, odd lot trades, split trades, and yellow flag regular trades. We aggregate total remaining share volume by exchange, exchange type (maker-taker, inverted, flat, free), and exchange family (NYSE, Nasdaq, CBOE, Independent). We combine volume from exchange codes T and Q into 'Nasdaq.' Panel A presents share volume totals and Panel B presents dollar volume totals. Certain items in this Table 6 may also be affected by the MDI Rules once they are fully implemented. *See* Table 3 note b.

Transaction fees for trades in stocks priced equal to or greater than $1.00 are generally levied per share transacted. From Table 6 we see that in the first half of 2022, there were approximately 1.4 trillion shares transacted at prices equal to or greater than $1.00 per share across all venues, 59% of which (866 billion shares) were executed on a registered exchange.[501] Of these on-exchange transactions priced equal to or greater than $1.00 per share, approximately half were in tick-constrained securities while the other half were not. These numbers provide the basis for estimating the total amount of access fees and rebates collected and distributed in transactions priced equal to, or greater than, $1.00 per share. For transactions less than $1.00 per share the access fee is generally levied as a percent of the transaction share price. In Panel B we see that in the first half of 2022 there was approximately $18 billion transacted on exchanges in shares priced less than $1.00 per share.

Panels A and B of Table 7 break down the share and dollar volume statistics presented in Table 5 by venue type: maker-taker, inverted, and flat/free. The overwhelming majority of both dollar and share exchange trading volume occurs on maker-taker venues with approximately 88% of both dollar and share volume executing on maker-taker

[501] 1.4T shares 683 billion tick-constrained shares + 737 billion non-tick-constrained shares. Also, off exchange trading volume has increased in recent years. *See, e.g.,* Jonathan Brogaard and Jing Pan, *Dark Pool Trading and Information Acquisition,* 35 Rev. Fin. Studies 2625 (2022).

venues. Inverted exchanges capture about 6% of both dollar and share volume, and the remaining share volume transact on flat/free exchanges.

TABLE 7—VOLUME BY EXCHANGE TYPE AND ESTIMATED ACCESS FEE/REBATE ESTIMATES JAN. TO JUNE 2022 [a]

	Price <$1 (billions)	Price >$1 tick-constrained (billions)	Price >$1 non-tick-constrained (billions)	% Total
Panel A: Exchange Share Volume By Venue Type				
Maker-Taker	35.5	364.1	389.3	88.7
Inverted	1.9	38.4	18.9	6.6
Flat/Free	0.5	14.7	26.1	4.6
Panel B: Exchange Dollar Volume by Venue Type				
Maker-Taker	17.1	9,484.4	34,625.4	88.4
Inverted	1.0	986.1	2,036.9	6.1
Flat/Free	0.2	387.8	2,357.1	5.5
Panel C: Estimated Fees Collected and Rebates Distributed (Billions)				
Fees Collected		$2.55		
Rebates Distributed		2.31		
Exchange Capture		0.24		
Panel D: Total Estimated Net Fees by Liquidity Type (Billions)				
Demander		$2.13		
Provider		−1.89		
Exchange Capture		0.24		

[a] Certain items in this Table 7 may also be affected by the amendments in the MDI Rules once they are fully implemented. *See* Table 3 note b.

Panel C provides an estimate of the total amount of access fees collected and rebates distributed.[502] In the first 6 months of 2022 there were an estimated $2.55 billion in access fees collected across all exchanges and $2.31 billion in rebates distributed, resulting in a net capture to all exchanges of $242 million.

Panel D of Table 7 provides estimates of the net access fee paid by liquidity demanders and liquidity suppliers.[503] In the first 6 months of 2022 liquidity demanders paid an estimated $2.1 billion in net access fees and liquidity providers received an estimated $1.89 billion in rebates. With the difference of $242 million being the exchanges' estimated net capture.

Although not subject to rule 610(c), because they do not post protected quotes, ATSs also often assess transaction fees.[504] As of the second quarter of 2022 there were 32 ATSs that reported trading volume to FINRA transacting a total of 81 billion shares.[505] Unlike exchanges, the fees that ATSs charge generally do not have a standard structure and are often negotiated between the ATS and the customer. Based on a review of item 19 in form ATS–N, ATSs generally do not provide rebates, and when transaction fees are explicitly discussed, they are often in the range of 10 mils.

3. Round Lots and Market Data Infrastructure

Currently, information on odd-lots inside the NBBO is only available to investors who subscribe to proprietary data feeds, and comprehensive odd-lot information is only available to market participants who subscribe to the proprietary data feeds of all the exchanges.[506] The implementation of the MDI Rules will include odd-lot information inside the NBBO.[507] The MDI Rules will also change the definition of a round lot. Specifically, the MDI Rules will lower the round lot size to 40 shares for stocks priced greater than $250 and less than $1,000. The round lot definition will become 10 shares for stocks priced greater than $1,000 and less than $10,000. The round lot definition will become 1 share for stocks priced greater than $10,000.

[502] These estimates are computed by assuming a 30 mil access fee and 28 mil rebate on all transactions that occur on maker-taker or inverted exchanges and an 8 mil access fee (and no rebate) on the volume priced equal to, or greater than, $1.00 per share that occurs on IEX. For trading in sub $1.00 transactions, the various access fees and rebates for each exchange presented in Panel B of Table 5 are multiplied by the corresponding dollar volume of trade in transactions priced less than $1.00 per share to compute the total access fees collected and rebates distributed for this volume. The figures are summed together to provide the estimates of total access fees collected and rebates distributed.

[503] This estimate presumes that for shares transacted in prices equal to or greater than $1.00 per share on maker-taker venues the liquidity demander pays a 30 mil access fee and the liquidity provider receives a 28 mil rebate. On inverted exchanges the opposite occurs. On IEX it is presumed that liquidity demanders pay an 8 mil access fee and liquidity providers receive no rebate. For trading in sub $1.00 transactions the various access fees and rebates for liquidity suppliers and demanders are computed by taking the respective fees and rebates for sub $1.00 transactions for each exchange presented in Panel B of Table 5 and multiplying them by the corresponding dollar volume of trade in transactions priced less than $1.00 to compute the total access fees collected and rebates distributed for liquidity-providing and demanding trades. The figures are summed together to provide the estimates of total access fees collected and rebates distributed.

[504] IntelligentCross ATS, for example, offers matching processes for all NMS stocks eligible for trading, and disseminates bids and offers in real-time to subscribers to the ATS's proprietary data feed, but these are not protected quotes. *See* IntelligentCross, Form ATS–N, Item 15 (Display) (dated Apr. 11, 2022) *available at https://www.sec.gov/Archives/edgar/data/1708826/000170882622000002/xslATS-N_X01/primary_doc.xml.*

[505] *See ATS Transparency Data Quarterly Statistics, available at https://www.finra.org/filing-reporting/otc-transparency/ats-quarterly-statistics.*

[506] *See supra* note 371 and accompanying text for a discussion of a current request for comment by the exclusive SIPs about the potential to amend the plans to include some odd-lot information in the SIP data.

[507] *See supra* section IV.A.1 for a discussion on the expected time of the implementation of the MDI Rules.

When adopting the MDI Rules, the Commission enumerated numerous economic effects specifically related to changing the round lot definition and including odd-lot information as a part of core data. For the change in the definition of round lots, these effects include: (1) a mechanically tighter NBBO for higher priced stocks due to the redefinition of the round lot sizes,[508] (2) increased transparency and better order execution,[509] and (3) potentially more orders for high priced stocks being routed to exchanges instead of ATSs.[510] The costs of changing the round lot definition are also discussed and include upgrading systems to account for additional message traffic and modifying and reprogramming systems.[511] The Commission also discussed the expected effect that changing the round lot definition would have on other rules and regulations.[512]

For the inclusion of odd-lot information inside the NBBO to core data,[513] these effects include reducing information asymmetries between investors who currently have access to odd-lot information through proprietary data feeds and those who do not, leading to better order execution and price efficiency.[514] Providing a reasonable alternative to some market participants to proprietary data will allow some market participants to reduce data expenses required for trading.[515] The costs of including odd-lot information inside the NBBO include: [516] the cost of upgrading existing infrastructure and software to handle the dissemination of additional core data message traffic, the cost to SROs to implement system changes required in order to make regulatory data and other data needed to generate consolidated market data available to competing consolidators, the cost of technological investments market participants might have to make in order to receive the new core message traffic, and lastly, the cost to users of proprietary data whose information advantage would dissipate somewhat.[517]

The MDI Rules do not require the competing consolidators to disseminate odd-lot information. However, the Commission estimated that at least one competing consolidator will disseminate the odd-lot information because it believed that there will be demand for the data.[518]

4. Affected Entities and Markets

The proposal would affect trading in NMS Stocks, particularly on exchanges that charge high access fees and in stocks with lower quoted spreads, many odd-lots inside the spread, or higher prices. Therefore, the proposal would affect a wide variety of market participants, including national securities exchanges, other trading venues, exclusive SIPs and their data users, competing consolidators (eventually), broker-dealers operating order entry and order routing systems, and others who engage in the trading of NMS Stocks, including investors.

There are 16 national securities exchanges on which NMS Stocks are traded that would be affected by the proposal. The exchanges compete with each other and other trading venues to attract order flow. Exchanges compete with each other in how they set the rules that dictate how orders routed to it interact given the broader requirements of the Exchange Act and rules thereunder. Such rules are coded into the systems of exchanges that match buy and sell orders. Exchanges also differentiate themselves with the access fees they charge or the rebates they pay out for particular order types.[519] As a subset of national securities exchanges, the five listing exchanges, set rules for listing standards for securities and are responsible for tracking certain regulatory information regarding their listed stocks.

Other trading venues, including 33 ATSs and 238 other FINRA members, including OTC market makers, also compete with exchanges and each other to attract order flow in NMS Stocks and can route orders to the various trading venues. The order flow they attract depends on a number of factors such as fees and price improvement over the NBBO amongst other aspects of execution quality.

Pending the full implementation of the MDI rules, the market for market data is serviced by the two exclusive SIPs and exchange proprietary feeds. The two exclusive SIPs collect trade, quote, and regulatory data from the 16 exchanges and three trade reporting facilities,[520] consolidate those data, determine an NBBO, and disseminate those data directly to users or through vendors and broker-dealers. The exclusive SIPs can also collect information from the alternative display facility (''ADF'') operated by FINRA though no one currently uses the ADF to display quotes. Upon full implementation of the MDI Rules, the exclusive SIPs will be retired and an unknown number of competing consolidators will take over the collection, consolidation, estimation, and dissemination. The volume of data to be processed through these competing consolidators will be greater than that currently processed through exclusive SIPs, but competing consolidators will have flexibility to design data products tailored to different user types. In addition to the exclusive SIPs, the exchanges also disseminate market data to paying subscribers via proprietary data feeds. These proprietary data feeds provide more data than the exclusive SIPs at a lower latency.[521] Following the transition to a competing consolidator model for market data, the Commission expects total fees for market data are likely to decline.[522]

Broker-dealers typically route their own orders or their customers' orders for execution to trading venues. There were 3,564 registered broker-dealers as of the end of calendar year 2021. A portion of these broker-dealers focus their business on individual and/or institutional investors in the market for NMS stocks.[523] According to CAT data,

[508] *See* MDI Adopting Release, *supra* note 5, section V.C.1.(b).(i) for the full discussion of the effect of changing the round lot size on the NBBO.

[509] *See* MDI Adopting Release, *supra* note 5, sections V.C.1.b.(ii) and V.C.i.b.(iii) for the full discussion of the effect of changing the round lot size on transparency and execution quality.

[510] *See* MDI Adopting Release, *supra* note 5, section V.C.1.b.(iv) for the full discussion of the effect of changing the round lot size on exchange competition and order routing.

[511] *See* MDI Adopting Release, *supra* note 5, section V.C.1.b.(vi) for the full discussion of the expected costs of changing the round lot size.

[512] *See* MDI Adopting Release, *supra* note 5, section V.C.1.b.(vii) for the full discussion of the effect of changing the round lot size on other rules and regulations.

[513] *See* MDI Adopting Release, *supra* note 5, section V.C.1.c.(i) for the full discussion of the effect of including odd-lot information inside the NBBO in its definition of core data.

[514] *Id.*

[515] *Id.*

[516] *See* MDI Adopting Release, *supra* note 5, sections V.C.1.c.(iv), for the full discussion of the costs associated with expanding core data to include odd-lot information inside the NBBO.

[517] *Id.*

[518] *See* MDI Adopting Release, *supra* note 5, at footnote 1945 and surrounding text.

[519] Exchanges can also facilitate the routing of orders to other exchanges.

[520] Trade Reporting Facilities (TRFs) are facilities through which FINRA members report off-exchange transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS.

[521] *See supra* note 330 and *infra* note 612 and associated text for a further discussion on the nature of proprietary data feeds.

[522] *See* MDI Adopting Release, *supra* note 5, at 18773–64.

[523] Based on information from broker-dealers' 2021 FOCUS Report Form X–17A–5 Schedule I. This includes both carrying broker-dealers, who maintain custody of customer funds and securities, and introducing broker-dealers, who accept customer orders and introduce their customers to a carrying broker-dealer that will hold the customers' securities and cash.

there were approximately 1,037 broker-dealers that originated NMS stocks orders on behalf of individual investors and approximately 909 broker-dealers originated NMS stocks orders on behalf of institutional investors.[524] Institutional investor orders are typically ''not held'' orders, which provides the broker-dealer with more time and price discretion to execute the order or to minimize price impact.[525] In contrast, broker-dealers must attempt to execute a marketable held order immediately, which typically better suits individual investors who tend to seek immediate executions and rely less on broker-dealer order handling discretion since their orders typically have much lower price impacts.[526] Brokers-dealers serving individual investors often distinguish themselves by the customer service and financial advice they provide and the accessibility and functionality of their trading platforms.

Many broker-dealers that handle customer accounts do not directly access national securities exchanges or ATSs for their orders and rely on other broker-dealers to facilitate market access for them through those broker-dealers' order entry systems. The Commission estimates that there are 1,192 broker-dealers with order entry systems that submit orders in NMS stocks to exchanges in the minimum pricing increments.[527] Of these broker-dealers, an estimated 282 broker-dealers operate smart order routers to facilitate order routing.

D. Economic Effects

The Commission expects the proposal to lead to lower transaction costs for liquidity demanders on exchanges trading in stocks with narrow spreads. The proposal for a minimum increment to trading would improve exchanges' and ATSs' abilities to potentially innovate in ways that could potentially increase competition for retail order flow. A lower access fee cap would reduce the transaction costs of liquidity demanders in the predominant maker-taker structure. Making fees and rebates determinable at the time of trade may enhance broker-dealer order routing by helping mitigate a potential conflict of interest and providing clarity in terms of all in execution costs. Accelerating the inclusion of odd-lot information into the exclusive SIPs, updating the definition of a round lot, and providing the best odd-lot order, would accelerate some of the benefits of the MDI Rules, and could also lead to better order-execution by enhancing benchmarking. The proposed rule would also impose compliance costs on various market participants.

1. Modification of Rule 612 To Create a Tiered Tick Structure

The proposal would create a smaller tick size for some NMS stocks. A smaller tick, as proposed, would have two competing effects on transaction costs. First, a smaller tick leads to pricing that more effectively balances liquidity supply and demand—which, all else equal, can lower transaction costs. Second, a smaller tick fragments liquidity in the order book into more price levels, which can increase complexity and the incidence of pennying[528]—which could harm liquidity. The primary mechanism by which a smaller tick would lead to improved market quality is by reducing the tick size constraints that prevent spreads from narrowing. The proposal would not change the tick for NMS stocks when their prices drop below $1.00 or for stocks with Time-Weighted Average Quoted Spread greater than $0.04 during an evaluation month. The Commission expects that the trading environment for stocks with these characteristics is unlikely to be significantly affected.[529]

The proposal assigns each NMS stock priced equal to, or greater than, $1.00 to one of 4 tick sizes: $0.001, $0.002, $0.005, and $0.01 depending on the stock's Time-Weighted Average Quoted Spread during an evaluation month. Table 8 presents estimates of the amount of share trading volume that would have been associated with each of the four tick sizes.

TABLE 8—PROPOSED TICK SIZES AND QUOTED SPREAD [a]

Average quoted spread	Tick	Number of stocks	Estimated % share volume	Estimated % dollar volume
Spread ≤$0.016	$0.001, 0.002	1,707	64.0	37.9
$0.016 <Spread <$0.04	0.005	2,648	17.9	22.3
$0.04 <Spread	0.01	7,792	18.1	39.8

[a] Quoted spreads are determined by computing the time-weighted quoted spread during regular trading hours as computed by the WRDS intra-day indicators for every sym_root and sym_suffix combination in the dataset and taking the equal weighted average across all trading days in Mar. 2022. The number of stocks assigned to each group is indicated in the *Number of Stocks* column. The tick size is then applied to all trading volume for Apr. to June 2022 with the fraction of share and dollar trading volume attributable to each tick group presented in the respective columns.

Once implemented, the changes to the current arrangements for consolidated market data pursuant to the MDI Rules may impact the number of stocks and their estimated % volumes anticipated for each tick level. In particular, under the MDI Rules, NMS stocks priced $250 or more will receive reductions in round lot sizes which is anticipated to lower their quoted spreads; however the effect on the reported numbers is likely small both because these stocks make up less than 3% of share volume and because they are unlikely to have spreads less than $0.04. Based on an analysis of data from Mar. 2022, the average spread of a stock priced between $250 and $1,000 was $0.35 in Mar. 2022, far greater from the $0.04 that would trigger a smaller minimum increment. Similarly, for stocks priced between $1,000 and $10,000 the average quoted spread was $2.90 in Mar. 2022 and the only stock that had a value weighted average price greater than $10,000 already has a round lot size of one share and was not near-tick-constrained.

[524] Customer accounts are identified in CAT as accounts belonging to either the ''Institutional Customer'' account type, defined as accounts that meet the definition in FINRA Rule 4512(c), or the ''Individual Customer'' account holder type, defined as accounts that do not meet the definition of FINRA Rule 4512(c) and are also not a proprietary account.

[525] *See* Disclosure of Order Handling Information, *supra* note 4 at nn.59–60 and corresponding text. Meanwhile, a broker-dealer must attempt to execute a held order immediately, which typically better suits individual investors who seek immediate executions and rely less on broker-dealer order handling discretion.

[526] FINRA's best execution obligation requires that, ''A member must make every effort to execute a marketable customer order that it receives fully and promptly.'' *See* FINRA Rule 5310, Supplementary Material paragraph .01.

[527] *See infra* note 625.

[528] *See supra* note 459 for the definition of pennying.

[529] It is possible that changes in the stocks priced greater than $1.00 with quoted spreads of less than $0.04 could have spill-over effects in these stocks, but the net effect of such is uncertain and likely insignificant. For instance, tighter spreads in stocks receiving a tick size reduction could potentially result in the withdrawal of some liquidity providers from all markets (which would harm liquidity in stocks with no tick size adjustment) and/or lead some liquidity providers to shift their activity to stocks with no tick size adjustment (improving liquidity in those stocks).

[b] Initially the Commission expects that no stock would qualify for the $0.001 tick size due to the minimum pricing increment restricting the time weighted-average quoted spread. Thus, after the first evaluation period stocks that would eventually be assigned a $0.001 tick size would initially be assigned a tick size of $0.002.

Table 8 indicates that if March 2022 were the first evaluation month then almost two thirds of stocks would have retained the $0.01 tick size because they have Time-Weighted Average Quoted Spreads greater than $0.04. These stocks account for approximately 18% of share trading volume and 40% of dollar trading volume. The next most frequent outcome would be among the approximately 22% of stocks that would have received a $0.005 tick because they have Time-Weighted Average Quoted Spreads between $0.016 and $0.04. These stocks account for approximately 18% of share volume and approximately 22% of dollar volume. For the remaining approximately 14% of stocks, those with spreads less than $0.016, there is significant uncertainty regarding which bin these stocks would be assigned to, either the $0.001 or $0.002 tick size bin. The $0.01 tick size creates a floor on Time-Weighted Average Quoted Spreads that, absent an actual tick size change, makes it difficult to determine the prevailing tick size that may occur given a smaller tick.[530] Thus, Table 8 combines together statistics for all stocks with prevailing quotes less than $0.016. These stocks comprise approximately 64% of total share volume and 38% of dollar trading volume.

For the 14% of stocks that would likely receive either the $0.001 or $0.002 tick, the Commission expects liquidity to generally improve. Empirical analysis presented and discussed below in Table 9 suggests that for stocks with fewer than approximately 2 ticks intra-spread, a 1:5 reduction in the tick size generally improved market quality. This is a similar reduction in the tick size to what the proposal would offer and so the Commission believes it is reasonable to extrapolate from this analysis that these stocks would see an improvement in liquidity.[531] For the 22% of stocks that would receive a $0.005 tick size under the proposal the effect of the proposal is less certain. For these stocks, the proposal would target 3–8 ticks intra-spread whereas currently these stocks have approximately 1.5–4 ticks intra-spread. In this case, the empirical guidance from the analysis in Table 9 is not clear as to which regime produces better market quality outcomes. Stocks that retain the $0.01 tick would have market quality that is likely unchanged relative to the baseline.

All else equal, reducing the tick size could narrow the spread. In a competitive market, and in the absence of rebates or other price distortions, the prevailing bid or ask price would be the feasible price equal to just worse than the price that equates liquidity supply and demand—as any price better than this would lead to an excess of liquidity demand which would induce more liquidity providers. This tick size effect diminishes as spreads widen. As a conceptual example, consider a stock that, should the tick size be $0.0005, would trade at an ask of $10.0065 and a bid of $10.0045. If the minimum tick were at a penny, absent other effects, it is reasonable to believe that the ask would be $10.01 and the bid $10.00. In contrast, were the tick size to be $0.001, it would be feasible to have an ask of $10.007 and a bid of $10.004. Rather than $0.01, the spread would be $0.003. In this conceptual example that abstracts from other effects described below, the stock would receive a 70% reduction in its quoted spread if the tick size decreased from $0.01 to $0.001.

As spreads widen, tick-size-induced distortions attenuate. To see this, consider the same example above, but two orders of magnitude larger where the prices that equate liquidity supply and demand are an ask price of $1000.65 and a bid price of $1000.45. In the current one-cent tick regime, the prevailing ask and bid would equal the spread that equates liquidity supply and demand and there would be no tick-size induced distortion. Consequently, reducing the tick size could have a significant effect for stocks with narrow spreads, and this effect may attenuate as the stock's spread widens. A risk of a smaller tick is that it spreads liquidity over more price levels, which may potentially create adverse effects—particularly for larger orders.

Additionally, a smaller tick could increase the incidence of pennying, which occurs when limit order providers get to the front of the queue by providing economically trivial price improvement, and could reduce the importance of time priority. The risk of being pennied could discourage liquidity provision, particularly by market participants that are slower to respond to changes in market conditions, and could increase trading costs for these investors.[532] To compensate for additional costs associated with a fragmented order book, liquidity providers may post less aggressive quotes leading to worse market quality. The reduction in the importance of time priority would lower the risk of sniping and increase the opportunity for slower traders (non-high-frequency traders) to fill orders using liquidity-providing instead of liquidity-demanding transactions.[533] This could reduce adverse selection costs for these traders, countering the effects of pennying.

In contrast to the pricing effect discussed above, the pennying effect would be most pronounced for stocks with wide spreads because there are more intra-spread price levels and the cost of gaining priority over other liquidity providers, by updating the best price by a single tick, is lower.[534] For example, a stock with a spread of one cent, and a $0.001 tick, would have 10 price levels within the spread, whereas a stock with a $0.10 spread would have 100. Because price has first priority in order execution, a primary way to gain priority for a trader providing liquidity is to price-improve over existing orders. Without a small tick size relative to the spread, getting to the front of the queue via price improvement would be more costly, requiring larger relative price concessions.[535]

[530] Some stocks could potentially have spreads just less than $0.01 due to locked or crossed markets. This is more likely to occur among stocks with relatively low prices and very high trading volume. *See supra* note 448.

[531] It is possible that, for unknown reasons, some stocks may trade better with a wider tick even though their quoted spread suggests that a smaller tick may be warranted, though the Commission does not think the scenario to be likely. For example, one market participant expressed the idea that the optimal tick size could be a function of the stock's price and trading volume, rather than the stock's current quoted spread. Based on this analysis, it is possible that due to variation in price and volume, a stock in this proposal could trade outside the optimal tick range according to this market participant. *See* Phil Mackintosh, *Looking for the Perfect Stock Price,* Nasdaq (Sept. 19, 2019), *available at https://www.nasdaq.com/articles/looking-for-the-perfect-stock-price-2019-09-19.*

[532] *See* Dyhrberg, et al., *supra* note 454, studying the effects of imposing a tick size on a crypto exchange that previously did not have a tick size. The authors report an improvement in market quality due largely to a reduction in pennying behavior.

[533] *See supra* note 478 and related text.

[534] The pennying effect would be particularly acute for wide spread stocks with lower stock prices because a lower stock price reduces the amount of capital needed to supply a round-lot quote and hence make pennying less capital intensive.

[535] For example, if a stock has a spread of one cent and a $0.001 tick, gaining priority through price improvement would require narrowing the

Continued

In the presence of an NBBO and a differentiation between pricing feeds that disseminate top of book versus depth of book data, there may be informational consequences of a change in the tick size. As mentioned above, fragmenting of the order book reduces the displayed liquidity at the NBBO. This would temporarily reduce the information about liquidity available in the market for market participants who do not receive depth of book information from proprietary data feeds. Having less information about available liquidity could make it more difficult, more complex, and more expensive to locate shares for larger trades and to manage liquidity provision strategies.[536]

For those who do not currently receive depth of book data or those who would otherwise not purchase depth of book data from competing consolidators, the proposal could increase the demand to purchase depth of book data. Before the full implementation of the MDI Rules, this could result in more market participants purchasing data from exchange depth of book proprietary data feeds than do currently. Afterward, this could result in more market participants purchasing depth of book data from either competing consolidators or exchanges than in the absence of the proposal.

The expectation that a smaller tick size would lead to tighter spreads for stocks that currently have narrow spreads finds empirical support. The academic literature examining the effect of tick sizes on financial markets largely studies two events: decimalization, which occurred in 2001[537] and reduced the tick from 1/16th ($0.0625) to $0.01; and the TSP which ran from October 2016 to October 2018 and temporarily increased the minimum tick increment to $0.05 for a sample of small cap stocks.[538] Most of the literature surrounding decimalization suggests that, on average, decimalization was associated with a decline in spreads consistent with the notion that, on average, and during this time period, lowering the tick relieved distortions related to having a tick size that is too wide.[539] Industry studies show examples of reverse splits leading to large reductions in spreads and hence trading costs.[540] When a stock undergoes a reverse split its share price goes up, the current penny tick is lower as a fraction of the share price, implying that in economic terms, the stock could go from being tick-constrained to non-tick-constrained.

The Commission supplements existing analysis with its own analysis on the TSP. Focusing on the TSP, as opposed to decimalization, has several advantages. Additionally, the Commission relies more on its own analysis and the existing literature on the TSP than that for decimalization for this purpose because market dynamics have changed dramatically in the more than two decades since decimalization. Most notably over that period, electronic, algorithmic, and high-frequency trading have come to dominate the trading landscape today, whereas they were much less prominent in 2001.[541]

Using the TSP for analysis also has limitations because the TSP affected a subset of small cap stocks and primarily focused on changes in tick size[542]—it did not affect access fee caps for instance. The TSP also did not contain ETPs. Nonetheless, the fact that it concluded relatively recently suggests that its outcomes may be more generalizable to current markets than decimalization.

The academic literature studying the TSP shows that for stocks with average quoted spreads close to $0.05 prior to the TSP (namely, stocks likely to fall under our conceptual definition of tick-constrained), the TSP led to an increase in effective and quoted spreads.[543] That is, these stocks tended to trade better with a $0.01 tick than with a $0.05 tick. These results suggest that a tick that is too wide increases the cost of transacting small and average sized orders. Mechanically wider spreads in some stocks could mean that relatively small orders that do not need to take advantage of any additional NBBO depth may execute at a higher cost.[544]

The TSP literature provides mixed results with regards to the trading costs for large orders.[545] Multiple academic studies have found that a wider tick increases depth at the NBBO.[546] This finding is intuitive because all the quotes that would have been placed within the spread with a $0.01 tick prior to the TSP, congregated at the next best available prices under the $0.05 tick. In addition, any wider spreads and greater pennying costs associated with a larger tick would also serve to attract more liquidity to the NBBO. More depth at the NBBO would mean that a larger order could execute without having to go deeper into the book—potentially decreasing the cost to executing a larger order if the added depth at the NBBO is sufficient to overcome costs from the wider tick. However, one empirical study using different data for the TSP found evidence suggesting that the TSP led to a decrease in cumulative liquidity beyond the NBBO for test group stocks with an average pre-pilot quoted spread less than $0.05 suggesting an increase in the cost to transact a large order—although the authors do not articulate a clear mechanism for this result.[547]

half-spread (*i.e.,* the distance between the current quote and the midpoint) by 20%. If instead a stock has a spread of $0.10 with a $0.001 tick, a market participant would only need to improve the half spread by 2% to get to the front of the queue.

[536] However, the inclusion of odd lot information helps to mitigate this effect, and the eventual inclusion of depth of book information in consolidated market data due to the implementation of the MDI rules would render this effect temporary. At that point in time, consolidated market data is expected to contain depth information at many more price points, which would largely counteract the effects of a reduction in displayed depth from a reduction in tick size.

[537] *See, e.g.,* Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000) (''Decimal Pricing Release''); *Commission Notice: Decimals Implementation Plan for the Equities and Options Markets,* SEC (July 24, 2000), *available at https://www.sec.gov/rules/other/decimalp.htm.*

[538] *See supra* note 84.

[539] *See* Bessembinder (2003) *supra* note 477. *See also* Michael A. Goldstein and Kenneth A. Kavajecz, *Eighths, Sixteenths and Market Depth: Changes in Tick Size and Liquidity Provision on the NYSE,* 56 J. Fin. Econ. 125 (2000) and Charles M. Jones and Marc L. Lipson, *Sixteenths: Direct Evidence on Institutional Execution Costs,* 59 J. Fin. Econ. 253 (2001), both examining the earlier tick size change from ⅛ to 1/16 of a dollar. *See also* Sugato Chakravarty, Venkatesh Panchapagesan, and Robert A. Wood, *Did Decimalization Hurt Institutional Investors?,* 8 J. Fin. Mkts. 400 (Nov. 2005) and Sugato Chakravarty, Bonnie F. Van Ness, and Robert A. Van Ness, *The Effect of Decimalization on Trade Size and Adverse Selection Costs,* 32 J. Bus. Fin. & Acc. 1063 (June/July 2005), both suggesting that large institutional trades may have become more costly following decimalization.

[540] *See* MEMX Report, *supra* note 105; *see also* Adrian Griffiths, *The Tick Size Debate Revisited,* MEMX (Jan. 2022), *available at https://memx.com/wp-content/uploads/MEMX_MSR_Tick-Constrained-Securities-2_03b.pdf.*

[541] *See, e.g.,* Terrence Hendershott, Charles M. Jones, and Albert J. Menkveld, *Does Algorithmic Trading Improve Liquidity?,* 66 J. Fin. 1 (Feb. 2011).

[542] *See* Barardehi, et al. (2022) *supra* note 85.

[543] *See* Hu, et al. (2018), *supra* note 477; Kee H. Chung, et al., *Tick Size Liquidity for Small and Large Orders, and Price Informativeness: Evidence From the Tick Size Pilot Program,* 136 J. Fin. Econ. 879 (2020); Rindi and Werner (2019) *supra* note 475; Griffith and Roseman (2019) *supra* note 478; Barardehi, et al. (2022), *supra* note 85. Part of this effect may be mechanical.

[544] *See, e.g.,* Chung, et al. (2020) *supra* note 543; Rindi and Werner (2019) *supra* note 475; and Maureen O'Hara, et al., *Relative Tick Size and the Trading Environment,* 9 Rev. Asset Pricing Stud. 47 (2019).

[545] Griffith and Roseman (2019) *supra* note 478 find evidence that the imposition of the TSP had either no effect on or slightly increased the cost of trading large trades for treatment stocks with an average pre-pilot quoted spread greater than $0.05, though the results were not statistically significant. They found statistically significant evidence that trading costs for large trades increased for treatment stocks with an average pre-pilot quoted spread less than $0.05. Barardehi, et al. (2022), *supra* note 85, and Chung, et al. (2020), *supra* note 543, both document that depth increases and the cost of executing large trades decreases.

[546] *See, e.g.,* sources cited *supra* note 543.

[547] Griffith and Roseman (2019), *supra* note 478, use the order book data from (NASDAQ) and find

The current literature offers little guidance regarding the expected effect of a tick size change for stocks with wider spreads. For stocks that were not tick-constrained by the $0.05 tick, *i.e.,* those with quoted spreads wider than $0.05 prior to the TSP, the literature examining the TSP is much less uniform in its assessment of the effect of a wider tick on market quality for stocks with wider spreads.[548] The fact that this literature does not provide consistent results on how a wider tick affects stocks with wider spreads is likely the result of the different researchers using different definitions of tick-constrained, and by virtually all studies simply bifurcating stocks into either tick or non-tick-constrained stocks to perform comparisons and assuming that all non-tick-constrained stocks will be affected in a similar manner by the tick size change.[549] In contrast, the theoretical discussion at the beginning of this section suggests that a simple bifurcation might not be the proper way to study the effect of tick size on stocks with various quoted spreads, since the relation between market quality and tick size is unlikely to be a binary function of whether or not the stock is tick-constrained, but rather depends on the number of ticks within the spread. That is, if there were to be negative effects on spreads when ticks are made too narrow, theory suggests that these would be most likely to be observed in stocks for which spreads are especially wide, with many ticks within the spread.

The Proposal would reduce the tick size for some stocks with narrower spreads that do not meet the definition of tick-constrained. To provide greater insight into the impact of tick sizes on various aspects of market quality across the quoted spread spectrum, Table 9 provides additional analysis that examines the impact of the TSP on a wider range of quoted spread profiles than simply tick-constrained or not. This analysis focuses on the end of the TSP, when the tick size was reduced from $0.05 back to $0.01, because that event more closely matches the proposal, which considers a tick size reduction.

The analysis presented in Table 9 uses a difference-in-difference methodology to study the effect of lowering the tick size from $0.05 to $0.01 on TSP stocks at the end of the TSP.[550] TSP treated and control stocks are assigned near the end of the TSP into one of four bins ranging from the most tick-constrained in the first bin to the least constrained in the fourth bin.[551] Key variables such as quoted depth and spreads were measured before and after the tick size was lowered and difference in difference estimation methods were used to examine how these variables reacted to the tick size change. The analysis uses ordinary least squares[552] and quantile (median) regressions[553] to estimate the following regression model:[554]

$$Y_{j,t} = \alpha_0 + \alpha_P Pilot_j + \alpha_E Event_t + \beta(Pilot_j \times Event_t) + u_{j,t}$$

where the quantile regression optimizes:[555]

$$\beta \in \underset{\alpha_0,\alpha_P,\alpha_E,\beta}{\operatorname{argmin}} \sum_{j,t} \rho_{0.5}(u_{j,t})$$

that cumulative depth away from the BBO is lower and larger trades became more costly to execute for treatment stocks with an average pre-pilot quoted spread less than $0.05 and hence became tick-constrained by the TSP. By focusing on a single exchange the paper does not take into consideration depth available on other exchanges, which could affect the paper's measure of trading cost.

[548] Existing studies do not to agree on the overall impact of a wider tick for stocks that were not tick-constrained by the $0.05 tick. For example, Rindi and Werner (2019), *supra* note 475, document that while quoted spreads increased among non-tick-constrained stocks, effective spreads decreased for these same stocks suggesting that while displayed prices were worse with a $0.05 spread, the actual transaction prices that investors received improved. Chung, et al., (2020), *supra* note 543 find that in general, transaction costs among stocks that were not tick-constrained decreased with a $0.05 tick. Griffith and Roseman (2019), *supra* note 478 find that the $0.05 tick was not associated with any change in order book depth for non-tick-constrained stocks. Additionally, DERA White Paper (2018), *supra* note 477 finds that for non-tick-constrained stocks, the imposition of a $0.05 spread led to no change in quoted spreads and very little change in effective spreads.

[549] The exact threshold, in terms of the time weighted quoted spread at which a stock is considered tick-constrained, is subject to debate and researchers use various thresholds. The Commission's review of the literature and of industry publications suggests that a time-weighted quoted spread of $0.011 is the most commonly used. That spread is used for the analysis herein.

[550] Difference-in-differences is a statistical technique in which the effect that a treatment has on some response variable is estimated by comparing the average change in the response over time in the treatment group to the average change in the control group.

[551] Bin assignments are calculated according to the stock's average quoted spreads for May and June of 2018, near the end of the TSP. Specifically, we use WRDS Intra-day indicators to collect the time-weighted quoted spread for all TSP and control stocks for each trading day in May and June 2018. Then for each stock we calculate the equally-weighted average quoted spread across all trading days. Based on this average, TSP and control stocks are sorted into one of four bins. The first bin is for stocks with quoted spreads ($0.00, $0.06). Empirically, for stocks in the TSP, this bin is said to include those stocks that were tick-constrained by the $0.05 tick increment during the pilot. The second bin is for stocks with quoted spreads in the range ($0.06, $0.09]. For stocks in the TSP, this bin is said to include those stocks that were near-tick-constrained by the $0.05 tick increment during the pilot. The third bin is for stocks that had quoted spreads of ($0.09, $0.15) or approximately 2–3 ticks intra at a $0.05 tick increment. The fourth bin is for stocks with quoted spreads greater than $0.15. The TSP had three test groups: the first group applied the $0.05 tick only to quoting, the second group applied the $0.05 tick to quoting and trading (with exceptions for benchmark and midpoint trades and for certain retail price improvement trades), and the third group applied the $0.05 tick to trades and quotes the same as the second group but also had a trade at rule applied. Because the proposal would apply the tick size to both trading and quoting, the analysis presented here includes only stocks in the latter two groups—*i.e.,* test groups two and three. Barardehi, et al. (2022), *supra* note 85 provide similar analysis, and also expand the analysis in many dimensions and find evidence that all key results presented here are robust to the test group analyzed and to many other factors.

[552] Ordinary least squares (OLS) regression refers to a statistical technique for estimating the linear relationship between an independent variable and dependent variables by minimizing the sum of squared errors between the estimate and the observed independent variable. The use of OLS and quantile regressions is common in the literature on the TSP pilot.

[553] The primary advantage to quantile regressions is that they are less sensitive to outliers that can affect mean inference in OLS. Thus median regressions provide additional robustness to the analysis and ensure that results are not driven by outliers.

[554] In this equation the variable Y denotes the response variable of interest such as quoted spread and depth. The subscripts j and t serve to index stocks and days respectively. α_o, α_p, α_e, and β are coefficients (to be estimated), and $u_{j,t}$ is the error term. $Pilot_j$ is an indicator variable that equals 1 if stock j was in the treatment group, or 0 if stock j was in the control group. $Event_t$ is a indicator variable which is equal to 1 if the day t was post the treatment event and equals 0 otherwise. Table 9 reports the difference-in-difference estimator of β for a different response variable Y across the different spread bins.

[555] In this equation $u_{j,t}$ is the error term from the previous regression specification equation, *supra* note 554, and the loss function is defined as: $\rho_\tau(u) = \tau \max(u, 0) + (1-\tau) \max(-u, 0)$; where $0 < \tau < 1$.

TABLE 9—EFFECTS OF A REDUCTION IN TICK SIZE ON QUOTING AND TRADING OUTCOMES [a]

	OLS				Quantile (median) regression			
	Quoted spread ($) May & June 2018				Quoted spread ($) May & June 2018			
Spread bin #	1st	2nd	3rd	4th	1st	2nd	3rd	4th
Depth (100 shares)	*** −22.5	*** −5.30	*** −1.55	−0.51	*** −11.8	*** −3.16	*** −0.96	*** −0.21
	[−12.02]	[−7.09]	[−4.40]	[−1.30]	[−16.99]	[−23.52]	[−17.81]	[−4.30]
Depth ($1,000)	*** −16.7	*** −8.41	*** −4.67	*** −2.06	*** −11.2	*** −7.27	*** −3.96	*** −1.48
	[−14.58]	[−10.94]	[−7.82]	[−3.66]	[−22.04]	[−20.70]	[−12.58]	[−4.14]
Quoted Spread ($)	*** −0.033	*** −0.027	*** 0.023	*** 0.12	*** −0.034	*** −0.031	*** 0.012	*** 0.12
	[−18.71]	[−6.46]	[2.99]	[5.51]	[−35.41]	[−10.31]	[2.03]	[6.80]
Relative quoted Spread	*** −0.0049	* −0.00097	0.00034	*** 0.0046	*** −0.0041	*** −0.0014	0.00021	*** 0.0034
	[−9.59]	[−1.80]	[0.53]	[3.30]	[−8.54]	[−6.89]	[0.74]	[4.66]
Effective spread ($)	*** −0.027	−0.026	*** 0.029	** 0.038	*** −0.026	*** −0.021	−0.0018	*** 0.051
	[−4.97]	[−1.43]	[5.17]	[2.16]	[−58.10]	[−12.81]	[−0.63]	[4.81]
Relative eff. spread	*** −0.0039	0.00043	0.0055	*** 0.0028	*** −0.0030	*** −0.0010	−0.00013	*** 0.0016
	[−3.12]	[0.17]	[1.36]	[4.42]	[−10.78]	[−9.58]	[−1.09]	[3.23]
Cancel-to-trade	*** 5.10	*** 6.69	*** 7.56	*** 18.8	*** 4.56	*** 5.49	*** 6.87	*** 12.3
	[5.99]	[6.38]	[6.79]	[8.44]	[7.75]	[7.79]	[10.44]	[10.61]
Odd-lot rate (%)	*** 4.89	*** 5.61	*** 2.85	** 1.49	*** 5.59	*** 6.39	*** 3.29	** 1.85
	[9.62]	[8.04]	[4.35]	[2.15]	[8.02]	[8.99]	[4.72]	[2.51]
Realized spread ($)	*** −0.014	*** −.0099	.00037	*** 0.040	*** −0.014	*** −0.013	*** −0.0068	*** 0.038
	[−27.94]	[−7.43]	[0.12]	[4.45]	[−48.36]	[−17.96]	[−5.13]	[5.64]
Relative real. spread	*** −.0024	−.00032	−.00039	** .0014	*** −.0014	*** −.00054	*** −.00013	*** .0012
	[−11.82]	[−1.36]	[−1.25]	[2.37]	[−14.08]	[−12.52]	[−2.77]	[3.65]
Volume (1,000 shares)	26.5	** 30.3	12.5	−5.41	19.1	3.35	0.20	** −3.25
	[1.30]	[2.13]	[1.32]	[−1.07]	[1.42]	[0.40]	[0.04]	[−2.44]
Cum Depth 10c from mdpt	*** −0.17	*** −0.26	** −0.27	** −0.34	*** −0.49	*** −0.54	*** −0.45	** −0.63
	[−3.93]	[−5.00]	[−2.59]	[−2.37]	[−5.51]	[−6.29]	[−4.91]	[−3.15]
Cum Depth −10c from mdpt	*** −0.22	*** −0.19	*** −0.37	** −0.45	*** −0.49	*** −0.42	*** −0.50	** −0.79
	[−5.28]	[−3.74]	[−3.44]	[−2.83]	[−6.33]	[−5.21]	[−5.68]	[−2.75]
CRT 10 round lots	*** −0.026	−0.001	*** 0.035	*** 0.14	*** −0.037	*** 0.085	*** 0.035	** 0.075
	[−19.56]	[−0.19]	[3.99]	[1.03]	[−2.72]	[2.75]	[4.20]	[2.37]

[a] This table presents the effects of a reduction in minimum tick size from $0.05 to $0.01 cent on various quoting and trading outcome variables. The 1st bin is most tick-constrained and the 4th bin is least tick-constrained. *See supra* note 554 for bin descriptions. A difference in difference regression with no control variables is estimated using data covering Control, Test Group 2, and Test Group 3 TSP stocks from 08/01/2018–11/30/2018. All observations are at the stock day level. The same model is used for all outcome variables. *See supra* note 554 for a discussion of why Test Group 2 and Test Group 3 were selected. For each outcome variable Y_{jt}, the table presents only the difference in difference coefficient estimates that indicate the effect of the TSP on the dependent variable. Estimates are performed by past quoted spread subsamples that decompose the sample based on average quoted spreads during June and July of 2018. Each regression is estimated using both OLS and quantile (median) regressions. The first four columns present the result from OLS regression results, the last four columns present the results from quantile regression results. Column titles 1st, 2nd, 3rd, and 4th represent results estimated for bin 1, bin 2, bin 3 and bin 4 stocks respectively. The quoted spread refers to the distance between the NBBO midpoint and the NBBO quote. The effective spread is the distance between the NBBO midpoint and the realized trade price; the realized spread is the distance between a future NBBO midpoint (5-minutes ahead) and the trade price. Relative spread measures are calculated as the spread scaled by the NBBO midpoint. The cancel-to-trade ratio is the daily number of order cancellations divided by the number of trades, for displayed orders. The odd-lot rate is the percentage of trades in a day which executed against an odd-lot quote. CRT 10, or the cost of a round-trip trade of 10 round lots, measures the cumulative transaction costs from buying and then immediately selling 10 round lots. The CRT assumes that an order that is larger than the displayed depth at the best price will not execute in full at that price. Instead, the assumed unfilled portion will execute at worse prices until completely filled with displayed depth. All data are Winsorized at the 1% and 99% level. The numbers in the [ ] brackets reflect t-statistics that are based on two-way stock-and-date clustered standard errors. Symbols *, **, and *** reflect statistical significance at 10%, 5%, and 1% type-1 error levels.

This analysis provides evidence of a fundamental tradeoff between accurate pricing on one hand and incentives for liquidity provision on the other. Across all specifications, the end of the TSP was associated with a decrease in depth at the NBBO, when the tick size was reduced from $0.05 to $0.01, as signified by the negative and, in most cases, statistically significant coefficients reported. The magnitude of the coefficients suggest that the reduction in shares available at the NBBO was the greatest for stocks with tighter spreads and smaller for stocks with wider spreads. The finding that tighter spread stocks experience the greatest decline in depth at the NBBO is consistent with the -idea that, for these stocks, the $0.05 tick was the most constraining, and so liquidity that would have naturally spread out within the quoted spread given a smaller tick, bunched at the wider tick increments, and that once the tick-constraint was relaxed this liquidity naturally spread out over the additional price levels. For less tick-constrained stocks, the bunching was less severe since liquidity already had some room to spread out.

For stocks in the first or second bins, we find that lowering the tick to $0.01 leads to significantly lower quoted spreads. These stocks went from having approximately 1–2 ticks inside the spread, with a $0.05 tick, to having 1–10 ticks inside the spread, with a $0.01 tick. For these bins, relaxing the tick size served to narrow the spread. This finding is consistent with the idea that for stocks that are tick-constrained, or near-tick-constrained, the effect of decreasing the tick size will narrow spreads by improving competition. For the stocks in the third and fourth bins, the story is different, as the reduction in the tick size was associated with a widening of the quoted spread. These stocks went from having more than two or more ticks within the spread, with a $0.05 tick, to having more than 10 ticks within the spread, with a $0.01 tick. This result is consistent with the idea that for wider spread stocks, the prevailing effect of reducing the tick size was to increase fragmentation of liquidity and the risk of pennying which made trading more costly leading to wider spreads. This pattern of results—namely narrower spreads for the first and second bins and wider spreads for the fourth—holds regardless of whether dollar spreads, relative spreads, OLS, or quantile regressions are used, suggesting this as a robust outcome of the end of the TSP.

The pattern for effective spreads is similar to that observed for quoted spreads. Effective spreads measure the average realized transaction cost for trades as it measures the absolute distance between the realized trade price and the NBBO midpoint at the time of the trade. Effective spreads do not always equal quoted spreads because trades can execute inside the NBBO for numerous reasons, such as odd-lot trades, midpoint trades, and

hidden orders. For stocks in bin one—*i.e.,* stocks for which the $0.05 tick was the most restrictive—all specifications suggest that reducing the tick size was associated with a decrease in realized transaction costs as measured by effective spreads. For stocks in bin four, those with the widest spreads prior to the tick size reduction, all specifications suggest that the reduction in the tick size lead to an increase in transaction costs, measured by effective spreads. For stocks in between these extremes in bins two and three, the results are not as uniform. For stocks in bin two, the sign of the coefficients for all estimates (dollar effective spreads, relative effective spreads, OLS, and quartile regressions) suggest that lowering the tick size decreased effective spreads, although not all specifications agree as to statistical significance. The OLS regressions suggest that the effect was statistically insignificant, while the quantile regressions found a statistically significant effect and suggest that effective spreads decreased. For stocks in the third bin, the analysis did not find a consistent, statistically significant change in effective spreads, or in other words, lowering the tick size did not appear to reliably help or harm transaction costs as measured by effective spreads.

These results, like the results for quoted spread, suggest that for stocks for which the narrowing of the spread meant that the stock went from having less than 2 ticks within the spread to 1–10 ticks within the spread, the effect of reducing the tick was beneficial in terms of reducing transaction costs. For stocks with very wide spreads, reducing the tick size appeared to harm liquidity, which is consistent with fragmentation and pennying being the prevailing effect.

The theoretical discussion above suggests that executing an order may become more complex with a smaller tick size—meaning it may take visiting more venues as well as across more price levels to execute an order with a smaller tick size. This potential outcome is explored using the ''cancel-to-trade'' ratio. A higher ratio indicates more frequent canceling of orders per the amount of trading volume, and is an indication that market participants are more active in managing their quotes and their order strategies. In this analysis, both the OLS and the quantile regressions confirm that a smaller tick resulted in a statistically significant increase in the cancel to trade ratio, suggesting more complexity. Additionally, the magnitude of the effect is increasing in the quoted spread, with wider quoted spreads having larger coefficients, suggesting a larger effect in the cancel-to-trade ratio than stocks with narrower spreads. This pattern is consistent with pennying and increased complexity having a greater impact on stocks with wider spreads.

The analysis also looks at the effect of lowering the tick size at the end of the TSP on the usage of odd-lot orders. Across all quoted spread bins, the usage of odd-lot orders increases when the tick size decreases. This finding is consistent with the notion that liquidity would be spread out over more levels and liquidity providers would be willing to offer less liquidity at a given price level—leading to an increased use of odd-lot orders to allow liquidity providers to offer smaller levels of liquidity at finer price increments. This result also suggests that a lower tick size increases the need for market participants to have ready access to odd-lot information given that the lower tick size can be expected to increase the usage of odd-lot quotes.

Effective spreads provide a measure of liquidity providers' revenue and the contrasting economic effects also have implications for how liquidity providers' revenue would be affected by a lower tick. The effective spread captures the liquidity premium, paid by those submitting orders for immediate execution, and can theoretically be decomposed into two components: *Effective Spread = Realized Spread + Price Impact.*[556] One component of the effective spread is the price impact or adverse selection component. It is the change in the NBBO midpoint at the time of trade to some point in the future. This component of the spread captures the portion of the spread liquidity providers lose from trading with investors who are more informed than they are, and is also referred to as the adverse selection component of the bid ask spread. The remainder of the effective spread, after removing the adverse selection component, is the realized spread. This portion of the spread acts as a proxy[557] for the compensation to the liquidity provider for its non-adverse selection costs. If a smaller tick decreases revenue for liquidity providers, by allowing bid and ask prices to more accurately reflect supply and demand, then this effect should manifest as a decrease in realized spreads for liquidity providers. However, if increased order book fragmentation and pennying risk increase the cost of providing liquidity, then liquidity providers would need to be compensated for these costs in order to provide liquidity and, thus, realized spreads would increase. To the extent that the two effects offset one another, realized spreads might not change.

For tick-constrained stocks in bin one, the analysis indicates a decrease in realized spreads across all specifications, and when using dollar or relative realized spreads when the tick size was reduced from $0.05 to $0.01. This result is consistent with the notion that liquidity providers' non-adverse selection revenues would decrease due to bid and ask prices being more reflective of supply and demand with a smaller tick. The opposite occurs for stocks with wide spreads in bin four, where realized spreads increase significantly—consistent with liquidity providers needing to be compensated for the increased cost and complexity associated with trading a wide spread stock in a small tick environment. For stocks in the middle two bins, the effect of lowering the tick size on realized spreads is unclear, as about half of the specifications indicate no change in realized spreads while the other half indicate lower effective spreads. The specifications often do not agree between relative and effective spread specifications and between OLS and quantile regressions.

The analysis also uses MIDAS data to study how the tick size change affected liquidity deeper in the book. Analyzing liquidity deeper in the book is valuable because it gives an indication of how trading larger orders that must go deeper in the book to be fulfilled may be affected by a change in the tick size. This analysis uses MIDAS data to calculate the daily average cumulative

[556] Effective spreads can be interpreted as what liquidity providers expect to earn from providing liquidity, assuming that prices do not change before the liquidity provider is able to unwind its position and realize their profit. Under this interpretation, realized spreads would proxy for what they actually earn, taking into account that the market price may have moved against the liquidity provider before it could unwind its position. *Effective Spread = Realized Spread + Price Impact.* For a full mathematical decomposition of effective spreads into realized spread and price impact components *see* Peter N. Dixon, *Why Do Short Selling Bans Increase Adverse Selection and Decrease Price Efficiency,* 11 Rev. Asset Pricing Stud. 122 app. at 165 (2021).

[557] Realized spreads do not measure the actual trading profits that market makers earn from supplying liquidity. In order to estimate the trading profits that market makers earn, we would need to know at what times and prices the market maker executed the off-setting position for a trade in which it supplied liquidity (*e.g.,* the price at which the market maker later sold shares that it bought when it was supplying liquidity). If market makers offset their positions at a price and time that is different from the NBBO midpoint at the time lag used to compute the realized spread measure (Rule 605 realized spread statistics are measured against the NBBO midpoint 5 minutes after the execution takes place), then the realized spread measure is an imprecise proxy for the profits market makers earn supplying liquidity.

shares available at $0.10 above and below the midpoint for control and treated stocks, and uses the same difference-in-difference analysis to examine the effect of reducing the tick size on cumulative depth.[558] Our analysis suggests that reducing the tick size also reduced the total depth available deeper in the book with the coefficient for bin 4—*i.e.,* those with the widest spreads—being the largest in magnitude. This finding is consistent with a smaller tick discouraging the posting of displayed liquidity due to pennying concerns for stocks with wide spreads.

These depth of book findings do not directly imply that trading deeper in the book became more expensive for two reasons. First, research suggests the use of non-displayed quotations increases significantly when the tick size is reduced.[559] Thus the decline in liquidity that we document is only a decline in displayed liquidity. Second, quotes tend to congregate at the price just worse than the quoter's desired price so that the quoter does not lose money on a transaction. When a wider tick is tightened, quotes that were previously congregated at the wide tick will spread out at prices better than the previous tick allowed. Thus, a market participant taking liquidity from multiple price layers in the order book to fulfill an order would have some shares that transact at superior prices than it would have with the wider tick.[560]

Table 9 also presents the effect of the TSP conclusion on the round-trip cost to transact a trade for 10 round lots (1,000 shares).[561] This analysis suggests mixed results for the effect of the tick size reduction on the cost of executing a 10 round lot trade. For pilot stocks that were tick-constrained by the Pilot with a $0.05 tick, the total round-trip cost of a 10 round lot trade decreased when the tick size was lowered—suggesting an improvement in liquidity deeper in the book. For near-tick-constrained stocks, the effect was not clear. The OLS regressions suggested no effect, while the quantile regressions suggested an increase in trading cost. For stocks in bins 3 and 4 (*i.e.,* those that were not tick-constrained by the $0.05 tick), the effect of lowering the tick size was to increase transaction costs for larger trades. These results cohere with the idea that when stocks are tick-constrained the pricing efficiency made possible by a smaller tick improves liquidity, and for stocks with wider spreads a smaller tick harms liquidity by making individuals less willing to post displayed liquidity due to complexity and the risk of pennying.

In conclusion, the analysis provided here suggests that, for stocks that were limited to just 1–2 ticks intra-spread by the $0.05 tick, the reduction to a $0.01 tick provided an improved trading environment. Thus, trading in an approximate 1–10 tick range intra-spread provided a superior environment to trading in a 1–2 ticks intra spread range. Additionally, for stocks with spreads greater than $0.15, where a $0.01 tick implied more than 15 ticks intra-spread, a $0.05 tick where there were only 3 ticks intra-spread, appeared to provide a superior trading environment. For stocks with spread between $0.10 and $0.15, it is not clear which tick size provided a superior trading environment.

These conclusions are consistent with results in Barardehi, et al. (2022), which more broadly examines the effect of tick size changes under the TSP.[562] Barardehi, et al. (2022) arrives at the same conclusions with respect to the effects of a tick size reduction in the context of the TSP while using different methodology. Specifically, the Commission's analysis focuses on the end of the TSP, when the tick size for treated stocks was reduced, because the proposal would lower the tick size for some stocks. In addition to looking at the end of the TSP, Barardehi, et al. (2022) also considers the effect of raising the tick size at the initiation of the TSP. Both the Commission's analysis and Barardehi, et al. (2022) find that stocks that either were tick-constrained or near-tick-constrained by the $0.05 tick benefited from a reduction in the tick size. Examining the imposition of the TSP, Barardehi, et al. (2022) additionally found a deterioration in market quality for stocks that became tick-constrained by the $0.05 tick. All together, these results provide robust support for the benefits of reducing the tick size in tick-constrained stocks.

Another methodological difference between the Commission's analysis and Barardehi, et al. (2022) is in the selection of TSP stocks used in the analyses. The Commission's analysis focuses on comparing TSP test groups that experienced a change in both trading and quoting increments, whereas Barardehi, et al. (2022) looked at a wider set of TSP test group combinations, including looking at the test groups separately.[563] Robustness checks in Barardehi, et al. (2022) show that analytical conclusions are similar regardless of the test groups used, thereby showing the robustness of the Commission's results as well. Barardehi, et al. (2022) further provide additional tests of the effect of tick size changes on trading costs, none of which provide results inconsistent with the Commission's analysis.[564]

Barardehi, et al. (2022) includes an exhibit with more granular analysis on the impact of a reduction in tick size at the end of the TSP, from 5 cents to 1 cent, on investor transaction costs, as captured by effective spreads. That exhibit is included below in Figure 1, and its results are broadly consistent

[558] In the regressions we take the natural log of shares available. This conversion helps standardize shares available for stocks with different prices by making the interpretation in terms of percentage changes.

[559] *See* analysis presented in Nasdaq Intelligent Tick Proposal, *supra* note 180; *see also* Justin Cox, et al., *Increasing the Tick: Examining the Impact of the Tick Size Change on Maker-Taker and Taker-Maker Market Models,* 54 Fin. Rev. 417 (2019); Amy K. Edwards, Paul Hughes, John Ritter, Patti Vegella, and Hao Zhang, *The Effect of Hidden Liquidity: Evidence from an Exogenous Shock (working paper Mar. 1, 2021), available at https://ssrn.com/abstract=3766512* (2021) (retrieved from SSRN Elsevier database).

[560] Consider a numeric example. A market with a $0.05 tick is quoting asks of 500 shares at $10.05 and 500 shares at $10.10. An investor wishing to purchase 700 shares would purchase 500 at $10.05 and 200 at $10.10 for a total price of $7,045. If the tick shrinks to $0.01 and cumulative shares posted decline by 20%—for example—but those shares are spread evenly over the finer grid then there would be 80 shares at each price level from $10.01 to $10.10. An investor wishing to buy 700 shares would need to purchase 80 shares at each price level from $10.01 to $10.08 and 60 shares at $10.09 for a total purchase price of $7,034. So even though total depth declined, the cost to execute a 500 share trade would decrease due to more efficiently spreading liquidity across more price levels.

[561] A round trip trade refers to executing an order to buy or sell the stock and immediately reversing the position with an equal countervailing order. We compute the cost of a round trip trade following the methodology laid out in Griffith and Roseman (2019), *supra* note 478, and Chung, et al. (2020), *supra* note 543. The methodology uses MIDAS data to take snapshots of the order book at 15 minute increments throughout the trading day and calculates the transaction costs associated with walking the book up 5 or 25 round lots to execute a large trade.

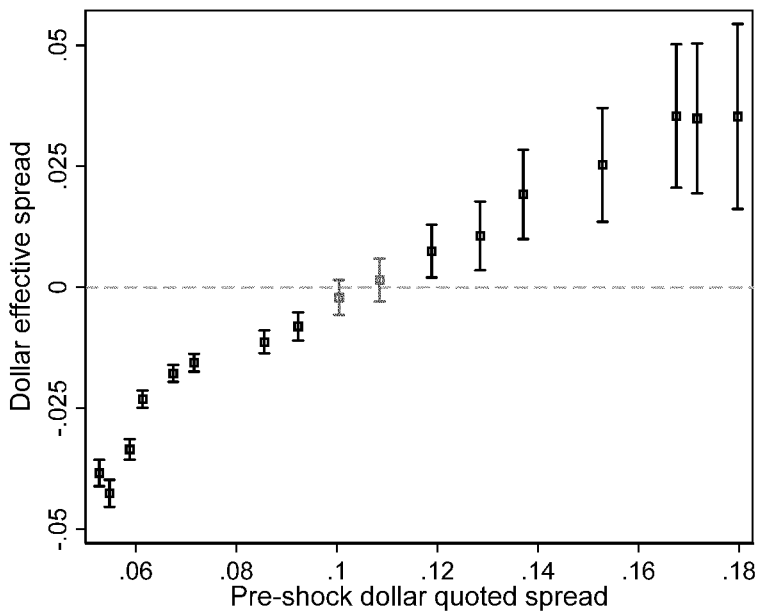
[562] *See supra* note 461.

[563] *See supra* note 551. Barardehi, et al. (2022), *supra* note 85 use stocks from TSP test groups 1 and 2 in their analysis. In order to provide more statistical power the authors, in addition to test group 1, include test group 2 stocks, citing that extant literature had shown little statistical differences between test group 1 and test group 2 stocks. By contrast, Table 9 analyzes test groups 2 and 3 because these involved comparing TSP test groups that experienced a change in both trading and quoting increment—with the caveat that the conclusion of the tick size pilot ended the harmonization of the quote and trade increments that had been implemented under that program, while this proposal would introduce it.

[564] Barardehi, et al. (2022), *supra* note 85 also included additional analysis to demonstrate that the results were also robust to bifurcating the TSP sample into high and low trading volume, to the exclusion of penny stocks, and using quantile regressions at the 25th and 75th quantiles as opposed to the median.

with the findings reported in Table 9. Figure 1 shows how the quoted spread of a stock during the pilot (''pre-shock dollar quoted spread'') correlates with how effective spreads changed when the pilot ended. For stocks with an average of fewer than two ticks intra-spread (those with pre-shock quoted spreads of $0.10 or less), a reduction in tick size from 5 cents to 1 cent significantly reduces effective spreads.[565] Whereas for stocks with an average of more than three ticks intra-spread (those stocks with pre-shock quoted spreads greater than $0.15), a narrower tick size increases effective spreads.

Figure 1



Source: Barardehi, et al. (2022), Figure 3, supra note 85

The Commission's results in Table 9 help provide guidelines for predicting how the proposed tick size reductions may affect market quality for stocks priced at, or greater than, $1.00 per share compared to the current baseline. For stocks that are tick-constrained by the current $0.01 tick, the proposal would increase the number of ticks intra-spread from 1 to either 1–8, or 4–5 depending on whether the stock was assigned a $0.001 or a $0.002 tick. The analysis in Table 9 suggests that 1–10 ticks intra spread provides a better trading environment than does just one tick intra-spread.[566] Additionally, the results for bin 2 stocks suggest that moving from 1–2 ticks intra spread to 5–10 ticks also generally improves market quality across most measures. Regardless the tick size that a current tick-constrained stock receives ($0.001 or $0.002) Table 9 suggests that across most liquidity metrics, liquidity would likely improve for these stocks. For stocks with a time-weighted average spread below $0.016, there are currently an average of 1–1.6 ticks intra spread. The proposal would increase this number to 4–8 ticks intra-spread by assigning a $0.002 tick to these stocks. The analysis of bin 2 stocks is analogous to stocks that would be subject to the $0.002 tick in terms of the effect of the tick size change on market quality. In both cases, the stocks are moving from

[565] Barardehi, et al. (2022), *supra* note 85, subset their sample into overlapping segments of TSP stocks based on their quoted spreads and perform difference-in-difference analyses on each segment to quantify the effect of a narrower tick size as a function of number of intra-spread ticks. In their setting, each segment of stocks is identified based on average quoted spreads in a period prior to the end of the TSP (08/08/2018–11/20/2018), where tick size decreased from 5 cents to 1 cent for pilot stocks. The stocks are grouped into overlapping 6-cent intervals of average May and June 2018, (pre-shock) quoted spreads in cents {($0.00, $0.06), ($0.01, $0.07), ($0.02, $0.08), . . . , ($0.15, $0.21), ($0.16, $0.22)}. For each intervals, the effect of a tick size change on dollar effective spreads are estimated in a difference-in-difference setting using quantile (median) regressions that control for date fixed effects and double-cluster standard errors by stock and date. Point estimates of the treatment effects along with the corresponding 95% confidence intervals are plotted against the median pre-shock quoted spread in the respective interval.

[566] One academic theoretical paper suggests that having a two tick spread is optimal. *See* Sida Li and Mao Ye, *The Optimal Nominal Price of a Stock: A Tale of Two Discretenesses,* (working paper Nov. 3, 3021), *available at https://ssrn.com/abstract=3763516* (retrieved from SSRN Elsevier database). The paper suggests that stocks reach their optimal price whenever the quoted spread is two ticks wide. While the paper advocates for a lower tick size, particularly for tick-constrained stocks, the two tick spread conclusion is the result of a highly stylized trading model which does not take into account pertinent factors from outside the model which likely affect spreads such as considerations of time priority and pennying concerns. Conditional on there being non-infinitesimal tick and round-lot sizes, their model suggests that a two-tick wide spread is optimal. Otherwise, their model suggests an optimal policy choice of infinitesimal tick and round-lot sizes.

an environment with just less than two ticks intra spread to one of 5–10 ticks intra spread in the case of the TSP, or 4–8 ticks in the case of the proposal. These changes are likely similar enough that comparison of the two groups is instructive. The analysis of bin 2 stocks in Table 9 indicated that across most liquidity metrics these stocks experienced improved liquidity with the smaller tick. Consequently, the Commission also expects that on average, stocks receiving the $0.002 tick size would likely experience an improvement in market quality. The analysis is less clear about the effect of the proposal in trading in stocks that would receive the $0.05 increment: stocks with Time-Weighted Average Quoted Spreads between $0.016 and $0.04. These stocks would transition from having an average 1.6–4 ticks intra spread to having 3–8 ticks intra spread. The TSP analysis in Table 9 suggested that, for stocks with approximately 2–3 ticks intra spread, moving to 10–15 ticks intra spread was not clear, while for stocks with 3 or more ticks intra spread, moving to 15 or more ticks intra spread appears to have been harmful.[567] None of the stocks in the proposed $0.005 tick group would have prevailing spreads with more than 15 ticks intra spread, so for this group the analysis does not provide clear predictions regarding the effect of the tick size reduction on transaction costs for these stocks.

Quoted spreads are not static from day to day. It is possible that a stock could have a narrow quoted spread during an evaluation month, and thus be assigned a small tick, and then during the following month it could experience points in time where the quoted spread is much wider.[568] If the spread widens sufficiently, relative to the quote, then the stock could trade in a range of ticks intra-spread that may harm market quality.[569] To provide an estimate of the fraction of trading volume that could be affected in this manner, the following estimation is computed. March 2022 is treated as a hypothetical evaluation month and all stocks are assigned a tick size based on their prevailing time-weighted quoted spread during this month.[570] No stock is assigned a $0.001 tick in this estimation, as Time-Weighted Average Quoted Spreads for stocks priced at, or greater than, $1.00 per share are currently have a lower bound because of the $0.01 tick. Thus, all stocks with Time-Weighted Average Quoted Spreads below $0.016 are assigned a tick of $0.002. Then, for the months of April through June 2022, all trading volume during regular trading hours is evaluated for all stocks and the Time-Weighted Average Quoted Spread is determined at the time of trade. If the NBB for the trade is below $1.00, that trade is assigned a tick size of $0.0001. Trading volume with an NBB greater than $1.00 that would have received a tick size lower than $0.01 based on March 2022 Time-Weighted Average Quoted Spreads is then analyzed. The total trading volume within this subsample that executed at a time when the quoted spread would have had more than 10 or 15 ticks within the spread if it had had the lower tick size is computed and presented in Table 10 as a fraction of total trading volume during the period.

TABLE 10—VOLUME RECEIVING A TICK REDUCTION EXECUTING DURING PERIODS OF WIDE SPREADS [a]

	10 + ticks (%)	15 + ticks (%)
Share Volume	3.4	1.1
Dollar Volume	7.4	2.2

[a] This table provides estimates of the amount of share and dollar trading volume in stocks that meet the following conditions. The NBB is greater than $1.00 per share at the time of trade. The stock had a time-weighted quoted spread of less than $0.04 in Mar. 2022, and the stock's quoted spread was greater than 10 or 15 times its hypothetical tick size based on Mar. 2022 time-weighted quoted spreads computed from the WRDS Intra-day indicators. The universe of securities in the WRDS intra-day indicators dataset is used. Only trading volume associated with normal trades during regular trading hours is considered. Normal trades are identified in TAQ data by sale conditions "blank, @, E, F, I, S, Y" which correspond to regular trades, intermarket sweep orders, odd lot trades, split trades, and yellow flag regular trades. We exclude these trades because they are not typically representative: for example the codes include trades that result from an acquisition, trades reported out of sequence, and extended hour trades.

Table 10 provides an estimate that approximately 3.4% of total share trading volume met the following conditions. It would have been associated with a stock receiving a lower tick size and would have executed when spreads were wider than 10 ticks based on the estimated tick size. Table 10 also provides an estimate that 1.1% of total share volume would have executed when spreads were more than 15 ticks wide. For this fraction of trading volume, it is possible that the reduction in the tick size could lead to a worse trading environment for the period of time that spreads remain significantly higher than the evaluation period compared to what the trading environment could have been had the stock retained a $0.01 tick. This effect would not be indefinite because, if a stock's spread remains elevated, then at the end of the next evaluation period, the stocks would be assigned a wider tick—mitigating the negative consequences of having a tick size that is too narrow relative to the quoted spread.

2. Minimum Pricing Increment for Trading

The proposal would require all trades that are not midpoint or benchmark trades, including trades executed by OTC market makers, including wholesalers, to execute in increments determined by the minimum pricing increment for trading, which would be harmonized with the minimum pricing increment for quoting. Applying a minimum pricing increment to trading, coupled with reducing the minimum pricing increment for quoting, could affect measures of the frequency and magnitude of price improvement either

[567] Barardehi, et al. (2022), *supra* note 85, show that statistical results for wider spread stocks, such stocks in bin #4 in Table 9, vary somewhat when they estimate their model separately on data for each of the three TSP groups. When separately estimated, the effects for lower spread stocks, bins 1 and 2, remain consistent and statistically significant across all three TSP test groups.

[568] Likewise, two stocks with equal average quoted spreads may not be equally tick-constrained. For example, one stock with a $0.02 average quoted spread could have a $0.01 quoted spread 40% of the time while another has a $0.01 spread 10% of the time. The effect of the proposal on market quality could differ in much the same way as the effects described in this paragraph.

[569] The empirical analysis in this section suggesting that a lower tick size benefits tick and near-tick-constrained stocks is an "on average" result. While the Commission expects that a lower tick would on average decrease transaction costs for tick and near-tick-constrained stocks, for some of these stocks, a smaller tick could lead to wider spreads. For these stocks, if spreads increase to a sufficient degree then the stock could be re-assigned a wider tick after the next evaluation month.

[570] We use WRDS intra-day indicators for all stocks in the database to estimate the time weighted quoted spreads for Mar. 2022. No stock is assigned a $0.001 tick in this estimation as quoted spreads for stocks priced $1.00 or more per share are currently constricted by the $0.01 tick. Thus all stocks with Time-Weighted Average Quoted Spread below $0.02 are assigned a tick of $0.002.

positively, negatively or insignificantly, on average. The Commission recognizes that any changes to these measures could affect transaction costs paid by investors or could affect where broker-dealers route customer order flow, or both, potentially leveling the playing field between exchanges/ATSs and off-exchange dealers in attracting retail order flow. Because of this competitive pressure, the Commission expects that trading venues will continue to compete on providing price improvement and that the harmonization of trading and quoting increments will not mitigate the execution quality improvements from a reduction in the minimum pricing increment.

Requiring trades to occur at the minimum pricing increment would have uncertain net effects on total price improvement, which is the primary mechanism for the economic effects of a trading increment. The Commission expects that for most trading volume receiving a smaller tick, quoted spreads would likely narrow, on average. While narrower spreads mean less opportunity for further price improvement, investors would not be getting worse trade prices under the proposed rules, because the narrower spreads imply better prices for most trades. While price improvement is a measure of execution quality, lower price improvement does not necessarily translate into worse outcomes for investors, particularly when quoted spreads are narrowing. Because price improvement is measured relative to the quoted spreads, price improvement is a more meaningful measure of execution quality when quoted spreads are held constant. Therefore, an increase in the frequency and level of price improvement in conjunction with an expected narrowing of quotes does not inform on overall investor execution quality from the proposal, though it may inform on whether the harmonization furthers or mitigates the expected improvements from narrower quotes in execution quality for investors.

The Commission does not anticipate that the proposal for a minimum trading increment would affect most current price improvement. In particular, Table 3 indicates that most price improvement in stocks with prices greater than $1 currently occurs as a result of midpoint trades or in increments of $0.01, neither of which would be affected by the proposed trading increment.[571]

From Panel B of Table 3, we observe that 82.5% of the dollar value of price improvement fits this description. The remaining 17.5% of price improvement ($12 million per day)[572] occurred in sub-penny increments and were not associated with midpoint trades and, therefore, could potentially be affected by the rule. In addition, the harmonization of tick sizes across venues will likely have very little impact on trades for stocks priced less than $1.00. The designated increment of $0.0001 already appears to be the minimum pricing increment for wholesaler price improvement.[573]

The proposed pricing increment for quoting and the proposed acceleration of the round lot definition would have an effect on price improvement that alters the basis by which the isolated effects of the trading increment are compared. However, the Commission is uncertain of the effect these proposals would have on the magnitude of price improvement, but anticipates they could increase the frequency of price improvement and change the basis for the effects of the trading increment. Because price improvement is benchmarked to the NBBO, the magnitude of price improvement available could decline as a result of reductions in the NBBO from the change in the round lot definition, which would narrow the spread in stocks priced more than $250, or from a smaller tick, which could narrow the spread in tick-constrained stocks. Conversely, the frequency and magnitude of price improvement could also increase for stocks that are currently tick-constrained because, for tick-constrained stocks, the only way to offer price improvement on an exchange or ATS is with a midpoint trade. If the reduction in tick sizes results in tick-constrained stocks no longer being tick-constrained, then exchanges and ATSs could accept odd-lot orders inside the NBBO that offer price improvement relative to the NBBO. It is unclear which effect would dominate: the decline in the NBBO spread leading mechanically to less reported price improvement or the increased ability to offer price improvement on stocks that are currently tick-constrained.

For currently price improved trades the effect of the proposal would depend on a few factors. Consistent with the analysis in Table 3, one study also reports that common price improvement levels are $0.0001, $0.001 and $0.002.[574] For stocks priced equal to or greater than $1.00, price improvement of $0.0001 would no longer be achievable. However, for a stock priced at $20, price improvement of $0.0001 represents only 0.05 bps of price improvement, which is not economically meaningful. The Commission expects that on such trades the wholesaler would likely round down to the price improvement that it offers in the majority of cases to the nearest permissible increment reducing price improvement by $0.0001 per share traded by retail investors, which could mitigate some of the benefits of the proposal as a whole. This is because the cost to an OTC market maker of rounding up almost an entire tick could be high. For price improvement that occurs in increments of $0.001 or $0.002 the effect of the rule would be dependent on the stock's designated tick size. For the estimated approximately half of trading volume that would likely receive a $0.001 tick, price improvement of either $0.001 or $0.002 would still be possible because both increments align with the $0.001 tick size. For the fraction of trading volume receiving a $0.002 tick, price improvement of $0.001 would not be possible but price improvement of $0.002 would still be possible. For the subset of retail trades in stocks that would have a $0.002 tick and would have received price improvement of $0.001 absent harmonization, the OTC market maker could offer greater price improvement on these trades to $0.002, or it could choose to not offer price improvement. Both options come with costs to the OTC market maker, so the decision depends on the margins earned by OTC market makers when internalizing trades. If it chooses to price improve from $0.001 to $0.002 it would earn $0.001 less per share transacted. However, if it fails to price improve then both the total price improvement offered to retail investors and the fraction of trades receiving price improvement would decline, potentially making the OTC market maker appear less competitive in terms of attracting retail order flow. Additionally, the less price improvement that OTC market makers in sum offer to retail traders, the less attractive they might appear to the broker-dealers who handle retail traders. This coupled with the fact that OTC

[571] Here, price improvement is defined as any trade that transacts inside the NBBO and includes midpoint and intra-spread trades executed on ATSs and exchanges in addition to OTC market maker internalized trades. A $0.01 price improvement would be feasible with any of the tick sizes considered in this proposal.

[572] This figure does not represent the potential harm to retail investors. The discussion later in this section explains that these trades could be positively or negatively affected. Further, trades that do not have an opportunity for price improvement currently, could have an opportunity for price improvement under the proposed rules.

[573] *See, e.g.,* Boehmer, *et al.* (2021), *supra* note 469. For this reason, the remainder of the discussion in this section focuses on the effects of harmonization on stocks priced equal to, or greater than, $1.00 per share.

[574] *See* Boehmer, et al. (2021), *supra* note 469.

market makers would be restricted to the same minimum trading increment as exchanges and ATSs would put competitive pressure on OTC market makers to price improve trades because exchanges and other ATSs would have an increased ability to potentially innovate and compete for retail order with OTC market makers, including wholesalers.[575]

Similar arguments follow for stocks that receive a tick size of $0.005 or $0.01. A wholesaler would not be able to offer price improvement at common levels and could thus offer less or no price improvement—which might harm its competitive standing in terms of competing for retail order flow. To offset this consequence the OTC market makers, including wholesalers, could instead increase the amount of price improvement that it offers.

To the extent that OTC market makers choose to not offer as much price improvement, total price improvement received by retail investors might decrease. But, to the extent that OTC market makers choose to increase the levels of price improvement to match the tick, then retail price improvement might increase. If OTC market makers increase price improvement in some instances to match the tick and decrease it in others, the net effect for retail price improvement could be positive, negative, or neutral.[576] The Commission believes that investors may benefit overall from harmonizing trading and quoting increments regardless of the effect on price improvement because of the potential long-term competitive effects.[577]

3. Lower Access Fee Cap

The proposal would lower the access fee cap from $0.003 per share (30 mils) to $0.001 per share (10 mils) for NMS stocks priced $1.00 or greater and having a minimum pricing increment greater than $0.001, from $0.003 (30 mils) to $0.0005 (5 mils) for NMS stocks priced $1.00 or greater and a minimum pricing increment of $0.001, and from 0.3% to 0.05% of the share price for stocks with prices less than $1.00.

Most exchanges currently charge the maximum access fee allowed under the cap. For stocks with narrow spreads such as tick-constrained stocks, a 30 mil access fee can increase the cost of demanding liquidity by as much as 60%.[578] The direct economic effect of a lower access fee cap is therefore likely to be a lower price to take liquidity, and thereby lowering the cost of trading for many investors. Moreover, to avoid increasing distortions in order routing, a reduction in the tick size must be accompanied by a reduction in the access fee cap in the presence of the NBBO. Because the NBBO offers quote protection, a liquidity taker must go to the best quote regardless of the fee, limiting the ability for market forces alone to lower access fees. Some reduction in the access fee cap would be necessary to prevent a situation in which the access fee exceeds the quoted spread.

At present, many exchanges offer rebates for liquidity providers and charge fees for liquidity takers (Section V.C.2), with a net capture rate of 2 mils for stocks with prices greater than or equal to $1.00. Table 11 estimates the rebates exchanges would pay, should this 2 mil capture fee prevail; that is, for stocks with a 10 mil access fee, the rebate would on average be 8 mils per share, for example. The analysis also assumes that the behavior of inverted exchanges and off-exchange venues changes proportionally, though the proposal would not require this. As shown in Table 11 below, the Commission estimates that the reduction in the access fee cap would lead to a decrease in the total access fees collected and rebates distributed of approximately $3.8 billion per year, amounting to a 73% reduction in access fees paid or an 80% reduction in rebates distributed.[579] Balancing out expected rebates paid on make-take, inverted, and flat fee venues, the Commission expects that liquidity demanders would pay $3.2 billion per year less in access fees netted across all venues under the proposal and liquidity providers would receive $3.2 billion per year less in rebates netted across all venues. These numbers represent an 80% reduction in rebates received by liquidity providers and a 73% reduction in access fees paid by liquidity demanders. Additionally, the Commission estimates that the reduction in the access fee cap could decrease the net capture of the exchanges by $89 million per year with the decline in net capture coming almost exclusively from a lower net capture for trading in stocks priced less than $1.00 (see below).[580]

The analysis in this section assumes that exchanges would maintain the practice of financing rebates through access fees, and thus for transactions in stocks priced $1.00 or more the Commission expects the average access fee to be near the 10 or 5 mil access fee cap and the rebate to be approximately 2 mils lower on average.[581] There are several reasons for this assumption to hold, at least approximately. First, on inverted venues, there is currently no restriction on the level of fees for taking liquidity or rebates for posting, yet as shown in Table 5 inverted venues generally have fee and rebate levels similar to maker-taker venues and approximately a 2 mil capture rate. Second, this proposal does not directly alter the ability or the incentives for an exchange to subsidize rebates. Additionally, if exchanges were to subsidize rebates by taking a net loss per share transacted, they would be vulnerable to experiencing extreme and unpredictable losses if volumes spike. Trading volumes can vary significantly through time with very little ability to predict the timing and magnitude of changes in trading volume. For example, in January 2021 volume spiked dramatically for certain stocks relative to pre-January 2021 levels.[582] The Commission nonetheless acknowledges uncertainty over whether this 2 mil capture rate would persist or be lower. The capture rate could be lower should exchanges choose to subsidize rebates on stocks priced $1.00 or more to a greater extent, choose to subsidize trading on stocks with prices less than $1.00, or choose to alter their business model in response to the changes.

Table 11 uses volume estimates from Table 6 to provide estimates of the fees

[575] *See infra* sectionV.E.2.a. for further discussion on these competitive effects.

[576] Market participants have also expressed similar uncertainty. NYSE, providing an analysis of the potential effect of a $0.0025 tick increment that applies in all settings, stated, ''We expect the reaction to [harmonizing the tick increment] will be some mix of favorable and unfavorable changes for marketable orders. For example, some buy orders will pay higher prices, but some will also pay lower prices as additional market participants can effectively use price points previously available only on bilateral trades.'' *See* NYSE Tick Harmonization Paper, *supra* note 126 at 6. Given the uncertainty regarding how OTC market makers, including wholesalers could react to applying the tick size to trading situations, the Commission is not providing quantitative estimates of the effect of the proposal on retail price improvement.

[577] *See infra* section V.E.2.a. for further discussion on these competitive effects.

[578] For a tick-constrained stock, the cost of demanding liquidity is one half the spread ($0.005) plus the access fee. An increase of $0.005 to $0.008 is a 60% increase.

[579] Estimates in this paragraph are computed by multiplying by two the estimates in Table 11.

[580] The exception is IEX, which the Commission estimates might experience a reduction in access fees collected on trading in tick-constrained stocks greater than $1.00. This is because the 5 mil access fee cap for these stocks is lower than the estimated 6 mils that IEX currently charges to access protected quotes. Thus the Commission estimates that the IEX might lose approximately $3 million per year in transaction revenue on trading in these securities.

[581] At certain pricing tiers rebates may exceed the access fee cap. However, because total overall fees exceed the total rebates paid out, the average rebate would remain lower than the average access fee.

[582] *See* Staff Report on Equity and Options Market Structure, *supra* note 20.

and rebates that would have been collected and disbursed in the first six months of 2022 if the proposed access fees were implemented.[583] Annualized estimates are simply these estimates multiplied by two. Panel A shows that under the current system with a 30 mil access fee cap for quotations priced $1.00 or more and a 0.3% access fee cap for transactions less than $1.00 the exchanges collected an estimated $2.55 billion in access fees and distributed $2.31 billion in rebates in the first six months of 2022, providing an estimated net capture of $240 million for the exchanges in that time period.[584] Under the proposed amendment to rule 610 the Commission estimates that the exchanges would collect $652 million in access fees and distribute $455 million in rebates, providing the exchanges a net capture of $197 million over the same time period. Thus total access fees collected would be expected to decline by $1.91 billion ($3.82 billion annually) and rebates distributed by $1.86 ($3.72 billion annually) billion in the first six months of 2022. This amounts to an estimated decline in net capture of $44.5 million ($89 million annually) across all exchanges.

Panel B provides estimates of the effect of the proposal on access fees paid and rebates received by liquidity demanders and providers separately under the proposed rule. The Commission estimates that under the proposed rule liquidity demanders would pay $1.56 billion ($3.12 billion annually) less in access fees and liquidity providers would receive $1.52 billion ($3.04 billion annually) less in rebates over the same time period. Thus, the current estimated $1.9 billion transfer facilitated by access fees and rebates from liquidity demanders to liquidity providers in the first six months of 2022 would be decreased by 80% under the proposal.

TABLE 11—ESTIMATED ACCESS FEES AND REBATES COLLECTED CURRENT AND PROPOSED JAN. TO JUNE 2022 [a]

	Current	Proposed	Difference
Panel A: Estimated Access Fees Collected and Rebates Distributed Jan–Jun 2022			
Fees Collected	$2,554,250,000	$652,318,000	−$1,901,932,000
Rebates Distributed	2,312,561,000	455,081,000	−1,857,480,000
Exchange Capture	241,688,000	197,237,000	−44,451,000
Panel B: Estimated Fees by Liquidity Type			
Liquidity Demander	2,135,292,000	568,631,616	−1,566,668,000
Liquidity Provider	−1,893,604,000	−371,394,303	1,522,210,000
Exchange Capture	241,688,000	197,237,312	−44,451,000

[a] This table takes trading volumes presented in Table 6 to calculate aggregate fee and rebate estimates under the proposal. It separately accounts for volume priced less than $1.00 as well as trading that occurred in stocks that had time weighted quoted spreads less than or equal to $0.011—*i.e.,* stocks that would likely have received a $0.001 tick under the proposed changes to rule 612. These stocks are determined using Dec. 2021 time weighted quoted spreads for all trading volume in Jan. through Mar. and Mar. 2022 time weighted quoted spreads for volume Apr. through June. Current estimates are drawn from Table 7 while proposed estimates are computed assuming that non-tick-constrained volume priced equal to or greater than $1.00 on maker-taker or inverted exchanges pay a 10 mil access fee and receive an 8 mil rebate. For tick-constrained volume the assumption is 5 mil access fee and 3 mil rebate. For IEX we assume a 6 mill access fee for non-tick-constrained volume and a 5 mil access fee for tick-constrained volume. For volume priced less than $1.00 we assume that no exchange offers a rebate and that all exchanges charge 0.05% to take liquidity except for IEX whom we assume charges both sides 0.05%. Computations are made at the exchange and then aggregated as shown above.

Table 11 presents analysis suggesting that the exchanges could lose approximately $89 million per year in net capture. This estimated decline in transaction revenue comes almost exclusively from the reduction in the access fee cap for transactions in securities below $1.00. This is because for transactions priced equal to or greater than $1.00 the Commission expects that, except for exchanges that choose to rely mostly on transaction fee revenue which tend to have a higher net capture, the exchanges would largely maintain their current net capture.[585] Thus the decline in exchange net capture would be driven almost exclusively by an anticipated decline in the net capture on transactions below $1.00. For these transactions most exchanges currently charge the maximum 0.3% but offer no rebates.[586] Because very few exchanges offer rebates on stocks priced below $1.00, the access fee represents the exchange's net capture. Lowering the access fee from 0.3% to 0.05% on these transactions would represent a decrease in net capture of 83% for many exchanges. This decline would not be expected to be uniform. Some exchanges do not charge any fees for trading in sub $1.00 securities while others charge a fee to both sides of a sub $1.00 transactions. Additionally, the exchanges differ in the fraction of sub $1.00 trading volume that they handle. Table 12 provides annualized estimates of the effect of lowering the access fee on exchange net capture given realized volumes in the first 6 months of 2022.

[583] This assumes that exchanges continue the practice of funding rebates through access fees, that trading volumes are unchanged relative to the first six months of 2022, that the distribution of trading volume across exchanges is unchanged, and that the distribution of trading volume priced below $1.00 and at or above $1.00 remains unchanged.

[584] *See* Table 7 for additional analysis on current estimates of exchange net capture.

[585] As discussed in section III.C.2, the Commission believes that most exchanges have a net capture of approximately 2 mils on transactions priced greater than $1.00. For reasons discussed in this section the Commission believes that it is reasonable to assume that exchanges with a current 2 mil net capture would be able to continue to earn a 2 mil net capture. The Commission expects one exception to its general belief that all exchanges would likely be able to maintain their net capture on transactions priced greater than $1. The Commission believes that IEX might receive a lower net capture for transactions associated with volume assigned the 5 mil access fee cap. The Commission estimates, based on Table 5 that IEX has estimated net capture of 6 mils per transaction priced equal to, or greater than, $1.00 per share. Under the assumption IEX would not begin charging access fees to liquidity providers, its maximum net capture per transaction on stocks with a 5 mil access fee cap would be 5 mils. Thus our estimates assume that IEX would lose 1 mil of net capture on estimated volume that IEX executed that would have received the 5 mil access fee cap. The Commission estimates that this loss would account to approximately $1.5 million in lost transaction fee revenue in the first six months of 2022, or $3 million annualized.

[586] *See* Table 5.

TABLE 12—ESTIMATED EFFECT OF POLICY ON EXCHANGE TRANSACTION CAPTURE [a]

	Revenues ($)	Revenues (%)
Nasdaq	−$33,527,000	−21
NYSE	−24,676,000	−20
Cboe	−22,356,000	−20
MEMX	−1,960,000	−7
IEX	−5,378,000	−10
MIAX	−1,005,000	−14
LTSE	0	0
Total	−88,902,000	−18

[a] To compute the variable Revenue ($) which provides an annualized estimate of the effect of the proposed amendment to rule 612 on exchange net capture, we assume that IEX loses 1 mil on transactions that are priced equal to, or greater than, $1.00 per share and are tick-constrained and (and thus may receive the $0.001 tick and 5 mil access fee). For all other exchanges the net capture on transaction priced equal to, or greater than, $1.00 per share is expected to remain unaffected by the proposal. For transaction volume below $1.00 per share estimates for the decline in transaction revenue is computed by assuming that under the proposal all exchanges would charge 0.05% to one side of the transaction and nothing to the other side of the transaction. Sub $1.00 dollar volume estimates for each exchange are taken from Table 6. This revenue is then compared to the estimated transaction revenue in the current environment that is estimated using the sub $1.00 transaction fees/rebates for each exchange presented in Table 5 Panel B and multiplying them by volume estimates for each exchange from Table 6. The difference is presented in the table. To estimate the impact on total transaction fee revenues the Commission assumes that all make-take and inverted exchanges would earn 2 mils on all transactions priced equal to or greater than $1.00 per share and Flat fee venues earn 6 mils. This revenue is added to the sub $1.00 transaction revenue estimated as stated earlier in this footnote. The variable Revenue (%) is computed as the Revenue ($) divided by the revenue total revenue converted to a percent. To annualize, all totals are multiplied by 2.

The estimated $3 billion annual reduction in rebates received by liquidity providers under the proposal could impact market participants, specifically algorithmic and high-frequency traders, which specialize in liquidity provision and rebate capture strategies. Holding the spread constant, a rebate of 28 mils provides a significant fraction of the total revenue earned by liquidity providers on each share transacted.[587] Even absent a reduction in the tick increment, the reduction in rebates from an estimated 28 mils average to either 8 or 3 mils would significantly decrease the revenue earned per share transacted by a liquidity provider.[588] Any additional reduction in the spread due to the reduction in the tick size for tick-constrained stocks would further reduce the revenue earned by liquidity providers.

The primary likely effect of the decline in rebates disbursed and access fees collected would be to reduce the amount of liquidity provision—particularly among stocks with narrow spreads. This reduction in liquidity provision may not be harmful to trading quality for these stocks, under the reasoning that the reduction in rebates would alleviate currently existing distortions that lead to an oversupply of liquidity relative to the demand of liquidity, and would better allow the forces of supply and demand to determine market prices and lower overall transaction costs for liquidity demanders.

If tick sizes were infinitely small, and absent other distortions, then fees and rebates would not affect the cost of trading because markets would simply adjust quotes by the amount of the rebate such that the spread with rebates included is the same.[589] However, current U.S. equity markets differ from this frictionless construct because there is a finite tick. In this environment, and particularly for stocks with narrower spreads, high access fees and rebates can distort liquidity supply and demand by artificially increasing the cost of taking liquidity and the revenue to providing liquidity. This dynamic creates an environment with too much liquidity supply relative to liquidity demand.

Consider a stock with a $0.01 spread. In this case, a liquidity provider offering a protected quote at a maker-taker venue under the current system with a 30 mil access fee and a 28 mil rebate will earn one half the spread ($0.005) plus the rebate ($0.0028) yielding a profit of $0.005+$0.0028=$0.0078 per share traded. In this case a rebate of 28 mils increases the liquidity provider's profit on the transaction by approximately 50%. For liquidity demanders, the 30 mil access fee produces the exact opposite effect, increasing transaction costs by approximately 50%. The existence of a $0.01 tick prevents spreads from adjusting to levels that can equate liquidity supply and demand, leading to an oversupply of liquidity relative to demand.

Reducing the access fee cap to 10 or 5 mils significantly reduces the effect that access fees have on the incentive to demand and provide liquidity and would allow markets to realize prices that better reflect the underlying economics of liquidity supply and demand. For example, consider a stock with a prevailing spread of approximately $0.01, an access fee cap of 5 mils, and an average rebate of 3 mils. In this case a liquidity provider on a maker-taker exchange will earn half the spread plus a 3 mil rebate for a total of ($0.005+$0.0003=) $0.0053. In this case the total cost to demanding liquidity falls by approximately 50% and the access fee is just 5.7% of the total transaction costs. For a stock with a $0.03 spread and a $0.005 tick, a 10 mil access fee, and an 8 mil rebate the liquidity provider in this case earns half the spread plus the rebate for a total of ($0.0150+$0.0008=) $0.0158. In this case the rebate is only 5% of the total revenue for providing liquidity. The effect of rebates diminishes as an economic incentive as spreads widen. For example, consider a stock with a $0.10 spread. Even in the baseline case with a 28 mil rebate. A liquidity provider will earn half the spread plus a 28 mil rebate for a total revenue of ($0.0500+$0.0028=) $0.0528 per share. In this case the rebate is 5.6% of the total cost, a fraction that drops to 1.5% with an 8 mil rebate under the proposal.

[587] *See supra* section V.C.2

[588] For example, on a stock with a $0.01 spread the liquidity demander would earn half the spread ($0.005) plus the rebate ($0.0028), or $0.0078 per share in the current market. Under the current regime if this stock was assessed a 5 mil access fee cap the expected rebate would decline to $0.0003 for a total profit of $0.0053, or a 32% reduction in total revenue to the liquidity provider on the transaction. This reduction would occur before any tick size reduction in the spread is taken into account.

[589] *See, e.g.,* Colliard and Foucault (2012), *supra* note 277; James Angel, Lawrence Harris, and Chester Spatt, *Equity Trading in the 21st Century,* 1 Q. J. Fin. 1 (2011).

Standard supply and demand arguments suggest that if the revenue earned per share transacted decreases—*i.e.,* the price of liquidity decreases—the amount of liquidity supply will also decrease, reducing the oversupply of liquidity. This reduction in liquidity provision likely means that some proprietary trading desks and firms that currently specialize in providing liquidity and capturing rebates would cease operation as the market adjusts from one with significant liquidity subsidization to one with less subsidization and where the ask and bid prices are more reflective of the forces of supply and demand for liquidity.[590]

The primary beneficiaries of the reduction in the access fee cap would be liquidity demanders. For stocks with narrow spreads such as tick-constrained stocks, a 30 mil access fee can increase the cost of demanding liquidity by as much as 60%.[591] Consequently, reducing the access fee significantly reduces the cost of demanding liquidity in the predominant maker-taker trading environment. This effect coupled with the expected decrease of liquidity suppliers can be expected to decrease competition to provide liquidity. Less competition to provide liquidity means that queue lengths could decrease and fill rates increase because it would be easier to get to the front of the order book. This effect could allow non high-frequency traders -more opportunity to fill orders using liquidity-providing instead of liquidity-demanding transactions.

The Commission expects the decline in the access fee to have opposing effects on trading volume. If more investors end up interacting with one another without the intermediation of a specialized liquidity provider or high frequency market makers the total number of transactions and trading volume may decrease. However, the basic forces of supply and demand suggest that as the price of a good decreases, the demand for that good increases. Thus, if the cost of demanding liquidity decreases, more investors will seek to trade which would increase trading volume. This could occur as market participants take advantage of the lower cost of demanding liquidity to more actively manage their portfolios—generating more trading.[592] Taken alone, a reduction in the access fee could lead to wider spreads in some cases by reducing the ability to use rebates as a form of intra-tick pricing. However, the reduction in tick size also reduces the need for intra-tick pricing. For instance if the ask price that equates supply and demand is equal to $10.0015 then absent a rebate and with a $0.01 tick, the prevailing ask price would be $10.01—the next feasible price. This price would indicate a distortion of $0.0085. However, with a 28 mil rebate, the prevailing ask price will be $10.00 because once the rebate is taken into account, the net price including the rebate would be $10.0028 which is greater than $10.0015. While still a distortion, the distortion in this case would be smaller at $0.0015. Thus, in this case the existence of a 28 mil rebate can narrow the spread by allowing a form of intra-tick pricing. In this example with a rebate of either 3 or 8 mils the prevailing price would still be $10.01 because the net price including rebates on a maker-taker venue would still be less than $10.0015. However, because the reduction in the access fee is also accompanied by a reduction in the tick size, markets would be able to more naturally find prices that equate supply and demand without needing rebates to minimize the distortion. In the example, where the ask price that equates liquidity supply and demand is $10.0015, and if the stock were assigned a tick of $0.001 under the proposed changes, the prevailing ask price would be $10.002 and the distortion would be $0.005. Thus because of the reduced tick, the need for intra-tick pricing via rebates is significantly reduced.

The reduction of the access fee cap, as well as relaxing of the tick constraint, could also simplify markets by reducing the need for complex order types that are designed to take advantage of the system of fees and rebates. The reduction would also likely simplify the overall system of fees by compressing the fees that are possible to charge and thereby also constraining the ability for exchanges to offer multiple pricing tiers with economically meaningful differences. This simpler market structure could reduce the cost associated with designing and executing an order routing strategy and could thus decrease transaction costs. Simpler fees and rebates could also translate into a reduced frequency and complexity of amendments to exchange access fees and rebates. If so, the proposal could result in cost savings to exchanges associated with fewer Rule 19b–4 filings.

A lower access fee cap could induce some trading volume that currently transacts on ATSs to revert to exchanges. This would occur to the extent that traders who may route orders to ATSs in order to avoid high access fees instead route orders to exchanges due to lower access fees.[593] More trading volume on exchanges could improve overall price efficiency.[594] However, these effects could be lessened or reversed due to the reduction in rebates, since rebates incentivize trading on exchanges versus off-exchange.

Finally, for stocks priced less than $1.00 the effect of lowering the access fee will primarily be to lower the transaction costs associated with trading in these securities. Most exchanges do not offer rebates for stocks priced less than $1.00, or if they do the rebates are quite small. Therefore, the effect of the proposal on such rebates is likely to be minimal. Lower transaction costs for these securities may improve liquidity for stocks with prices less than $1.00. However, given the relatively low natural trading interest, the Commission does not expect a significant improvement in the trading environment for these securities.

4. Exchange Fees and Rebates Determinable at the Time of Execution

The proposal requires that exchange fees and rebates be determinable at the time of execution. In the current environment, the prices adjusted for the fees and rebates that investors pay can vary by as much as 60 mils (0.6c) per share for orders with the same nominal execution price.[595] Thus, allowing market participants to determine the applicable fees and rebates at the time of execution could help improve investor execution quality by providing certainty as to the net fee and rebate price applicable at a given exchange at the time that an order is routed to that exchange.

Having fees and rebates determinable at the time of execution could make it easier for broker-dealers to pass such fees and rebates on to the end customer. Currently, it is difficult for a broker-

[590] Market participants sometimes refer to the oversupply of liquidity relative to demand as excessive intermediation (*see supra* note 100). Thus reducing the access fee would reduce excessive intermediation.

[591] For a tick-constrained stock, the cost of demanding liquidity is one half the spread ($0.005) plus the access fee. An increase of $0.005 to $0.008 is a 60% increase.

[592] *See, e.g.,* Roni Michaely, Jean-Luc Vila, and Jiang Wang, *A Model of Trading Volume with Tax-induced Heterogeneous Valuation and Transaction Costs,* 5 J. Fin. Intermediation 340 (Oct. 1996) for an empirical analysis of the relation between trading volume and transaction costs.

[593] *See* Menkveld, et al. (2017), *supra* note 275.

[594] *See* Foley, et al. (2016), *supra* note 465.

[595] If rebates and transaction fees are both approximately 30 mils on both maker-taker and inverted venues, then the realized price difference for an order with the same nominal value can be as much as 60 mils depending on where the order is submitted.

dealer to pass on fees and rebates to individual customers because the level of fees and rebates is not determinable at the time of execution and the tier into which a broker-dealer falls, which determines total fees and rebates, is based on total broker-dealer activity and not an individual trade.

Access fees create potential conflicts of interest. Passing on fees and rebates to end customers could eliminate such distortions and lead to improved overall order execution for end customers. Additionally, the ability to pass on the fees and rebates to end customers might also make customers more aware of these fees and rebates so that they can better inform their broker-dealers how to route with respect to fees and rebates which could also lead to better execution for end customers.

While the ability to determine fees and rebates at the time of execution would make passing fees and rebates on to the end customer more feasible, it is not clear in practice how much this would occur as there are significant uncertainties regarding how much demand currently exists for rebates to be passed through by end investors. Academic research shows that execution skill can have a significant impact on an investor's portfolio returns.[596] It is possible that more sophisticated market participants with high trading volumes, and thus higher transaction costs, might welcome the opportunity to better manage access fees and rebates for their trades. On the other hand, less sophisticated traders with low trading volumes might be less inclined to request that their broker-dealers pass through access fees and rebates.

Making fees and rebates determinable at the time of execution could also enable the customers of broker-dealers to better discuss transaction fees and rebates with their broker-dealers, and potentially request data on such fees. Doing so could improve broker-dealer accountability and lead to better outcomes for customers.[597]

5. Acceleration of the MDI Rules and Addition of Information About Best Odd-Lot Orders

The proposal would result in four changes to NMS data. Two of the changes would accelerate the implementation of specific aspects of MDI, namely the round lot definition and the inclusion of odd-lot quotations priced better than the NBBO in NMS data, and would, therefore, result in realizing the economic effects of these MDI Rules sooner. The Commission acknowledges that the economic effects of the proposed acceleration would be temporary only until the accelerated aspects of the MDI Rules would otherwise have been implemented. The proposal would impose a new requirement on the exclusive SIPs to disseminate the accelerated odd-lot information until the exclusive SIPs are retired, the effect of which is to guarantee that the odd-lot information would be disseminated.[598] The proposal does however present the possibility that the new requirements on the SIPs could reduce competing consolidator competition, which could reduce the expected benefits of the MDI Rules.[599] The proposal would also require the dissemination of a standardized best odd-lot order or BOLO. The primary economic effect of this would be to provide a standard benchmark that market participants could use to gauge execution quality—particularly for smaller or odd-lot orders.

a. Round Lot Definition

The round lot definition in the MDI Rules will result in numerous economic effects and the proposal would result in realizing these effects sooner. The primary effects stem from the MDI Rules round lot definition mechanically shrinking the NBBO for stocks priced greater than $250.[600] Other effects of changing the round lot definition include increased transparency and better order execution,[601] as well as any effects from potentially having more orders routed to exchanges instead of ATSs.[602] The costs of changing the round lot definition derive from upgrading systems to account for additional message traffic and modifying and reprogramming systems.[603] The Commission also expects that changing the round lot definition will impact the mechanics of other rules and regulations.[604] These economic effects would be realized earlier than is currently estimated under the existing MDI timeline because this portion of the MDI Rules is not set to be implemented until the end of the implementation timeline. Further, because the first steps of the timeline have not been accomplished,[605] and the Commission is uncertain when exactly the round lot definition otherwise will be implemented, the degree of the effect of the acceleration, is unknown.[606]

The Commission recognizes that the earlier implementation of the round lot definition could affect the proposed tiered tick structure by sooner increasing the number of stocks subject to a minimum pricing increment of less than $0.01, but does not expect this effect to be substantial. Specifically, a mechanically tighter NBBO would reduce the Time-Weighted Average Quoted Spread used to determine the appropriate tick increment for stocks priced greater than $250. However, higher-priced stocks also tend to have higher spreads that are unlikely to narrow enough for the proposal to result in a smaller minimum pricing increment.[607]

The Commission also recognizes that both the reduction in tick size and accelerating the definition of round lot would reduce the depth of liquidity at the NBBO. These effects might amplify each other in a small set of stocks. A

[596] *See* Amber Anand, et al., *Performance of Institutional Trading Desks: An Analysis of Persistence in Trading Costs,* 25 Rev. Fin. Stud. 557 (2012).

[597] *See infra* section V.E.2.c.

[598] *See infra* Section V.D.5.c. for additional discussion of this effect. While this proposal requires the exclusive SIPs to distribute odd-lot data, the MDI Rules do not require the competing consolidators to disseminate odd-lot data. However, the MDI Adopting Release anticipated that at least one competing consolidator will do so because there would be demand for the data. *See supra* section V.C.3.

[599] *See infra* section V.E.2.c for additional discussion of MDI acceleration and the potential effect on competitive consolidator competition.

[600] *See* MDI Adopting Release, *supra* note 5, section V.C.1.(b).(i), for the full discussion of the effect of changing the round lot size on the NBBO.

[601] *See* MDI Adopting Release, *supra* note 5, sections V.C.1.b.(ii) and V.C.1.b.(iii), for the full discussion of the effect of changing the round lot size on transparency and execution quality.

[602] *See* MDI Adopting Release, *supra* note 5, sections V.C.1.b.(iv) for the full discussion of the effect of changing the round lot size on exchange competition and order routing.

[603] *See* MDI Adopting Release, *supra* note 5, section V.C.1.b.(vi) for the full discussion of the expected costs of changing the round lot size. *See also infra* section V.D.6. for an estimation and discussion of these compliance costs as they pertain to the proposed acceleration.

[604] *See* MDI Adopting Release, *supra* note 5, section V.C.1.b.(vii), for the full discussion of the effect of changing the round lot size on other rules and regulations.

[605] *See supra* section IV.A.1 for a discussion of the delays.

[606] *See supra* section II.B. for a discussion of the factors that affect when MDI will be implemented and a discussion of an estimate of the proposed acceleration of at least two years after the Commission's approval of the plan amendment(s) required by rule 614(e).

[607] *See supra* Table 8 note a, for a discussion of the impact of the round lot definition on the estimates of which stocks would receive a reduced tick size. In the MDI Rules the Commission estimated an average reduction in quoted spreads, conditional on the round lot definition resulting in a reduction of roughly 15% for stocks priced $250-$1,000 and 28% for stocks priced $1,000-$10,000. Given the average quoted spread of $0.35 for stocks priced $250–1,000 and $2.90 for stocks priced $1,000-$10,000 the expected mechanical reductions are likely not sufficient to reduce the spreads of many of these stocks to the point where they would qualify for a lower tick size in this proposal. *See* MDI Adopting Release, *supra* note 5, section V.C.1.b.(i).

reduction in tick size would spread liquidity across more price levels while the implementation of the round lot definition would result in displaying smaller quotes at the NBBO. The proposal could result in this effect being amplified for stocks that trade above $250 with spreads narrower than $0.04 as these stocks would receive both smaller tick and smaller round lot sizes, which is likely only a small number of stocks. This reduction in depth at the NBBO would temporarily reduce the information about liquidity available in the market for market participants who do not receive depth of book information from proprietary data feeds. However, the eventual implementation of including the depth of book information in consolidated market data due to the implementation of the MDI rules would render this effect temporary. At that point in time, consolidated market data is expected to contain depth information at many more price points, which would largely counteract the effects of a reduction in displayed depth from the implementation of the round lot definition and even from a reduction in tick size.

b. Including Odd-Lots in NMS Data

The proposed acceleration of the implementation of the MDI Rules that expands the NMS data to include odd-lot information inside the NBBO would result in sooner realizing some, but not all economic effects of this aspect of the MDI Rules.[608] The Commission believes that this odd-lot information could be useful to consumers of SIP data who could use it to make inferences about market conditions and, thus, could lead to better investment decisions and increased market efficiency. It could also lessen the effect of a reduction in displayed depth at the NBBO resulting from either a smaller tick size or a smaller round lot. Specifically, the proposal to expedite implementation of inclusion of odd-lot data would sooner allow individual investors whose broker-dealers subscribe to the data to visually monitor the market environment and determine profitable trading opportunities. In addition, the proposal would change the timing and magnitude of compliance costs and other costs.[609] These costs would include: the cost for exclusive SIPs to upgrade existing infrastructure and software to handle the dissemination of additional message traffic, the cost to SROs to implement system changes required in order to make the data needed to generate odd-lot information available to exclusive SIPs, and the cost of technological investments market participants might have to make in order to receive the proposed SIP data.[610]

While these economic effects would be realized sooner, the Commission does not expect that the proposal would accelerate all the effects described in the MDI Rules related to adding to NMS data odd-lot information inside the NBBO. The proposal would not accelerate the benefits from allowing some market participants to reduce data expenses required for trading by providing a reasonable alternative to some market participants to proprietary data.[611] As such, the proposal would also not accelerate the cost to users of propriety data whose information advantage would dissipate somewhat. In particular, the Commission does not believe that adding the specified odd-lot information to the exclusive SIPs would result in low-latency traders substituting the exclusive SIPs for their current proprietary data usage. This is because a key component of the MDI Rules for this functionality is an expected reduction in latency of NMS data anticipated from the competing consolidator model of NMS data distribution.[612] The exclusive SIPs are not expected to be fast enough to replace proprietary data because existing SIP latency would not be reduced or affected by this proposal. Thus, the proposal would not accelerate the benefits anticipated in the MDI Rules that pertain to using low-latency odd-lot information. Instead, the Commission expects these effects after the implementation of all MDI Rules.

Market participants who receive and use odd-lot information from the exclusive SIPs would also incur costs if the acceleration results in additional systems changes. Specifically, if the exclusive SIPs changed data specifications to add odd-lot information, market participants receiving odd-lot information from exclusive SIPs would need to make systems changes upon implementation of the proposal. Because the data specifications of the competing consolidators are unknown and could differ from the data specification of the exclusive SIPs, market participants receiving SIP data could need to make systems changes again to receive the additional data from a competing consolidator upon full implementation of the MDI Rules. If there are significant fixed costs associated with system changes that are incurred on each change, then multiple system changes would be inefficient and could increase costs. Because market participants who receive odd-lot information from the exclusive SIPs would need to make an extra systems change stemming from this proposal, they could be discouraged from making systems changes to make use of the odd-lot information and, instead, wait until MDI implementation. This could dampen some of the benefits of the proposal.

To the extent that some market participants store SIP data for various purposes (such as transaction cost analysis) the storage costs could increase with the proposal as the amount of SIP data increases with the inclusion of odd-lot data. Many factors affect these costs, such as the number of market participants storing SIP data, the data structures they use to store SIP data, whether these market participants would choose to store all or just some of the SIP data provided by the proposal, and the period over which the proposal would affect these storage costs. Based on the nature of several of these factors, the Commission is unable to estimate these costs.

[608] *See* MDI Adopting Release, *supra* note 5, section V.C.1.c.(i), for the full discussion of the effects of including odd-lot information inside the NBBO in its definition of core data. Also, the MDI Rules do not require that the competing consolidators to disseminate odd-lot information, but the Commission anticipated in the MDI Adopting Release that at least one would do so. The proposed requirement that the exclusive SIPs disseminate odd-lot information helps ensure that the economic effects of the proposed acceleration of the MDI Rules occur. *See infra* section V.D.6. for a discussion of the costs to the exclusive SIPs.

[609] *See* MDI Adopting Release, *supra* note 5, at section V.C.1.c.(iv) for the full discussion of the costs associated with expanding core data to include odd-lot information inside the NBBO. *See also infra* section V.D.6 for further discussion of compliance costs.

[610] *Id.*

[611] *Id.*

[612] *See* MDI Adopting Release, *supra* note 5, at n.1939.

c. Dissemination of Odd-Lots in SIP Data

The proposed requirement for the exclusive SIPs to disseminate odd-lot data would ensure realizing the benefits of accelerating the implementation of including odd-lot information in NMS data while imposing costs on exclusive SIPs and potentially market participants.[613] The MDI Rules do not require the competing consolidators to disseminate odd-lot data. However, the Commission estimated that at least one competing consolidator will do so because there would be demand for the data.[614] Unlike competing consolidators, each exclusive SIP is the only distributor of the entirety of its data and may lack the incentive to disseminate the data. As a result, the Commission is not certain whether the exclusive SIPs would disseminate odd-lot information absent a requirement to do so, the benefits of the acceleration could be at risk without the requirement to disseminate.[615]

While the inclusion of the odd-lot data could impose costs on those who receive and use exclusive SIP odd-lot data, the requirement that exclusive SIPs disseminate the data could impose costs on those who receive but do not have an interest in using odd-lot information provided in SIP data. In particular, depending on the SIP data specifications, such SIP data users might need to alter their systems to remove odd-lot information. Further, such SIP data users could incur the cost of any SIP data fee increases intended to offset the costs to exchanges and exclusive SIPs. However, the Commission notes that SIP data fees did not increase when the exclusive SIPs started to include odd-lot trades.

d. Best Odd-Lot Order Definition

The proposal goes beyond the MDI Rules by proposing that NMS data also include information on the best priced odd-lot orders across all markets. Including the best odd-lot order in a standardized form would offer market participants a standard benchmark, like the NBBO, to use to measure execution quality. Currently, this information is only available to market participants who have proprietary data feeds, and even then there could be differences across market participants with this data in how exactly market participants calculate the best odd-lot order (or how many proprietary feeds they include). The best odd-lot information in the NMS data would provide a standardized benchmark. This benchmark may allow market participants to better monitor the execution quality of their broker-dealers and send more trading volume to broker-dealers with better performance.[616] Thus, including the best odd-lot information could enhance competition among broker-dealers leading to better trade execution and perhaps a lower cost to customers for execution services.

6. Compliance Costs

The Commission believes that various market participants would incur implementation and ongoing costs to comply with the proposal. These costs are presented in Table 13 and discussed below. Some costs presented in Table 13 represent costs that might not be new but rather were anticipated in the MDI Rules. Specifically, those costs are associated with the acceleration of aspects of the MDI Rules. These include an estimated $1.1 million of one-time costs and $340 thousand in annual ongoing costs to exclusive SIPs. If we assume that exclusive SIPs will become competing consolidators absent this proposal and that the cost of estimating and disseminating the best odd-lot order is minimal,[617] the cost of the proposal would be approximately $57.3 million in one-time costs and $158,000 per year in ongoing costs. However, the Commission recognizes some uncertainty in the assumption that exclusive SIPs will be competing consolidators and recognizes that exclusive SIPs would incur costs to estimate and disseminate the best odd-lot order. Therefore, the Commission estimates that total costs of the proposal if exclusive SIPs will otherwise not be competing consolidators would be approximately $58.4 million in initial one-time costs and $500 thousand in annual ongoing costs. Further, the ongoing costs for exchanges and exclusive SIPs to comply with proposed rules 600 and 603 would be incurred only until the exclusive SIPs are retired, after which time these costs were previously accounted for in the MDI Adopting Release.

[613] *See infra* section V.D.6 for additional discussion of the costs the exclusive SIPs are expected to incur.

[614] *See supra* note 518.

[615] The Commission recognizes that the exclusive SIPs have some incentive to offer odd-lots as indicated by the exclusive SIPs seeking comment on doing so. *See, e.g.,* 2022 SIP Odd-Lot Request for Comment, *supra* note 371.

[616] While the Commission does not expect most retail traders would engage in this sort of benchmarking due to a lack of technical capacity to do so among most retail traders, institutional traders likely have such capacity and so would engage in this type of monitoring. Institutional traders have strong incentives to monitor all aspects of transaction costs as these costs can significantly affect portfolio performance. *See* Anand, et al. (2012), *supra* note 596.

[617] This is consistent with the expectations that exclusive SIPs would likely become competing consolidators expressed in the MDI Adopting Release, *supra* note 5, at section V.C.2.(a)(ii).

TABLE 13—COMPLIANCE COST ESTIMATES

Rule #/incurring entities	Initial	Ongoing	Number of entities	Total initial	Total ongoing
612/All Trading Venues	$140,000		286	$40,040,000	
612/Listing Exchanges	19,000	$9,000	5	95,000	$45,000
612/Order Entry Systems	11,000		1,192	13,112,000	
612/Smart Order Routers	11,000		282	3,102,000	
610/Exchanges	57,000		15	855,000	
603, 600/Exchanges	4,000	7,000	16	62,864	112,800
603, 600/SIPs	567,000	170,000	2	1,134,000	340,000
Total				58,401,000	498,000

a. Estimates for Proposed Rule 612

According to Table 13, the primary driver of costs for the proposed tiered tick structure would be the costs to all trading venues of $40 million. The $40 million comes from an estimated $140,000 [618] in one-time costs incurred by each trading venue to update systems to comply with rule 612 [619] aggregated across an estimated 286 trading venues. The estimate of 286 trading venues comes from the number of entities who report rule 605 statistics. Therefore, if additional trading venues incur compliance costs, the costs to trading venues of the proposal could be greater than $40 million.

The estimated one-time cost of $19,000 [620] and $9,000 per year in ongoing costs [621] for listing exchanges is to calculate Time-Weighted Average Quoted Spreads and to transmit the associated tick size to the exclusive SIPs under the proposal. This estimate is based on the Commission's belief that the listing exchanges currently have access to the data needed to calculate the Time-Weighted Average Quoted Spreads because such data, specifically the NBBO, is needed for the exchanges to compile 605 reports. Thus, the Commission does not believe that the exchanges would incur additional costs associated with gathering data. Additionally, the listing exchanges have experience computing statistics conceptually similar to Time-Weighted Average Quoted Spreads for their 605 reports.[622] The listing exchanges also already have connections to the exclusive SIPs, and thus the listing exchanges would need to modify rather than build new systems to transmit tick sizes to the exclusive SIPs. Further, once competing consolidators replace the exclusive SIPs, it is the competing consolidators that have the responsibility to connect to the exchanges in order to receive data and thus, under the MDI Rules the exchanges would not incur additional costs in terms of connecting to the competing consolidators.[623] Consequently, the compliance cost estimates provided here represent costs associated with modifying existing systems rather than building systems from scratch. The Commission does not believe that having the listing exchange compute Time-Weighted Average Quoted Spreads and transmit the associated tick to the exclusive SIPs currently, or to the competing consolidators once the exclusive SIPs are discontinued, would require listing exchanges to acquire new hardware or systems.

The estimated $11,000 [624] in one-time costs to all broker-dealers with order entry systems assumes that broker-dealers with order entry systems would not need to acquire new hardware or develop new systems but rather they would modify existing systems. This assumption is based on the fact that broker-dealers with order entry systems must already have order entry systems that account for multiple tick sizes that can dynamically switch between the $0.01 tick for stocks priced equal to or greater than $1.00 and the $0.0001 tick for stocks priced less than $1.00. These systems would need to be expanded to incorporate data from the exclusive SIPs or the competing consolidators on the tick size and to allow for additional tick sizes for stocks priced equal to or greater than $1.00. The Commission believes that all broker-dealers with order entry systems currently subscribe to SIP data and will subscribe to data from competing consolidators and thus, would not incur additional data expenses to receive regulatory data as a result of the tick size change. The $11,000 cost also depends on an assumption that the costs to modify existing systems to accommodate the proposed tick size regime would be similar for both larger and smaller

[618] An exchange commenting on the tick size pilot estimated $140,000 as its expected expense to comply with the tick size pilot's requirement to change the tick size for some stocks. The Commission views this estimate as reasonable, but also notes that the proposal is simpler in some aspects than the tick size pilot and more complex in others. Specifically, although the proposal would have more tick levels than the tick size pilot, it would not impose any variation in ''trade at'' requirements. Thus, the Commission expects the estimate of $140,000 per exchange to be a reasonable estimate of the cost associated with the tick size change for exchanges and ATSs. *See* James G. Ongena, Chicago Stock Exchange (CHX), Comment Letter Re: File No. 4–657; Notice of Filing of the Proposed National Market System Plan to Implement a Tick Size Pilot Program On a One-Year Pilot Basis (Dec. 2014), *available at https://www.sec.gov/comments/4-657/4657-67.pdf.*

[619] The technical aspect of a wholesaler updating its system to reflect the tiered tick regime is likely similar to that of an exchange or an ATS. Thus the Commission is applying the same estimate to wholesalers and other to update systems as exchanges and ATSs. There were 16 registered exchanges, 32 ATSs, 6 wholesalers, and 232 other FINRA members. *See ATS Transparency Data Quarterly Statistics, 2022 Quarterly Tables, 1st Quarter, NMS Stocks,* FINRA (2022), *available at https://www.finra.org/filing-reporting/otc-transparency/ats-quarterly-statistics* for the number of ATSs. In the first quarter of 2022, there were 286 total entities affected.

[620] Salaries are derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead: [(Sr. Programmer at $368 for 25 hours) + (Sr. Systems Analyst at $316 for 10 hours) + (Compliance Manager at $344 for 10 hours) + (Director of Compliance at $542 for 5 hour)] ≈ $19,000 per listing exchange).

[621] [((Compliance Attorney at $406 for 6 hours) + (Compliance Manager at $344 for 2 hours)) × 4 tick size revisions per year] ≈ $9,000 per listing exchange for a total annual monetized burden of $45,000 ($9,000 × 5 listing exchanges).

[622] Current rule 605 reports require trading centers to compute and report share-weighted average time to execution statistics among others. Additionally, some listing exchanges have issued white papers that include statistics based on Time-Weighted Average Quoted Spreads. *See, e.g.,* Nasdaq Intelligent Tick, *supra* note 180 at Chart 3 and Cboe Proposal, *supra* note 104 at Exhibit 1.

[623] *See* MDI Adopting Release, *supra* note 5, at n.1133 and surrounding text. The costs for the competing consolidators to connect to the exchanges is accounted for in the MDI Rules and thus would not represent costs associated with this proposal.

[624] This estimate reflects the Commission's experiences with and burden estimates for broker-dealer systems changes: [(Attorney (5 hours) × $401) + (Compliance Manager (10 hours) × $298) + (Programmer Analyst (20 hours) × $232) + (Senior Business Analyst (5 hours) × $265)] ≈ $11,000. *See also* Transaction Fee Pilot Adopting Release, *supra* note 267 at n.770.

broker-dealers with order entry systems because the specific code to manage existing systems likely does not depend on the size of the market participant. The Commission estimates that there are 1,192 broker-dealers with order entry systems.[625] Thus, the Commission estimates that the proposal would lead to a one-time aggregate cost of ($11,000*1,192) ≈ $13 million across broker-dealers with order entry systems to update their systems to account for the new tick sizes.

The $11,000[626] estimated one-time cost to broker-dealers operating smart order routers assumes that broker-dealers operating smart order routers would not need to acquire new hardware or build new systems to comply with the proposed tick size changes. These broker-dealers already have systems that can adjust for tick sizes that change around the $1.00 threshold. Thus, the Commission expects that they would modify existing systems rather than build new systems. Any broker-dealers that would need to build new systems would likely incur more than $11,000 to do so. On the other hand, any broker-dealers that use vendors for their smart order routers could incur lower costs.

The Commission estimates an upper bound of 282 broker-dealers operating smart order routers.[627] This number provides an upper bound as it assumes that all entities with direct connections to exchanges or ATSs use a smart order router, which the Commission believes is an over-estimate. Thus, the Commission estimates a one-time upper bound cost of ($11,000*282) = $3.1 million for market participants to update smart order routers.[628] If fewer than 282 broker-dealers operate their own smart order routers, then the $3.1 million estimate is likely higher than the aggregate cost for broker-dealers to adjust their order routing systems to comply with the proposal.

Further, the Commission believes that these broker-dealers operating smart order routers also already subscribe to SIP data and will subscribe to consolidated market data products once the competing consolidators become operative and thus would not incur additional data expense to receive the regulatory messages necessary to comply with rule 612. The Commission also assumes that system updates would impose a similar cost on larger and smaller entities given that once code is written, scaling it up is relatively inexpensive.

Lastly, the Commission recognizes that proposed rule 612 could increase the overall implementation costs of the MDI Rules. In particular, in stocks for which the proposal would result in a smaller tick size and that would become less tick-constrained as a result, such stocks could have more odd-lot quotes inside the NBBO than anticipated when the Commission adopted the MDI Rules. As a result, the costs to SROs and competing consolidators of collecting, transmitting, consolidating, and disseminating odd-lot information would be greater than those described in the MDI rules. The Commission is unable to estimate this cost increase with any degree of precision because an estimation would require predicting a complex interaction between behavior changes from multiple types of market participants and the resulting effect on the number of ticks inside the NBBO and the volume of odd-lots submitted inside the NBBO. However, any such increase is unlikely to be of a greater magnitude than the other compliance costs discussed here.

b. Estimates for Proposed Rule 610

In Table 13, the $57,000 in estimated cost to exchanges to comply with proposed changes to rule 610 relate to the cost of preparing a rule 19b–4 filing to amend access fees and rebates and to make fees and rebates determinable at the time of execution.[629] This estimate assumes that exchanges will combine their proposals to include both amendments to fees and rebates and making fees and rebates determinable at the time of execution in the same rule 19b–4 filing and that this combination would not increase the cost of those filings. The Commission recognizes that if these filings would not be efficiently combined, the costs to exchanges could be higher than $57,000. The Commission estimates assume that LTSE would not file a rule 19b–4 filing with the Commission because it does not currently charge access fees or offer rebates, but that the other 15 exchanges would file rule 19b–4s. If so, the proposal would lead to an estimated one-time total cost of $855,000 for the exchanges to comply with the proposed rule 610.[630]

c. Estimates for Proposed Rules 600 and 603

The exclusive SIPs and exchanges would also face compliance costs associated with including the odd-lot information in SIP data to include the best priced odd-lot order, and to update the round lot definitions. The adoption of updated round lot definitions and the inclusion of odd-lot data inside the NBBO are both parts of the MDI Rules. Thus, the proposal would accelerate the compliance costs associated with these aspects of the MDI Rules. One difference is that the MDI Adopting Release anticipated that these changes to NMS data will occur after the competing consolidator model was up and running. Thus, the MDI Adopting Release did not anticipate that the current exclusive SIPs would incur such costs unless they chose to become competing consolidators. The addition of the best odd-lot order to the SIP data was not

[625] This estimate is obtained using consolidated audit trail data ''CAT'' data from the month of June 2022. The Commission calculated the total unique number of Central Registration Depository Numeric Identifier ''CRDs'' that originated an order in the month of June 2022 as an estimate of the number of entities with an order entry system.

[626] This estimate reflects the Commission's experiences with and burden estimates for broker-dealer systems changes: [(Attorney (5 hours) × $401) + (Compliance Manager (10 hours) × $298) + (Programmer Analyst (20 hours) × $232) + (Senior Business Analyst (5 hours) × $265)] ≈ $11,000. *See also* Transaction Fee Pilot Adopting Release, *supra* note 267 at n.796 where the cost to broker dealers to update systems for the TSP was estimated to be $9,000, here we are allowing for an additional 10 hours of Programmer Analyst time.

[627] This number is estimated by counting the number of unique CRDs that submitted an order directly to an exchange or ATS in the month of June 2022.

[628] The Commission also expects there may be other costs associated with updating systems to account for an increase in message traffic resulting from the new tick sizes. However, absent an estimate in the change in message traffic or existing bandwidth capacities it would be impractical for the Commission to attempt to place a reliable estimate on these costs. Estimating the change in message traffic would involve predicting how various types market participants would change their trading behavior and how those changes would interact with each other. Such an estimation would depend heavily on tenuous assumptions.

[629] The Transaction Fee Pilot was expected to impose a similar requirement for exchanges to file rule 19b–4 filings with the Commission to bring access fees into compliance with the TFP. The Commission estimated in the TFP proposing release that each filing would cost the exchanges approximately $48,400 [(Attorney (40 hours) × $401) + (Compliance Attorney (40 hours) × $352) + (Assistant General Counsel (25 hours) × $449) + (Director of Compliance (15 hours) × $470)] = $48,395 ≈ $48,400. *See* OMB Control No. 3235–0045 (Aug. 19, 2016), 81 FR 57946 (Aug. 24, 2016) (Request to OMB for Extension of rule 19b–4 and Form 19b–4 Filings). *See* Transaction Fee Pilot Adopting Release, *supra* note 267 at section IV.C.2(a)(v). To account for inflation the Commission multiplies this amount by 18% (derived from BLS inflation estimates from 2018 to 2022) to arrive at an estimate of approximately $57,000. *See CPI Inflation Calculator,* U.S. Bureau Lab. Stats., *available at https://www.bls.gov/data/inflation_calculator.htm,* for BLS inflation estimates.

[630] The Commission does not expect other market participants to incur significant incremental costs associated with the proposed change in the access fees and rebates. As shown in Table 5, market participants deal with over 100 fee changes per year across all exchanges and thus the Commission believes it reasonable to expect that one fee change by the exchanges to bring their fees into compliance with the proposal would represent an economically trivial incremental cost to these market participants.

part of the MDI Rules and would thus be a new cost under this proposal. The discussion below distinguishes costs to the exclusive SIPs accordingly as those included in the MDI Rules and new costs from this proposal.

The estimated initial one-time cost of $4,000 and $7,000 in ongoing costs for at least two years for exchanges to comply with the proposed amendments to rule 603 and 600 [631] account for the proposed acceleration of the necessary data to generate the odd-lot information, including the best odd-lot order, and transmit to the exclusive SIPs. The costs reported here account for an increase in the costs associated with the MDI Rules that will require the exchanges to transmit all of the data necessary to generate consolidated market data to competing consolidators.[632]

Consequently, for the exchanges, the costs associated with providing the exclusive SIPs with odd-lot information would represent an acceleration of costs anticipated in the MDI release rather than new costs—with a few differences. First, the odd-lot information would be transmitted to the exclusive SIPs as opposed to the competing consolidators. Second, the ongoing costs of the proposal would be incurred only until the exclusive SIPs are retired, which the Commission estimates will be at least two years after the Commission's approval of the plan amendment(s) required by rule 614(e).

The estimated one-time cost of $567,000 and ongoing costs of $170,000 imposed on the exclusive SIPs to comply with the proposed amendments to Rules 603 and 600 relate to the requirement for the exclusive SIPs to develop, operate, and maintain systems to collect and disseminate the odd-lot information inside the NBBO as required by the proposal.[633] The exclusive SIPs would incur these costs to receive and disseminate odd-lot information inside the NBBO and to estimate and disseminate the best odd-lot order. The Commission expects these costs are primarily made up of costs an exclusive SIP would incur to convert to become a competing consolidator. Thus, for exclusive SIPs that will become competing consolidators in the absence of the proposal, the initial costs represent an acceleration of costs articulated from the MDI Rules more than they do new costs. Further, the ongoing costs for exclusive SIPs to comply with proposed rules 600 and 603 would be incurred only until the exclusive SIPs are retired, after which time these costs were previously accounted for in the MDI Adopting Release.

If one or both exclusive SIPs will not become competing consolidators in the absence of the proposal, the initial and ongoing costs in Table 13 would represent new costs associated with the proposal. However, the MDI Adopting Release expressed an expectation that exclusive SIPs would likely become competing consolidators.

Likewise, the Commission recognizes that requiring the exclusive SIPs to build out the capacity to disseminate aspects of the data required by the MDI Rules increases the likelihood that the exclusive SIPs would choose to become competing consolidators because they would already have even more of the technology implemented in order to comply with the requirements of a competing consolidator—lowering the relative cost of becoming a competing consolidator.[634] The Commission recognizes that if the proposal results in one or both exclusive SIPs becoming competing consolidators, the costs in Table 13 could underestimate the full costs of exclusive SIPs because it does not account for the full costs of becoming a competing consolidator. However, as expressed in the MDI Adopting Release, the Commission expects that exclusive SIPs would likely become competing consolidators and therefore, believes that the costs in Table 13 are not underestimated.

The Commission recognizes that proposed rule 600 could increase the initial costs of becoming a competing consolidator and would increase the ongoing costs of competing consolidators, but believes that such costs are already accounted for in the MDI Adopting Release.[635] In particular, competing consolidators could incur additional compliance costs to estimate and disseminate the best odd-lot order. To the extent such costs are not accounted for in the MDI Adopting Release, they would likely be a small fraction of the compliance costs of including odd-lot information in SIP data noted above because the competing consolidators would already have the information necessary to calculate the BOLO, so most of the cost would be the initial cost of coding the information and the cost of processing that code in real time.

E. Effect on Efficiency, Competition, and Capital Formation

1. Efficiency

The Commission believes that the proposals would improve price efficiency relative to the baseline. The improvement in price efficiency is expected largely to come through the reduction in the tick size and the reduction of the access fee cap. The acceleration of portions of the MDI Rules could also increase price efficiency, but those effects are largely to accelerate the economic impact already anticipated in the MDI Rules.

The Commission expects that lowering the tick size for some NMS stocks with prices equal to or greater than $1.00, as well as lowering the access fee cap for all stocks to either 5 or 10 mils for stocks with prices equal to or greater than $1.00, or to 0.05% for stocks with prices lower than $1.00, would increase price efficiency. The Commission expects the reduction in the tick size for some stocks along with the reduction of the access fee cap for all stocks would improve liquidity for many stocks while causing little to no harm. This reduction is expected because research suggests that when trading becomes less costly, market participants have an increased incentive to gather more information because doing so is more profitable.[636] Gathering more information and trading on that information means that prices are more reflective of the fundamental value of the firm. Consequently, for stocks that receive an improvement in liquidity due to the lower tick size or the reduction in the access fee the Commission expects an improvement in price efficiency.[637]

Making fees and rebates determinable at the time of execution, along with the reduction of the access fee cap could also increase price efficiency by helping minimize potential conflicts of interest. The inability for broker-dealers to determine access fees and rebates at the

[631] In the MDI Adopting Release, *supra* note 5, section V.C.2(d)(ii), the Commission estimated costs to the exchanges of collecting and transmitting the necessary information to the competing consolidators to be approximately $70,000 in one-time costs and approximately $130,000 in ongoing costs. The additional $4,000 in one-time costs and $7,000 in ongoing costs here represent a 5% addition over the costs in the MDI release to account for the proposed new requirement to send the necessary data to generate odd-lot information to the exclusive SIPs ($70,000 × 0.05 = $3,929 ≈ $4,000 and $130,000 × 005 = $7,050 ≈ $7,000). *See infra* note 739 and accompanying text.

[632] *Supra* note 404 and accompanying text.

[633] *See infra* notes 728, 730, 732, and 733 and accompanying text for a breakdown of these cost estimates.

[634] In the MDI Adopting Release, the Commission anticipated that both exchanges operating exclusive SIPs would have strong incentives to enter the competing consolidator market. *See* MDI Adopting Release, *supra* note 5, at V.C.2.(a).(ii).

[635] *See supra* section V.D.6 for further discussion of how or whether this requirement would alter the compliance costs of competing consolidators.

[636] *See, e.g.,* Dixon, *supra* note 556 for a discussion of this concept in the context of short selling.

[637] *Id.*

time of execution makes it difficult to effectively pass them on to their customers.[638] To the extent that order routing decisions are affected by potential conflicts of interest, these potentially conflicted decisions could harm efficiency by leading to inefficient trading decisions and thus an inefficient incorporation of information into stock prices.[639] Lowering the access fee and decreasing the tick size will, for tick-constrained stocks at least, lower overall transaction costs for demanding liquidity and diminish the role that access fees and rebates might play in order routing decisions. Further, making access fees determinable at the time of execution would further enhance efficiency by allowing market participants certainty concerning the fees that they will be charged per transaction. This certainty could also allow broker-dealers to more efficiently examine their own best-execution performance. Additionally, to the extent that this feature allows broker-dealers to pass fees on to end customers they could help eliminate entirely distortions that might occur due to potential conflicts of interest. Greater certainty about fees and rebates in advance of routing an order could also increase the efficiency of the broker-dealers' best execution assessments by providing them with greater certainty about the full cost of a transaction prior to placing the order.

The acceleration of adding odd-lot information to NMS data and the inclusion of information relating to the best odd-lot quote would realize many of the price efficiency benefits to this data articulated in the MDI Rules at a sooner date, providing improved price efficiency earlier than anticipated in the MDI Rules. Not all efficiency-related benefits articulated in the MDI Rules associated with the inclusion of odd-lot information will be realized sooner because the Commission acknowledges that the proposal would not reduce the latency of SIP data.[640] Specifically, research suggests that adding information on the shares available at price levels inside the NBBO may improve price efficiency.[641] Currently only market participants who subscribe to proprietary data feeds can view the odd-lot information and thus can adjust trading strategies and decisions based on the information contained therein. Expanding the exclusive SIP feeds to include odd-lot information will sooner provide new information to those investors who subscribe to the SIP data but do not subscribe to proprietary data feeds. The extent to which investors can quickly incorporate this information into stock prices before the full implementation of the MDI Rules and increase efficiency is limited.[642]

2. Competition

a. Trading

i. Modification of Rule 612 To Create a Tiered Tick Structure

A smaller tick could lead to greater competition on pricing, which more effectively balances liquidity supply and demand. This greater competition on pricing comes with a reduced importance on time priority and discourages liquidity oversupply thereby allowing slower traders to better compete with faster traders to provide liquidity and earn the spread.

Reducing the tick size for tick-constrained stocks could induce some order flow onto the exchanges. Academic and industry research suggests that tick size constraints create a competitive disadvantage for exchanges because they create long queues for limit order execution and increase the incentives to internalize, leading to more off-exchange trading.[643] The disadvantage comes because in stocks that are tick-constrained, queues are longer, fill rates lower, and the relative cost of crossing the spread higher. If a narrower tick alleviates these disadvantages, then more order flow in these securities could be routed to the exchanges.

ii. Minimum Pricing Increment for Trading

Applying a minimum pricing increment to trading, coupled with reducing the minimum pricing increment for quoting, could affect measures of the frequency and magnitude of price improvement, as previously explained in Section V.D.2. The Commission recognizes that changes to these measures could affect transaction costs paid by investors as well as where broker-dealers route customer order flow. For example, the less price improvement that OTC market makers offer to retail traders, the less attractive they might be to broker-dealers who handle retail traders. This coupled with the fact that OTC market makers would be restricted to the same minimum trading increment as exchanges and ATSs would help level the competitive playing field between exchanges/ATSs and off-exchange dealers when it comes to attracting retail order flow. Such a development would put competitive pressure on OTC market makers to price improve trades because exchanges and other ATSs would have an increased ability to potentially innovate and compete for retail orders with wholesalers. Accordingly, the Commission expects that trading venues would further compete on providing price improvement and that the harmonization of trading and quoting increments would not mitigate the execution quality improvements from a reduction in the minimum pricing increment.[644]

In the longer term, the proposed modification of rule 612 to require the tick size to apply to trading could make exchanges and ATSs more competitive in terms of their ability to attract retail order flow. This stems from the fact that currently one reason retail broker-dealers route orders to wholesalers is to take advantage of sub-penny price improvement that exchanges and ATSs do not offer. By harmonizing the trading increment the proposal would create a more level playing field for exchanges and ATSs to innovate to attract retail order flow. Certainly, the exchanges and ATSs face obstacles to more effectively compete for order flow, but requiring all trade to occur in units of the tick size makes it more likely that the exchanges and ATSs could find a way to innovate. While the Commission cannot predict the type of innovation that that exchanges and ATSs may design to attract retail order flow, a more level playing field increases the likelihood that such innovation could occur.

[638] *See* section V.C.2 describing how transaction fees and rebates are currently determined.

[639] If order routing decisions are not significantly affected by access fees then the effect on efficiency would be negligible.

[640] *See supra* section V.D.5.b for additional discussion.

[641] *See* Bartlett, et al. (2022), *supra* note 365.

[642] The MDI Rules do not require the competing consolidators to distribute odd-lot information. Thus, it is possible that competing consolidators may not choose to distribute odd-lot information, in which case the positive effect on price efficiency will be lost. The Commission believes that this outcome is unlikely because the odd-lot information appears to be valuable in terms of having information relevant to stock prices (*see* Bartlett, et al. (2022), *supra* note 365), and the alternative to odd-lot information from the competing consolidators would be to subscribe to all of the proprietary data feeds, which is expensive. Thus, the Commission believes that there will be significant demand for the odd-lot information and that the competing consolidators will therefore offer the data.

[643] *See* Kwan, Masulis, and McInish (2015), *supra* note 99, *see also* MEMX Report, *supra* note 105.

[644] One industry study suggests that it is not the presence of on-exchange quoting restrictions that drives off-exchange price improvement. This study shows, using Rule 605 data, that stocks with very wide spreads have more price improvement than otherwise. *See Market Lens: Unlevel Playing Field? What 605s Can Tell Us About Tick Sizes,* Citadel Sec. (Sept. 8, 2022), *available at https://www.citadelsecurities.com/news/market-lens-unlevel-playing-field-what-605s-can-tell-us-about-tick-sizes/* (''Citadel Paper'').

However, if such innovation by exchanges were to occur, it could increase the fraction of retail trading volume on the exchanges.

iii. Access fees

The lower access fees under this proposal could affect certain exchanges' business models. For instance, as discussed in Section V.D.3, lowering the access fee cap is expected to lower the total amount of access fees collected and rebates distributed by certain exchanges, and the Commission estimates that exchanges could lose approximately $89 million per year in net capture under their current business models. Exchanges might respond, in part, by adjusting the rebates they offer, which could affect order routing. For instance, exchanges for which high rebates are currently the means of attracting certain flows could have to adjust their business model or find revenues sources, other than access fees collected, to fund rebates.

These effects could impact competition between trading venues. First, since the proposal would make the exchanges more similar in terms of fee structures (*i.e.,* fee/rebate levels and tiers),[645] competition in other key dimensions of trading—such as execution quality like fill rates, transaction costs, and speed of execution—could increase and spur innovations, ultimately to the benefit of investors. Second, some exchanges' profitability, and accordingly their operations, could be impacted, especially in the short run as these exchanges adapt their business models. In an extreme case, some existing exchanges could ultimately shut down, though the Commission notes that exchanges derive revenues from other sources, such as data and connectivity fees, which also impact their viability.[646] Third, certain exchanges' competitiveness could be affected relative to other exchanges as well as relative to other trading venues.

iv. Acceleration of the MDI Rules and Addition of Information About Best Odd-Lot Orders

The acceleration of the inclusion of odd-lot information in the NMS data along with the implementation of the MDI Rules round lot definition might lead to increased competition between exchanges and ATSs and OTC market makers, including wholesalers. NMS stocks priced greater than $250.00 would be expected to benefit sooner from a tighter NBBO, thereby increasing the competiveness of the best displayed protected quotes, following the proposed accelerated implementation of the round lot definition. A greater visibility of more competitively priced odd-lot orders with the NBBO could increase the competitive position of exchanges and ATSs and attract greater order-flow. This effect would be temporary, only lasting until the full implementation of the MDI Rules. After the full implementation of the MDI Rules the effect on competition is accounted for by the MDI Rules.

b. Broker-Dealer Services

The Commission believes that the proposal could affect certain broker-dealers' current business model to the extent that they rely on rebates for revenues. This could affect these broker-dealers' operations as they adjust to the new competitive environment. Making fees and rebates determinable at the time of execution could enable the customers of broker-dealers to better discuss transaction fees and rebates with their broker-dealers, and potentially request data on such fees, which could increase competition between broker-dealers along this dimension, leading to better order execution and lower costs. In particular, while there is currently no requirement to either pass on the fees and rebates, or account for them when assessing execution quality, the Commission believes that there could be competitive pressure to do so as it would be straightforward for a competing broker-dealer to include fees and rebates in its transaction cost analysis, or to simply pass them through to the customer.

The Commission also believes that including odd-lot information in the exclusive SIPs and providing the best odd-lot order information, as well as making fees and rebates determinable at the time of execution, would enhance competition for broker-dealer services. First, making the best odd-lot order information accessible through the exclusive SIPs would facilitate better analysis of a broker-dealer's execution quality than is currently available with just NBBO data.[647] Thus, it could be easier for some customers to monitor the performance of their broker-dealers.[648] Additionally, making the fees and rebates determinable at the time of execution would further allow customers to monitor the performance of their broker-dealers as it would increase the ability for a customer to request more detailed information on the fees and rebates that the broker-dealer pays and to have them either passed on to the customer or to have them accounted for when evaluating execution costs.[649]

Additionally, the Commission does not believe that the proposal initially would alter the competition to provide market access to retail brokers. Many retail broker-dealers find it economically beneficial to rely on OTC market makers, including wholesalers, who maintain access to multiple trading venues, to facilitate market access rather than becoming a member or subscriber to an exchange or ATS themselves and directly route orders to the venues.[650] The benefits from being able to selectively choose what order-flow to internalize helps OTC market makers support payment for order flow to retail broker-dealers, which further incentivizes broker-dealers to continue

[645] Currently, as explained in Section V.C.2, exchanges can differentiate themselves by offering different fee schedules—*e.g.,* inverted, flat fee, or maker-taker with numerous price strata and volume based pricing tiers. That said, the Commission also noted (Table 5 in SectionV.C.2) that the data do not show a high variation in the highest fees charged, which would suggest that the reduction in variation of fee and rebate levels under this proposal would primarily make different exchange fee models more similar.

[646] This effect considers the impact of MDI implementation on proprietary data feed revenues. Exchanges are expected to collect these data and connectivity fees from competing consolidators and self-aggregators in addition to revenue from proprietary feeds, which may supply information beyond the core data that would be distributed. The MDI Adopting Release anticipated that data revenue for the exchanges is likely to diminish after the full implementation of the MDI Rules. This effect will decrease the likelihood that a new exchange or a low volume exchange could gather sufficient revenue from market data to become or remain viable. *See* MDI Adopting Release, *supra* note 5, section V.C.2.(ii).(d), for the full discussion of the effect of the competing consolidator model on exchange data fees.

[647] While the Commission does not expect most retail traders would engage in this sort of benchmarking due to most retail traders lacking the technical capacity to do so, some institutional traders likely have this capacity and so would likely engage in such benchmarking. Institutional traders have strong incentives to monitor all aspects of transaction costs as these costs can significantly affect portfolio performance. *See* Anand, et al. *(2012), supra* note 596.

[648] It is possible that some institutional traders have access to proprietary data feeds that provide the ability to benchmark trades against odd-lot orders. Or they could contract with specialized firms that have access to the data and provide transaction cost analysis.

[649] Under the baseline it would be difficult in many cases for a broker-dealer to allocate specific rebates received or fees paid to one customer's trade because the fees or rebates in a given month are based, in many instances, on that broker-dealer's total trading volume across all customer accounts (*see* section V.C.2.b.iv). However, if the fees and rebates are determinable at the time of execution the broker-dealer could feasibly track a specific fee or rebate to a specific trade making it possible for a customer to request such information.

[650] Retail-broker-dealers may also route to wholesalers to avoid the expenses associated with establishing connections to some the exchanges. Wholesalers also frequently offer other services such as free routing on orders that they do not internalize.

to route order-flow to OTC market makers such as wholesalers. Thus, lower access fees or harmonized trading increments might not materially affect a retail broker-dealer's decision to route to an OTC market maker instead of an exchange. Second, while the proposal does not allow OTC market makers to price improve at any level that they wish, the proposal is designed to ensure that there are usually at least 4 ticks within the spread for nearly all stocks.[651] Thus, the Commission believes it is reasonable to expect that the OTC market makers, including wholesalers, would still be able to provide meaningful price improvement at the designated tick sizes. Because the Commission expects that OTC market makers would still be able to provide price improvement to retail orders, broker-dealers handling retail trades would still have an incentive to route to wholesalers.[652] Thus, it would still likely be cost effective for retail broker-dealers to continue to route to wholesalers. For these reasons, the Commission does not expect the proposal to lead to a significant reduction in retail orders routed to wholesalers.

c. Market Data

Expediting the inclusion of odd-lot data into the exclusive SIPs could increase competition among data providers of odd-lot information prior to the full implementation of the MDI Rules though it would do so less than envisioned in the MDI release, for the period until the MDI Rules are fully implemented. Specifically, under the implementation schedule in the MDI Rules, adding odd-lot information to core data would occur during the parallel operation period. Adding odd-lot information to the current exclusive SIPs would enable the exclusive SIPs to compete directly with the exchange's proprietary data products for use in visual display settings. Currently, the only means to get odd-lot information is to subscribe to multiple proprietary data feeds. This would change if odd-lots are a part of SIP data. Unlike the data provided by the competing consolidators, the Commission does not believe that the current exclusive SIPs are fast enough for use in certain trading. Thus, the competition for odd-lot data would be limited to odd-lot information used in visual display settings. To the extent that some market participants subscribe to proprietary data for use in visual display settings, the introduction of odd-lot information to the exclusive SIPs can provide competition to this segment of the market and could reduce the prices of odd-lot information provided by the proprietary data feeds. However, the Commission does not believe that this market is very large. Currently, for most display settings market participants use SIP data or one of the top of book data products offered by one of the three highest volume exchange groups and it is unclear to what extent market participants subscribe to proprietary data with odd-lot information for use in visual display settings. However, if the exclusive SIPs choose to charge more for data, then this price increase could provide a competitive advantage to the providers of top of book data as it would become relatively less expensive.

The proposed requirement on the exclusive SIPs to disseminate the accelerated odd-lot information until the exclusive SIPs are retired, would guarantee that the odd-lot information would be disseminated.[653] This aspect of the proposal presents the possibility that the new requirements on the SIPs could reduce competing consolidator competition, which could reduce the expected benefits of the MDI Rules. However, this effect could be small because non-SIP competing consolidators would still have an opportunity to compete for a significant market share. The proposed requirement could increase the competitive advantage of exclusive SIP competing consolidators relative to non-SIP competing consolidators[654] because they would have established a market for odd-lot information before having to face competition. Because data users could increase the costs to switch to another competing consolidator, they could stay with a SIP competing consolidator to avoid incurring those costs. The proposal could also reduce the costs for exclusive SIPs to become competing consolidators by accelerating those costs before they transition, increasing the likelihood that they would do so.[655] The Commission recognizes that this additional competitive advantage could dissuade some potential competing consolidators from entering the market but believes it is reasonable to expect this to have a limited effect on competition. In particular, if competing consolidators can offer a lower latency product, they can capture a part of the market that the proposal would not affect—those who would use the odd-lot information in ways other than visual display.[656] If this market is significantly bigger than the visual display market, the competitive advantage of the exclusive SIPs would be less likely to dissuade entry and competing consolidators could have sufficient incentive to enter the market, thus limiting the effect on competition from the proposal.

3. Capital Formation

The Commission expects that the proposal could enhance capital formation through two channels. First, the proposed reduction in the access fee cap would reduce the amount of access fees paid by liquidity demanders, who are more likely to be non-high-frequency traders.[657] Analysis presented above in Table 11 estimates that, if the proposal had been in place in the first six months of 2022, then it would have saved liquidity demanders approximately $1.56 billion in access fees not paid in that period. Similarly, the Commission expects that the proposal would likely lead to an overall reduction in transaction costs due to the reduction in the tick size.[658] Table 4 indicates that approximately 56% of trading volume occurs in stocks that are tick-constrained and this volume can be expected to experience a decrease in transaction costs due to a lower tick size facilitating bid and ask prices that better equate liquidity supply and demand. Lower transaction costs caused by the lower tick size for some stocks and the lower access fee mean more capital available to investors to fund investment.

[651] The exceptions would be if a stock with a price greater than $1.00 has a quoted spared less than $0.004. In this case, the stock would be assigned a tick of $0.001 and there would be less than 4 ticks within the spread. The other case would be if a stock had a wide spread during an evaluation period and was thus assigned a wide tick and then subsequently the tick size shrank such that there were fewer than 3 ticks intra-spread. In this case the stock would have fewer than 4 ticks intra spread until after the next evaluation period.

[652] The effect of the proposal on retail price improvement is discussed in greater detail in section V.D.2.

[653] *See infra* section V.D.5.c for additional discussion of the effects of this requirement, such as to guarantee that the odd-lot information would be disseminated. While this proposal requires the exclusive SIPs to distribute odd-lot data, the MDI Rules do not require the competing consolidators to disseminate odd-lot data. However, the MDI Adopting Release anticipated that at least one competing consolidator will do so because there would be demand for the data. *See supra* section V.C.3.

[654] *See* MDI Adopting Release, *supra* note 5, for a discussion of how competing consolidators have higher barriers to entry than exclusive SIPs, such as in the form of compliance costs associated with Reg SCI.

[655] In the MDI Adopting Release, the Commission anticipated that both exchanges operating exclusive SIPs would have strong incentives to enter the competing consolidator market. *See* MDI Adopting Release, *supra* note 5, at V.C.2.(a).(ii).

[656] *See* discussion in section V.D.5.b.

[657] *See* discussion in section V.C.1 and V.C.2.

[658] *See supra* section V.D.1.

F. Reasonable Alternatives

This section considers alternatives to the proposal. These alternatives would have different costs and benefits than the proposal and these relative costs and benefits are discussed in this section. The alternatives are organized around three key elements of the proposal: the extension of rule 612 to apply to trading increments; alternative tick sizes; and alternative access fee regimes. These alternatives could be used together or in combination with each other and could also be paired with other elements of the proposal. Where applicable the Commission, when considering the economic impact of an alternative, has specified which alternatives would likely be paired together.

1. Alternative Trading Increment

A primary motivation for extending rule 612 to apply to minimum pricing increments for trading (or ''trading increments'') is to provide exchanges and ATSs an improved opportunity to potentially innovate in ways that would allow them to be more competitive in terms of attracting retail order flow, which could in turn increase overall competition for retail trades and lead to higher quality order executions for retail trades.[659] This section discusses two alternative methodologies that the Commission could pursue to level the playing field in this regard between exchanges and ATSs on the one hand and OTC market makers on the other in terms of competing for retail order flow. It also discusses the economic effects of choosing not to extend rule 612 to apply to trades.

a. $0.001 Trading Increment

Instead of modifying rule 612 to apply to trades, the Commission could instead modify rule 612 to require trading of all stocks priced equal to or greater than $1.00 to occur in increments of $0.001 regardless of the tick size applicable to quotes. For stocks with prices less than $1.00 the Commission would propose no change relative to the proposal: stocks priced less than $1.00 would be allowed to trade in increments of $0.0001. This alternative would also preserve an exception for midpoint or benchmark trades, such as VWAP trades, to execute at finer price increments.

This alternative would preserve the ability for exchanges and ATSs to potentially innovate in order to try and attract retail order flow, though to a lesser extent than would be expected of the proposal by creating a level playing field with respect to the trading increment between exchanges and ATSs on the one hand and OTC market makers on the other.[660] Under this alternative suppliers of liquidity would, in many instances, be restricted to post their quotes at price increments larger than the trading increment. Relative to the proposal, this could be expected to lower the amount of order flow executed at exchanges that rely on posted liquidity to attract trading interest. This alternative would also allow OTC market makers such as wholesalers to offer price improvement on a price lattice that is at least as fine and in some cases finer than what is included in the proposal.[661] The net effect of this alternative on retail price improvement is uncertain. As with the proposal it is not clear whether constraining retail price improvement to a finer price lattice would on average improve or harm the total amount of price improvement received by retail traders relative to what they currently receive.[662] In some cases constraining the lattice upon which price improvement can be offered could improve price improvement relative to the baseline by inducing OTC market makers to round up price improvement. In other cases they may round down. The net effect is uncertain.

While the net effect of this alternative on retail price improvement is uncertain relative to the baseline, the proposal's net effects are more uncertain. This is because allowing retail price improvement to always occur in increments of $0.001 is a smaller deviation from the baseline than what is considered in the proposal.

This alternative would have somewhat lower implementation costs relative to the proposal. This is because market participants would not have to develop trading systems that have to account for four tick sizes for stocks priced equal to or greater than $1.00 and where the trading increment can change periodically. Instead, they would have to design systems with only one trading increment that applies to all stocks with prices equal to or greater than $1.00 which would be consistent through time. Consequently, the Commission estimates that this alternative would decrease one-time implementation costs by $1.1 million relative to the proposal.[663]

b. Do Not Apply Rule 612 to Trading

The Commission could amend rule 612 to apply only to accepting, ranking, and quoting but not to trading—reflecting the current baseline application of rule 612. The advantage to this alternative would be that broker-dealers, including wholesalers, could still offer price improvement relative to exchanges in whatever increments they choose—leaving unchanged a wholesaler's ability to offer price improvement relative to the baseline. This alternative would eliminate the uncertainty in the proposal regarding how applying the tick increment to trading could affect retail price improvement.[664]

Not applying the tick increment to trading would reduce the ability of exchanges and ATSs to potentially innovate in ways that could make them more competitive at some point when competing for retail order flow. This would occur because the OTC market makers would retain their advantages in terms of sub-penny pricing that exchanges and ATSs do not have.[665]

The Commission preliminarily believes that the compliance costs associated with this alternative would be less than those discussed for the proposal.[666] The proposal would require market participants to update systems to account for rule 612 being applied to trading systems. This alternative would remove that proposed expansion of rule 612 and would thus lower the associated compliance costs. The Commission estimates that this alternative would reduce the one-time implementation costs of the proposal by an estimated $3.8 million.[667]

[659] *See* text surrounding *supra* note 239.

[660] *See supra* section V.E.2.a.ii.

[661] For stocks with a $0.001 tick, this alternative would offer the same price lattice for price improvement as the proposal. For stocks with a wider tick, this alternative would offer a finer pricing lattice for wholesalers to offer price improvement relative to the proposal.

[662] *See supra* section V.D.5.

[663] A uniform trading increment would primarily affect trading centers as opposed to other market participants. To reflect the simplicity of this alternative relative to the proposal, the Commission is revising down the implementation cost for trading centers by $20,000: from $140,000 per trading center to $120,000, for a total reduction in cost of approximately [$20,000*54 ≈] $1.1 million.

[664] *Id.*

[665] *See supra* section V.C.1. for a discussion on why the application of the tick size to only quoting provides an advantage to wholesalers competing for order flow.

[666] *See supra* section V.D.6.

[667] Not applying rule 612 to trading increments would primarily affect the implementation costs associated with trading venues as opposed to other market participants. For this alternative the Commission estimates that this alternative would lower compliance costs for trading centers by half because that the alternative would only require modifications to one aspect of the systems of market participants (quoting) as opposed to both quoting and trading. Thus, this alternative would lower the initial $140,000 compliance cost estimate for

Continued

c. Segmented Trade Exemption

Similarly, the Commission could also apply the tick increment to trading and quoting, but exempt segmented trades, such as most retail trades, from the trading requirements of rule 612 in one of two ways as follows. First, to conform with current retail liquidity programs, the Commission could allow a lower uniform trading and quoting increment of $0.001 for segmented orders such as those executed off-exchange (such as by a wholesaler) or on-exchange Retail Liquidity Program in stocks priced equal to or greater than $1.00. This alternative would allow for qualifying segmented orders in an exchange retail liquidity program or an off-exchange trading center such as a wholesaler to receive price improvement on qualifying orders in increments of $0.001. Second, the Commission could exempt segmented trades from the trading requirements of rule 612 altogether, thus not placing any restrictions on the trading increment of segmented trades.

Either of these alternatives would produce the same net effect on retail price improvement as those discussed earlier in this section. Specifically, applying a $0.001 increment to retail trades would lead to a net uncertain effect on overall retail price improvement, while exempting retail trades from the trading requirements of proposed rule 612 would leave retail price improvement unchanged relative to the baseline.

Additionally, the effect on ATSs' and exchanges' abilities to potentially innovate to attract retail order flow would likewise be unchanged. In the case of a $0.001 segmented trading tick, the ability for exchanges and ATSs to potentially innovate in ways that could increase their ability to compete for retail order flow would be increased relative to the baseline and would be similar to the proposal. In the case where retail trades are exempt from the trading requirements of proposed rule 612 the competitive position of exchanges and ATSs relative to OTC market makers would be unchanged relative to the baseline.

The originating broker would need to identify qualifying segmented orders [668] with the addition of a segmented order identifier affixed to the order. This alternative would use a two-part definition of the term ''segmented order.'' First, the order must be for an account of a natural person, or an account held in legal form on behalf of a natural person or group of related family members. Second, for such an account, the average daily number of trades executed in NMS stocks must be less than 40 in each of the preceding six calendar months. Defining ''segmented order'' this way would encompass the marketable orders of individual investors with expected low adverse selection costs that retail brokers currently route to wholesalers for handling and execution. These orders already are segmented in practice.

Limiting qualifying segmented orders to ''natural persons'' for purposes of this alternative would draw on existing rules designed to identify the orders of individual investors. For example, the definition of ''retail customer'' in the Commission's Regulation Best Interest (''Regulation BI'') is limited to a ''natural person.'' [669] Moreover, several national securities exchanges operate programs for trading ''retail'' orders that are limited to accounts of natural persons or certain accounts on behalf of natural persons. This definition of segmented order would be closely related to these rules,[670] as well as to FINRA's fee schedule for Nasdaq's Trade Repository Facility.[671] Patterning the definition of segmented order on existing SRO rules would leverage market knowledge. This would help minimize the costs of compliance because broker-dealers would already be familiar with identifying orders as for the accounts of natural persons, or for related accounts, in these other contexts. In addition to the accounts of natural persons themselves, the definition would, consistent with SRO rules, cover accounts held in legal form on behalf of natural persons or groups of related family members. Including related family members in this alternative is designed to not restrict the types of arrangements that may be set up to benefit family groups, including individual retirement accounts, corporations, and limited liability companies for the benefit of related family members.

The second part of such a definition of segmented orders would focus on the frequency of trading in an account. It would limit the average daily number of trades executed in NMS stocks in an account to less than 40 for each of the six preceding calendar months. This would exclude very active traders whose orders are likely to impose a much higher level of adverse selection costs on liquidity providers than the less-active accounts that are more typical of individual investors. For example, very active traders may use sophisticated trading tools, such as application programming interfaces (APIs) and computer algorithms, to submit their orders. These tools can enable highly active trading strategies that impose much higher adverse selection costs on liquidity providers than the manual placement of orders by a natural person. Rather than prohibiting any opportunity for investors to use potentially beneficial trading tools,[672] however, the proposed definition specifies a maximum level of trading activity as a means to limit the level of adverse selection costs.

The level is supported by an analysis of the distribution of order activity across accounts reported to the Consolidated Audit Trail as being held for the benefit of an ''Individual Customer'' for the first six months of 2022.[673] Across this period, slightly

trading centers by $70,000, to $70,000, for a total reduction in cost of approximately [$70,000*54 ≈] $3.8 million.

[668] For this alternative the Commission would define an originating broker as any broker with responsibility for handling a customer account, including, but not limited to, opening and monitoring the customer account and accepting and transmitting orders for the customer account.

[669] 17 CFR 240.15l–1(b)(1) (defining ''retail customer'' as, among other things, a natural person who receives a recommendation of any securities transaction from a broker-dealer and uses the recommendation primarily for personal, family, or household purposes).

[670] *E.g.,* IEX Rule 11.190(b)(15) (providing, among other things, that ''[a] Retail order must reflect trading interest of a natural person'' and that ''[a]n order from a retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual.''); and Nasdaq, Equity 7, section 118 (defining a ''Designated Retail Order'' as originating from a ''natural person'' and explaining that ''[a]n order from a 'natural person' can include orders on behalf of accounts that are held in a corporate legal form—such as an Individual Retirement Account, Corporation, or a Limited Liability Company—that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual'').

[671] FINRA Rule 7620A (defining a ''Retail Order'' as originating from a ''natural person'' and explaining that ''[a]n order from a 'natural person' can include orders on behalf of accounts that are held in a corporate legal form, such as an Individual Retirement Account, Corporation, or a Limited Liability Corporation that has been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual'').

[672] Some SRO rules, for example, prohibit the use of any computerized methodology for submitting retail orders. *See, e.g.,* NYSE Rule 7.44(a)(3) (defining ''retail order'' in the context of NYSE's RLP to require that ''the order does not originate from a trading algorithm or any other computerized methodology'').

[673] Analysis of Consolidated Audit Trail data for all orders originated from an account marked as held for the benefit of an Individual Customer, Jan. 1, 2022, through June 30, 2022. This analysis counted any order associated with one or more trades or fills in an order lifecycle. For the Consolidated Audit Trail, account type definitions

more than 99.9% of Individual Customer accounts originated, on an average daily basis, 40 or fewer orders associated with a trade. The median number of daily-average orders associated with a trade from accounts at or below this threshold was less than one.[674] The median number of daily-average orders associated with a trade from accounts above this threshold was approximately 68.[675] Accordingly, the threshold in the proposed rule is designed to capture the overwhelming majority of individual investor accounts while excluding accounts that might impose a higher level of adverse selection costs on liquidity providers.[676]

The Commission expects that this alternative would result in additional costs beyond those of the proposal. The Commission believes it reasonable to expect that the definition of a qualifying segmented retail order used for purposes of this alternative would result in direct initial and ongoing costs to broker-dealers associated with the monitoring of retail accounts and the affixation of an identifier to segmented retail orders. The Commission estimates that a total of 157 originating brokers and routing brokers would incur a one-time implementation costs of $170,000 to add a segmented order marker to existing systems.[677] The 157 originating brokers would incur an estimated additional initial cost of $33,760 per broker related to hiring in-house and outside counsel to review and update existing policies and procedures to identify segmented retail orders along with $3,472 per year for ongoing review.[678] The Commission would not expect the collection of data on account trading frequency to introduce new costs as brokers are already required to maintain customer trading information.[679] However the Commission estimates that originating brokers would have to modify existing technology to explicitly monitor customer trade frequency for an estimated one-time cost per broker-dealer of $95,480.[680] Market centers where segmented retail orders would be transacted are estimated to have to incur similar initial one-time costs of $170,000 to update their systems to receive and manage orders marked as a segmented retail order.

Alternatively, the Commission could use a definition of retail order that is qualitative in nature, for example as originating from a natural person and not using an application-program interface. Relative to the alternative outlined above, this alternative might be less costly because there would not be the need to monitor trading activity. However, it would still be necessary to adopt systems to identify retail customers. Moreover, this alternative might achieve less of the benefit of harmonization across trading and quoting, as off-exchange venues have greater ability to segment and therefore to attract the retail order flow.

2. Alternative Tick Sizes

One reason why the Commission chose the particular tick size cutoffs in this proposal was to have sufficient ticks intra-spread to preserve meaningful price improvement.[681] Most current price improvement would be unaffected by the proposal because it occurs as a result of a midpoint trade, or it occurs in increments that currently align with the baseline tick of $0.01.[682] However, for the minority of price improvement that could potentially be affected by the tick size change and the application of the tick size to trading applications, 4–8 ticks intra-spread can help preserve meaningful price improvement opportunities—though the net effect is uncertain.[683] The range of 4–8 ticks intra-spread comes at the cost of increasing the likelihood that, due to natural variation in spreads, a stock could trade with a smaller tick when a wider tick might provide a better trading environment.[684] If the Commission were to adopt one of the alternatives in section V.F.1 then the Commission could utilize alternative tick regimes that do not consider the need to provide price improvement only in units of the tick size. This section discusses alternative tick size regimes that the Commission could implement in this case.

To clarify the discussion, for all alternatives discussed in this section the following conditions apply. First, the Commission would not amend rule 612 to apply to trading situations. Thus, all alternatives here apply tick sizes only to quoting.[685] This allows the Commission

are available in Appendix G to the CAT Reporting Technical Specifications for Industry Members (*https://catnmsplan.com/*), for the field name ''accountHolderType.'' Account types represent the beneficial owner of the account for which an order was received or originated, or to which the shares or contracts are allocated. Possible types are: Institutional Customer, Employee, Foreign, Individual Customer, Market Making, Firm Agency Average Price, Other Proprietary, and Error. An Institutional Customer account is defined by FINRA Rule 4512(c) as a bank, investment adviser, or any other person with total assets of at least $50 million. An Individual Customer account means an account that does not meet the definition of an ''institution'' and is also not a proprietary account. Therefore, the CAT account type ''Individual Customer'' includes natural persons as well as corporate entities that do not meet the definitions for other account types.

[674] *Id.*

[675] *Id.*

[676] In other contexts, national securities exchanges currently characterize certain types of orders according to the level of activity associated with a market participant's account. With respect to trading in listed options, several exchanges include the concept of ''Professional'' order, and these orders, which must be identified as such, are distinguished from other customer orders. For example, pursuant to Cboe Exchange, Inc. (''CBOE'') Rule 1.1, ''Professional'' means any person or entity that is not a broker or dealer in securities and places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). Under CBOE's rules, all Professional orders are distinguished from other public customer orders (*i.e.,* orders for persons other than broker-dealers), must be marked as such, and are handled by CBOE's trading platform in the same manner as broker-dealer orders unless otherwise specified. *See* CBOE Rule 1.1. *See also* NYSE Arca Rule 1.1; Nasdaq, Options 1, section 1(a)(47); and BOX Rule 100(a)(52).

[677] This estimate is based on industry sources of the cost to program systems to add a new marking classification and adjusted for inflation. *See, e.g.,* Securities Exchange Act Release No. 94313 (Feb. 25, 2022), 87 FR 14950, 14976 (Mar. 16, 2022) (proposing amendments to Regulation SHO) (''Regulation SHO Amendment Proposal'').

[678] The Commission estimates the initial costs related to employing legal counsel to review and update policies to be: (Attorney at $462 for 40 hours) + (Compliance Counsel at $406 for 10 hours) + (Deputy General Counsel at $663 for 5 hours) + (Chief Compliance Officer at $589 for 5 hours) + (10 hours of review × ($496/hour for outside counsel service) = $33,760. With ongoing annual costs to be: (Attorney at $462 for 4 hours) + (Compliance Counsel at $406 for 4 hours) = 8 ongoing burden hours and $3,472.

[679] *See* 17 CFR 240.17a–3(a) (requiring broker-dealers to make and keep, among other things, current blotters containing an itemized daily record of all purchases and sales of securities and the account for which each such purchase and sale was effected).

[680] The Commission estimates this cost to be: (Sr. Programmer at $368 for 160 hours) + (Sr. Database Administrator at $379 for 40 hours) + (Sr. Business Analyst at $305 for 40 hours) + (Attorney at $462 for 20 hours) = 260 initial burden hours and a monetized cost of $95,480.

[681] *See supra* section II.F.2 for additional discussion. Specifically, see text surrounding *supra* note 210 where the Commission states, ''[t]he Commission believes that proposing to vary the minimum pricing increments . . . represents a balancing of pricing, liquidity, complexity, and price improvement opportunities.'' *See also* text surrounding *supra* note 221 where the Commission states ''The Commission also selected these particular pricing increments because, as described above, the proposed amendments to rule 612 are designed to (1) correlate the Time Weighted Average Quoted Spread to the minimum pricing increments by limiting the number of potential price points within the spread which in turn should mitigate the loss of liquidity that can occur when the minimum tick size is reduced, and (2) preserve meaningful price improvement for the majority of NMS stocks that would trade at minimum pricing increments that are $0.005 or less.''

[682] *See* Table 3 and surrounding analysis finding that only 18% of current price improvement occurs in sub-penny increments and not as a result of a midpoint trade.

[683] *See supra* section V.D.5 for additional analysis on this topic.

[684] *See* Table 10 and surrounding analysis.

[685] The economic effects of not applying rule 612 to trading are discussed in section V.F.1. Alternatively, the Commission could adopt any of the other alternatives presented in section V.F.1, the

Continued

to consider tick size regimes without having to balance the need for OTC market makers to have sufficient ticks intra-spread in order to offer price improvement, though these alternatives would not offer the benefit of leveling the playing field across execution venues with respect to price improvement. Second, the tick sizes discussed refer explicitly to stocks priced equal to or greater than $1.00. For stocks with a share price of less than $1.00 in every case there would be no change in rule 612 relative to the baseline—*i.e.,* a tick of $0.0001 that does not apply to trading.[686] This reflects the fact that in the proposal the only change to rule 612 for stocks priced less than $1.00 was that the tick size of $0.0001 would also apply to trading. Given the fact that all alternatives in this section are predicated on rule 612 not being expanded to trading, the trading environment for stocks priced less than $1.00 would not change relative to the baseline, and so the analysis in this section focuses exclusively on tick sizes for stocks priced equal to or greater than $1.00. These first two conditions would lower implementation costs. Third, the access fee cap would not deviate from the proposal. Specifically, for stocks priced equal to or greater than $1.00 the access fee cap would be 10 mils whenever the tick size is greater than or equal to $0.002 and 5 mils for stocks with tick sizes less than $0.002 and prices greater than or equal to $1.00. For stocks priced less than $1.00 the access fee cap would be 0.05% of the value.[687] This condition acknowledges that the alternative tick sizes discussed in this section do not affect the economics of access fees or the reasons why the Commission is seeking to reduce the access fee.[688] Consequently, for all alternatives discussed in this section the Commission would retain the tick size regime in the proposal. This condition would lead to the same implementation costs associated with access fee caps that is presented in the proposal.[689] Fourth, all proposals in this section would provide a tick size exception for midpoint trades and benchmark trades such as VWAP or TWAP trades—reflecting the value that such trades offer to investors.[690] This condition likewise does not deviate from the proposal, and thus the compliance costs associated with this condition are accounted for in Section V.D.6. Fifth, for the quoted spread based tick size regimes the Commission would use the same process described in the proposal to determine a stock's Time-Weighted Average Quoted Spread: Evaluation Periods that last one month and occur four times per year where Time-Weighted Average Quoted Spread is the time weighted quoted spread during normal trading hours.[691] Because this condition does not represent a change relative to the proposal, the implementation costs would be as discussed in the proposal.[692]

a. Quoted Spread Based Approaches

Without the need to balance the ability of OTC market makers such as wholesalers to offer retail price improvement when determining the tick size thresholds, the Commission could shrink the bands where the given tick sizes apply or consider different tick size structures. Shrinking the bands limits the risk that stocks may trade with too many ticks intra-spread due to time series variation in quoted spreads by both limiting the total number of stocks that receive a tick size reduction and also limiting the size of the tick size reduction for stocks that do qualify for a tick size reduction relative to the proposal.

In Table 10, the Commission estimated that if the proposal had been implemented in the first six months of 2022, approximately 3.4% of share volume and 7.4% of dollar volume would have received a lower tick size and then transacted when spreads were wider than 10 ticks intra spread—the point at which analysis suggested TSP stocks would have traded better with a wider tick.[693] By shrinking the bands where the tick sizes apply the Commission could mitigate the risk of shrinking the tick too much and harming market quality for some trading volume while still providing relief to stocks that are currently tick or near-tick-constrained in the current $0.01 tick regime.

In addition to narrowing Time-Weighted Average Quoted Spread bands at which the proposed tick sizes apply, the Commission could also revise the total number of tick sizes. The proposal has 4 tick sizes for stocks priced equal to or greater than $1.00. The Commission could adjust this number down to increase simplicity but at the cost of potentially assigning a stock to a tick regime that may not be optimal, or up to expand the tick size regime to stocks with wider spreads—increasing complexity but ensuring that all stocks have a tick size that is tailored to their Time-Weighted Average Quoted Spread.

i. Alternative Tick Threshold

The proposal contains a total of 4 tiers for stocks equal to or above $1, and targets between 4 and 8 ticks intra-spread. Alternatively, the Commission could reduce the number of tiers from 4 to 3, with similar ticks but with tighter criteria for reducing the tick size, as follows:

i. No smaller than $0.0025, if the Time-Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was less than $0.01.

ii. No smaller than $0.0050, if the Time-Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.01 but less than or equal to $0.02;

iii. No smaller than $0.01, if the Time-Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.02.

This alternative would target 2–4 ticks intra-spread. The empirical analysis presented in Section V.D.1 suggested that stocks with less than 2 ticks intra-spread generally benefited from the reduction in the tick size that accompanied the end of the TSP while stocks with more than 15 ticks may have been harmed. By targeting 2–4 ticks intra-spread this alternative would provide relief to stocks that are currently tick or near-tick-constrained while also reducing the risk that a stock is harmed by trading with too many ticks intra-spread.

A key difference of this alternative relative to the proposal is that a smaller fraction of overall trading volume would be assigned a smaller tick size: only those stocks with Time-Weighted Average Quoted Spreads less than $0.02. Thus a higher fraction of overall trading volume would remain at the $0.01 tick size.

The Commission estimates that the costs to implement this alternative

effect of which would be to combine the economic effects discussed in this section with those of the specific alternative in V.F.1 adopted.

[686] This stems from the first assumption which is that rule 612 is not amended in this alternative to apply to trading situations. For stocks with prices less than $1.00, this was the only proposed change to rule 612 relative to the baseline. Consequently, the economic effects of this aspect of the alternatives discussed in this section are not discussed here. *See* section V.C.1 for a discussion of the tick size baseline for stocks with prices less than $1.00.

[687] The economic effects of this aspect of the alternatives discussed in this section are not discussed here, but are discussed in the discussion of the proposal. *See, e.g.,* sections V.D.2 and V.E.

[688] *See supra* sections III.C, V.C.2, and V.D.2.

[689] *See supra* section V.D.6 for a discussion of these implementation costs.

[690] *See* text surrounding *supra* note 247 for a discussion of the role that midpoint and benchmark trades play.

[691] *See supra* section II.F.2.a for additional details on this process.

[692] *See supra* section V.D.6 of a discussion of the costs of implementing this aspect of the proposal.

[693] *See supra* section V.D.1.

would be similar or slightly lower as compared to the proposal because there would be three rather than four tick sizes that market participants would be required to adapt to, and the process for determining which stock received which tick size would be the same as the proposal.

Relative to the proposal, this alternative would more specifically target trading volume that is tick or near-tick-constrained as a stock would be required to have a Time-Weighted Average Quoted Spread less than $0.02 to qualify for any reduction in the tick size. Additionally, by targeting 2–4 ticks intra-spread instead of 4–8, this alternative would lower the risk that normal variation in quoted spreads through time could lead trading in some stocks some of the time to be worse off relative to the proposal.

Another difference between this alternative and the proposal pertains to what would occur should a reduction in the tick size result in a widening of spreads. Consider, for example, a stock that trades at a Time-Weighted Average Quoted Spread of $0.013. If the proposal were adopted, and after the implementation period, such a stock could go from a tick size of $0.01 to $0.001. One possible scenario is that spreads might widen (though the analysis suggests this is not the most likely scenario). Should spreads widen to, say $0.03, the tick would revert to $0.005; however spreads would be wider than they had been. In contrast, under this alternative, the stock would be assigned to the $0.005 bucket, rather than the $0.002 bucket. Spreads would be less likely to widen, but should they do so (consider $0.03), the tick would revert to $0.01. Under the proposal, spreads would have to undergo a 3-fold increase, to $0.04, to once again qualify for $0.01. Under this alternative, due to the less severe reduction in the tick size relative to the proposal, the spread would be less likely to widen due to a smaller tick, and were it to widen, it would need a less severe increase in the spread to revert to a tick of $0.01.

This alternative would also result in a smaller financial impact on any exchange relying on access fee revenue because none of the buckets would qualify for the 5 mil access fee. Additionally, because the smallest tick size would be assigned an access fee cap of 10 mils, the access fee cap for stocks trading beneath $1.00 would be 0.10% rather than 0.05% in the proposal—resulting in a smaller reduction in exchange transaction revenue for this trading volume.

ii. Two-Tiered Alternative

Alternatively, the Commission could simplify the tick size proposal and consider a two-tiered tick alternative for stocks priced equal to or greater than $1.00 where only tick-constrained stocks, *i.e.,* those with Time-Weighted Average Quoted Spreads less than or equal to $0.011 during an evaluation month, receive a tick of $0.005 while all other stocks retain a tick of $0.01.[694]

One advantage of this alternative relative to the proposal is that it would be simpler than the proposal as it would eliminate two of the tick sizes. Market participants, but retail investors in particular, might find it less confusing if the only two tick sizes were one penny and half a penny.

Also, to the extent that the proposal raises the concern that tick sizes would be too small for some stocks, this alternative would have the benefit that fewer stocks would be trading at a smaller tick, and the minimum tick itself would be substantially wider.

However, the analysis in Section V.D.1 suggests that this alternative could leave some stocks with a spread that is artificially wide, specifically near-tick-constrained stocks which could trade at spreads that are wider than they would be with a smaller tick. For example, a stock with average spread of $0.013 would be frequently trading with just one tick in between the best bid and best offer. Empirical analysis from section V.D.1 suggests that reducing the tick for this stock would, on average, reduce costs for investors. Moreover, if a stock priced equal to or greater than $1.00 has a Time-Weighted Average Quoted Spread of $0.005 then under the proposed changes to rule 612 that stock would receive a tick size of $0.001 providing 5 ticks intra-spread. Under this alternative that same stock would receive a $0.005 tick and would be tick-constrained with only one tick intra-spread. Albeit with the smaller tick relative to the current environment the distortive effects of the tick size would be smaller than what they currently are.

This alternative would have somewhat lower implementation costs relative to the proposal due to the fact that market participants would only be required to program systems to account for two tick sizes instead of four tick sizes. However, the reduction in cost relative to the proposal would be relatively small because market participants would still be required to build systems to adapt to multiple tick sizes that could periodically change. Once this functionality is built out, the Commission preliminarily believes that the cost of two tick size tiers would not be significantly larger than the cost of four tick size tiers. Thus, while acknowledging that the implementation costs of this proposal would likely be somewhat lower than those of the proposal, the Commission believes that the estimates for the proposal would be reasonable and seeks comment on this belief.

Because no stock would be assigned a tick size of $0.001 in this alternative, the access fee cap for all transactions priced greater than $1.00 would be 10 mils. At this level the Commission expects that IEX could maintain its current net capture on all transactions priced greater than $1.00 and thus a cost of the proposal to IEX would be eliminated. Additionally to harmonize the access fee cap for trading above and below $1.00 the Commission would enact a transaction fee cap of 0.1% (instead of 0.05%) for transactions priced less than $1.00. This higher transaction fee cap would effectively double, relative to the proposal, the revenue that the exchanges could earn from transactions priced less than $1.00 which would cut in half the expected lost revenue associated with the proposal articulated in Table 12. Specifically, this alternative would reduce the estimated lost revenue to exchanges by approximately $45 million per year.[695]

iii. Include Wider Ticks Than $0.01

The Commission could expand the proposal to include ticks wider than $0.01 for stocks with spreads wider than $0.04. In doing so the Commission could seek to target 4–8 ticks intra-spread for all wider-spread stocks. This alternative would apply the results from the empirical analysis suggesting that stocks with two or fewer ticks intra-spread would benefit from a reduction in the tick size while stocks with 10–15+ ticks intra spread would not.[696] Consequently, the Commission could extend the 4–8 tick intra-spread target in the proposal to all stocks. For example stocks with spreads greater than $0.08 and less than $0.16 could have a tick of

[694] For stocks with prices equal to, or greater than, $1.00 per share, a $0.01 tick would provide a floor on the feasible quoted spread (*see supra* note 448). *See supra* note 448 for a discussion of using a $0.011 threshold for the spread of tick-constrained stocks.

[695] In Table 12, the Commission estimated that the reduction in the access fee cap for transactions priced less than $1.00 from the baseline 0.3% to 0.05% in the proposal would lead to approximately $89 million per year reduction in exchange transaction revenue. Half of $89 million is approximately $45 million.

[696] *See* analysis in *supra* section V.D.1, Table 9.

$0.02. Stocks with spreads greater than $0.16 but less than $0.32 could have a tick size of $0.04 and so on.

This alternative could potentially improve the trading environment for stocks with wider spreads by minimizing the costs associated with having too many ticks intra-spread.[697] It would also increase complexity relative to the proposal because market participants would need to adapt to an environment with a larger number of tick sizes.

iv. Alternative Proposed in NASDAQ White Paper

Nasdaq has offered an alternative in a white paper.[698] This alternative would have stocks trading with spreads below 0.011 receive a tick size of $0.005. Stocks with spreads between $0.01 and $0.02 would continue to trade at an increment of $0.01, stocks with spreads between $0.02 and $0.05 would trade at an increment of $0.02, between $0.05 and $0.1 at $0.05, $0.1 to $0.25 to $0.10 and those above $0.25 to $0.25. Spreads would be determined every six-months based on the Time-Weighted Average Quoted Spread over the prior six months. The Commission believes that the compliance costs of this alternative would be similar to the proposal due to the similar nature of the alternative.

This alternative has two distinct disadvantages relative to the proposal. First, a stated assumption underlying this proposal is that ''stocks should trade at or near their Time-Weighted Average Quoted Spread.'' [699] Consequently, the proposal targets at most 2.5 ticks intra spread for most stocks.[700] The empirical analysis provided in Section V.D.1 indicated that TSP stocks that had fewer than two ticks intra-spread prior to the conclusion of the TSP benefited from the reduction in the tick size when the stock's tick size reverted from $0.05 to $0.01. Thus, our analysis indicates that fewer than 2 ticks intra-spread is on average too few and that stocks would trade better with more ticks intra spread. Thus this alternative might harm market quality relative to the proposal for many stocks. Additionally, this alternative does not provide a mechanism for most stocks to receive a lower tick size. For example if a stock is trading with a Time-Weighted Average Quoted Spread of $0.025, under this alternative it would receive a tick size of $0.02. However, since the tick size also defines the minimum tick possible this stock could never trade at less than $0.02 and thus would never qualify for a smaller tick. This disadvantage could be solved by multiplying all of the tick size thresholds by some multiple such as 1.1 to allow stocks that become tick-constrained by the assigned tick to receive a smaller tick size.

This alternative shares some of the benefits with the proposal. In both cases the proposal would reduce the risk of pennying by ensuring that for most stocks there would be relatively few ticks intra-spread. It reduces the risk that that the proposal could narrow spreads too much for some stocks. It also provides some relief to tick-constrained stocks by allowing them to trade at a $0.005 tick.

v. Step-Down/Step-Up Mechanism

The Commission could alternatively add a ''step-up/step-down'' mechanism to the proposal or to any of the alternatives above to prevent stocks from transitioning more than one tick size tier at a time. For example, under the proposal, a stock trading with a $0.005 tick that ends the quarter with a time-weighted average spread of $0.006 would switch to a minimum increment of $0.001, skipping over the minimum increment of $0.002. With a step-up/step-down mechanism, this stock would ''step-down'' to rather than skip the minimum of $0.002; only stocks with a minimum increment of $0002 and a Time-Weighted Average Quoted Spread of less than $0.008 would be eligible to move to a minimum increment of $0.001. Likewise, a stock would be assigned the next larger tick in the tick size schedule if it traded with a wider spread than prescribed by its tick size tier, regardless of whether the spread was large enough to be assigned to a tier with an even larger tick size.

A step-up/step-down mechanism would help avoid any potentially large shifts in tick size under the proposal. This alternative, however, could prolong the costs associated with being tick-constrained or near-tick-constrained and tick assignment. Further, this alternative would be more complex as the resulting tick size would not only depend on the stock's time-weighted average spread but would also depend on the stock's prevailing minimum increment. This additional complexity may lead to confusion amongst market participants who would not actively track tick size assignments, though in terms of implementation the Commission does not expect that the additional requirement of tracking a stock's previous tick size would lead to higher implementation costs than those in the proposal.

b. Other Approaches

i. Uniform $0.005 Tick for All Stocks Priced Equal to or Greater Than $1.00

The Commission could reduce the minimum tick size to a half a cent ($0.005) for the quoting and trading of all NMS stocks that are priced at or above $1.00. A primary advantage of this alternative is that it would reduce complexity relative to the proposal as there would be a uniform tick size for all stocks trading equal to or greater than $1.00 while also allowing tick-constrained stocks a smaller tick. Additionally, there is a risk that, for unknown reasons, some stocks that would qualify for a smaller tick under the proposal would trade better with a wider tick. For these stocks this alternative would be better than the proposal both because the tick size reduction is not as severe as the proposal. The disadvantage to this proposal is that, as shown in section V.D.1, a smaller tick for wide spread stocks can harm liquidity, thus applying a smaller tick to all securities would likely harm execution quality for some stocks with wide spreads.

This alternative would also have lower initial one-time compliance costs and no ongoing costs relative to the proposal because this alternative provides just one modification to the current tick size regime: a reduction in the tick from $0.01 to $0.005 for all stocks priced greater than $1.00. Thus it would be cheaper to implement. The Commission estimates that this alternative would lower implementation costs relative to the proposal by approximately $14 million.[701]

[697] *See* Barardehi, et al. (2022), *supra* note 85.

[698] *See* Nasdaq Intelligent Tick, *supra* note 180. *See also supra* section II.E.2.

[699] *See* Nasdaq Intelligent Tick, *supra* note 180, at 16.

[700] The proposal would limit increases in the tick size to $0.25, and so to the extent that a stock's prevailing spread surpasses this amount, it could trade at more than 2.5 ticks intra spread. However, as indicated in Table 4, transactions in stocks with quoted spreads greater than $0.25 represent less than 4% (20%) of share (dollar) volume thus the intelligent tick proposal would target the majority of trading volume with less than 2.5 ticks intra-spread.

[701] *See* Table 13 for enumerated cost estimates of the proposal. For trading centers, the Commission estimates that this alternative would lower compliance costs by $90,000 from $140,000 to $50,000 to reflect the fact that the rule would only apply to quoting and not to trading, thus only one part of the trading center's systems would need to be modified and that the modifications to the quoting systems would be simpler than the proposal. There would be no one-time or ongoing costs associated with monitoring Time-Weighted Average Quoted Spreads. Additionally, entities adjusting order entry systems for the new tick would not need to adjust their systems to add any tick size dynamism beyond what exists in the baseline. Thus, the Commission estimates that entities with order entry systems would see their implementation costs decline by $7,000 from $11,000 to $5,000 per order entry system. For the

Additionally, because no stock would be assigned a tick size of $0.001 in this alternative, the access fee cap for all transactions priced greater than $1.00 would be 10 mils if kept proportional to the tick size. At this level the Commission expects that IEX could maintain its current net capture on all transactions priced greater than $1.00 and thus a cost of the proposal to IEX would be eliminated. Additionally to harmonize the access fee cap for trading above and below $1.00 the Commission would enact a transaction fee cap of 0.1% (instead of 0.05%) for transactions priced less than $1.00. This higher transaction fee cap would effectively double, relative to the proposal, the revenue that the exchanges could earn from transactions priced less than $1.00 which would cut in half the expected lost revenue associated with the proposal articulated in Table 12. Specifically, this alternative would reduce the estimated lost revenue to exchanges by approximately $45 million per year.[702]

ii. Variable Tick Size Based on Price

The Commission could also implement a tick regime that is based solely on the share price of the securities. This alternative effectively would expand the current regime where quotes for NMS stocks priced less than $1.00 have a tick of one hundredth of a penny while quotes for NMS stocks priced at or greater than $1.00 have a tick of $0.01. The advantage to this approach relative to the quoted spread tick alternative discussed in the previous section is that it is simpler to implement as it would be a static rule that requires no computations by the listing exchange. The primary disadvantage to this alternative relative to using the quoted spread based measures is that price, while a useful benchmark because it is correlated with quoted spreads, is not perfectly correlated with the quoted spread—the key economic variable of interest when determining tick sizes—and stocks with similar prices can have spreads that vary significantly.[703] Thus it is likely that under a price based regime some stocks would have a tick size that is too wide relative to their quoted spread and others too small.

The Commission could implement a price based tick schedule as follows.

Price	Tick
Less than $1	$0.0001
$1 to $10	0.001
$10 to $50	0.005
Greater than $50	0.01

This tick schedule effectively would add two intermediate tick levels to the current regime. For stocks with prices below $1.00 and above $50.00, there would be no change relative to the existing tick regime. However, for stocks with prices between $1.00 and $10.00 the tick would be $0.001, and for stocks between $10.00 and $50.00 the tick would be $0.005.

Table 14 provides descriptive statistics based on data from March 2022 for the various price levels.[704] The first price group of stocks is those with prices less than $1.00. Trading in these stocks accounted for approximately 8% of share trading volume in March 2022. For these stocks, there would be no change in the trading environment relative to what is currently in place. Stocks in price group two with prices between $1.00 and $10.00, *i.e.,* stocks that would be assigned a tick size of $0.001 under this alternative accounted for a total of 28% of all share trading volume. Of this trading volume, the majority (78%) occurred in tick-constrained stocks, while 21% of volume in this price group occurred in stocks with a spread between $0.01 and $0.10. In this group of stocks very little trading volume occurred in stocks with a spread greater than $0.10. Thus, the effect of lowering the tick to a tenth of a cent for stocks in this price group would likely improve the trading environment for the 78% of trading that is currently tick-constrained in this price range. For the remaining 22% of trading volume in this price category, the trading in stocks that are not currently tick-constrained, the effect of reducing the tick to a tenth of a cent could be negative based on the analysis in section V.D.1.

TABLE 14—SHARE VOLUME BY PRICE GROUP AND QUOTED SPREAD [a]

Price group	Spread group	Average number of stocks	% Total share volume	% Group share volume	% Total dollar volume	% Group dollar volume	% of stocks	% of group stocks
Less than $1	Tick-Constrained	259	7	93	0	91	2	25
	$0.011 < Spread < $0.10.	651	1	7	0	9	6	64
	Spread > $0.10	112	0	0	0	0	1	11
$1 < Price < $10	Tick-Constrained	540	22	78	2	74	5	18
	$0.011 < Spread < $0.10.	1,994	6	21	1	24	17	67
	Spread > $0.10	454	0	2	0	2	4	15
$10 < Price < $50	Tick-Constrained	397	23	59	12	57	3	7
	$0.011 < Spread < $0.10.	2,982	14	37	8	39	26	55
	Spread > $0.10	2,017	1	4	1	4	18	37
Price > $50	Tick-Constrained	97	6	24	10	13	1	5

same reasons, the Commission estimates that operators of smart order routers would see their compliance costs decrease from $11,000 to $5,000. [$90,000*54 (trading centers) + $7,000*1,192 (order entry systems) + $7,000*282 (smart order routers) ≈ $14 million].

[702] In Table 12, the Commission estimated that the reduction in the access fee cap for transactions priced less than $1.00 from the baseline 0.3% to 0.05% in the proposal would lead to approximately $89 million per year reduction in exchange transaction revenue. Half of $89 million is approximately $45 million.

[703] *See* Mackintosh, *supra* note 475, for evidence that stock prices and quoted spreads are correlated but not perfectly so.

[704] Each day, total trading volume for a stock would be allocated into one of the four price groups based on that stock's VWAP on that day. Then, the total trading volume in each of the price groups, as well as average number of stocks that fall into each price group each day is computed for the month of Mar. 2022 (the hypothetical first evaluation month in the examples presented in section V.G.1.b.). This methodology is an estimate of the amount of trading volume that would have been allocated to each of the price groups. For example, in this methodology, a stock with a VWAP of just below $1.00 on a trading day would have all of its trading volume allocated to the $1.00 trading bin even though some fraction of its trading volume may have occurred intra-day at prices at or above $1.00. However, this bias will be minor because there will also be some stocks with prices just above the relevant thresholds and the incorrect trades will likely mostly cancel out. Additionally, the overwhelming majority of trading volume does not occur right on the thresholds, so the noise created by using a VWAP based methodology instead of a trade by trade methodology is likely to be minor.

TABLE 14—SHARE VOLUME BY PRICE GROUP AND QUOTED SPREAD [a]—Continued

Price group	Spread group	Average number of stocks	% Total share volume	% Group share volume	% Total dollar volume	% Group dollar volume	% of stocks	% of group stocks
	$0.011 < Spread < $0.10.	715	14	55	41	54	6	34
	Spread > $0.10	1,264	5	21	25	33	11	61

[a] This table provides estimates of the distribution of trading volume that occurs in stocks with various price and quoted spread levels. Each day in Mar. 2022 stocks are divided into four price groups (less than $1.00, $1.00 < Price < $10, $10 < Price < $50, and Price > $50) and three quoted spread groups (Spread < $0.011 *i.e.,* tick-constrained, $0.011 < Spread < $0.10, and Spread > $0.10). Price is determined using that day's VWAP, and quoted spreads are computed using the time weighted quoted spread during regular trading hours. Both statistics are obtained from the WRDS intra-day indicators. Once a stock is assigned to a particular quoted spread and price group all of that stock's trading volume across all venues for that day is determined. This table computes the average number of stocks in each of the 12 unique price/spread groups during our sample. It also presents the total share and dollar volume falling into each of the 12 groups. The table also provides percentage summations for each price group that illustrate what fraction of trading volume in each price group falls into each quoted spread category. These computations are presented in columns with titles beginning with % *Group.*

Stocks with a price range of between $10.00 and $50.00, *i.e.,* stocks that would be assigned a half cent tick, represent about 38% of share trading volume. Of this 38% of trading volume, approximately 59% occurs in stocks that are currently tick-constrained, 37% occurs in stocks that are not tick-constrained but have an average spread of less than $0.10. The remaining 4% occurs among stock with spreads wider than $0.10. For tick-constrained stocks, a reduction in the tick size to a half a penny from the current one cent would likely improve market quality for these stocks. For the 37% of trading volume in this price range that occurs in stocks with spreads less than $0.10 but that are not tick-constrained, the average quoted spread is approximately $0.05. For these stocks, a half cent tick represents 10 ticks within the quoted spread. Ten ticks intra-spread is in line with the maximum number of intra-spread ticks allowable for stocks receiving a tick size reduction under the proposal, and the empirical analysis in Section V.D.1 suggests that stocks trading at approximately 10 ticks or less intra-spread do not need a reduction in the spread to improve market quality. For the 4% of trading volume in this group with average quoted spreads above $0.10, the average quoted spread is approximately $0.27, and a half cent tick would introduce over 50 price levels within the spread. At this level, the half cent tick could be too small and could harm market quality by increasing complexity and the risk of pennying.

The last category of stocks, those with prices greater than $50, account for approximately 28% of share trading volume. For these stocks, the tick would not change relative to the baseline environment.

This alternative would have implementation costs similar to those discussed section V.D.6 with the exception that the 5 listing exchanges would not be required to monitor quoted spreads and to send tick size information to the SIPs, reducing one-time costs by $95,000 and ongoing costs by $45,000 per year.[705]

This alternative would also reduce the effect relative to the proposal on IEX's net capture. Specifically, in the proposal the Commission estimated that approximately half of trading volume is in tick-constrained stocks that would receive a tick size of $0.001 and an associated access fee cap of 5 mils. This is the volume that IEX would be estimated to receive a reduced net capture of 1 mil. However, as shown in Table 14, stocks priced between $1.00 and $10.00 only account for an estimated 28% of total share volume. Consequently, this alternative would reduce by approximately half the estimated fraction of trading volume that would receive the 5 mil access fee cap and thus would reduce IEX's lost net capture on trades priced greater than $1.00 relative to the proposal by about half.

iii. Cboe Proposal

Cboe has also put forth an alternative methodology for determining the tick size.[706] This alternative would apply three layers of filtering to stocks to determine if the stock qualified for a $0.005 tick. First, the stock would need to be consistently trading with a Time-Weighted Average Quoted Spread of $0.011. Then among those stocks, only those with high quote-size-to-trade-size-ratios would be further considered for a tick size reduction. Cboe argues that a high quote-size-to-trade-size-ratio is indicative of there being ample liquidity but investors being discouraged from crossing the spread due to the high tick. If a stock's quote-size-to-trade-size-ratio is greater than the 75th percentile among stocks that are trading with quoted spreads less than $0.011 then it would qualify for consideration as a candidate for a tick size reduction. The last criterion relates to the notional-turnover-ratio. This criterion is designed to eliminate stocks that are relatively thinly traded from consideration for a tick size reduction. To be a candidate for a tick reduction a stock must also be above the top 75th percentile among stocks with a Time-Weighted Average Quoted Spread less than $0.011. Thus, the three criteria to receive a tick size reduction would be a Time-Weighted Average Quoted Spread less than $0.011, and the stock must be above the 75th percentile among stocks with a Time-Weighted Average Quoted Spread less than $0.011 in both its quote-size-to-trade-size-ratio and its notional-turnover-ratio. This plan would re-evaluate stocks on a quarterly or bi-annual basis.

Relative to the proposal, this alternative would limit the tick size reduction to an estimated 4% of dollar trading volume. This proposal would also limit the tick size reduction for these stocks to $0.005. Thus to the extent that some stocks that would receive a lower tick size in the proposal but would not benefit from a lower tick size for unknown reasons, these stocks would be better off under this alternative due to its limited scope.

This alternative would be considerably more complex than the proposal and it is unclear which entity would have responsibility for computing the quote-size-to-trade-size-ratio and the notional-turnover-ratio 75th percentile thresholds as these thresholds require a standardized methodology to be applied to all stocks regardless of listing exchange. This alternative could also leave some stocks that could perhaps benefit from a smaller tick size with a wider one, thus the problem of tick-constrained stocks might persist to a greater extent in this alternative than in the proposal.

[705] *See* Table 13 for enumerated cost estimates of the proposal.

[706] *See* Cboe Proposal, *supra* note 104.

3. Alternative Access Fee

The Commission could also consider alternative access fee caps that are higher or lower than those in the proposal. These alternative access fee caps could be paired with either the tick sizes in the proposal or the alternatives considered in Section V.F.2. To the extent that a given alternative access fee cap interacts with tick sizes, the Commission addresses that in the discussion below.

a. Higher or Lower Access Fees

For stocks priced below $1.00 the Commission could consider access fees that are higher than 0.05% of the share price. Doing so would increase the amount of net revenue that the exchanges could earn on transactions in stocks priced less than $1.00 which would limit the costs of the proposal for the exchanges. However, doing so comes with the tradeoff that it risks creating an access pricing discontinuity at $1.00 whereby it becomes more expensive at $1.00 to transact. Since stocks priced less than $1.00 tend to be smaller market cap stocks, this discontinuity could make it relatively more expensive to trade these smaller stocks.[707]

The baseline access fee cap of 0.3% is equivalent to 30 mils if the share price is exactly $1.00. Thus at $1.00 the access fee cap of 0.3% is equivalent to 30 mils and begins to decline from there as the price declines. Thus there is a smooth transition in terms of the access fee cap between stocks priced equal to or greater than $1.00 to those priced less than $1.00. The proposal is similarly designed to create a smooth transition between the per share access fee cap of 5 mils for stocks priced equal to or greater than $1.00 and the proportional access fee cap of 0.05% for stocks priced less than $1.00.

Choosing an access fee greater than 0.05% would create a discontinuity where at $1.00 it becomes relatively more expensive on a per share level to transact. For example a stock priced at $1.00 would have either a 5 or 10 mil access fee cap under the proposal. If the Commission retained the current baseline 0.3% access fee cap for stocks priced less than $1.00 then as soon as the stock price dropped below $1.00 the access fee cap would jump to the equivalent of approximately 30 mils at the $1.00 threshold.[708] As the share price continued to decline below $1.00 the access fee cap would also decline, but would not be lower than the equivalent of 10 mils on a per share basis until the stock price crossed below $0.30 per share and would not be lower than 5 mils until the stock price dropped below $0.15. Thus raising the access fee cap for stocks priced less than $1.00 higher than the proposed level of 0.05% would create a discontinuity at $1.00 where it becomes more expensive to transact.

Making it relatively more expensive to transact shares priced less than $1.00 risks, the alternative would create a discontinuity, which could potentially harm liquidity for smaller cap stocks. Despite such a discontinuity, this alternative would still lower trading costs relative to the baseline so long as the proportion chosen for the access fee cap for sub $1.00 transactions was below the baseline level of 0.3%. Thus, relative to the baseline, it would likely become less expensive to trade sub $1.00 stocks on most exchanges—potentially improving their liquidity relative to the baseline, but not relative to the proposal.[709]

For stocks priced greater than $1.00 the Commission could likewise raise or lower the access fees from those in the proposal. The primary advantage to lowering the access fee cap would be that it could help reduce supply and demand distortions caused by access fees and their associated rebates. However, if the access fee cap is lowered beneath approximately 3 mils, then the exchanges could struggle to maintain their net capture and their estimated financial losses due to a lower net capture would increase. If the access fee cap is lowered beneath 6 mils, then, while most exchanges would be able to maintain their net capture, IEX would likely not, placing it at a disadvantage relative to other exchanges because IEX primarily funds itself through access fees. The Commission estimates that this alternative would carry the same compliance costs as the proposal because it is structurally the same as the proposal.[710]

Under the assumption that exchanges maintain the 2 mil net capture rate, rebates would rise or fall with access fees. To the extent that lower rebates aid market quality, this benefit would be differentially realized relative to the proposal.

b. Tie Access Fee to the Tick Size With Current Proportion of 30%

The current access fee cap for quotations $1.00 or more of 0.3 cents per share on a one cent tick size is 30% of the tick size. The proposal would lower access fee caps within set parameters of the stock price and minimum pricing increment. As an alternative to the proposal, the Commission could implement an access fee cap that applies proportionally at any tick size. This alternative would carry the same implementation costs as the proposal. It would also allow fees and rebates to facilitate similar intra-tick pricing as the current system of fees and rebates, which can narrow spreads in certain instances.[711] It would also allow for greater rebates to be paid in stocks with wider ticks, which under the proposal are those with wider spreads, which could lead to a more efficient manner of rewarding liquidity provision.

The proposal considers a schedule with ticks of $0.001, $0.002, $0.005, and $0.01 for different stocks. Under this alternative, for stocks with a $0.01 tick size, the proportional access fee cap would remain 30 mils per share. For stocks with a tick size of $0.005, the access fee cap would be 15 mils. For stocks with a tick size $0.002, the access fee cap would be 6 mils. Lastly, for stocks with a tick size of $0.001, the access fee cap would be 3 mils. Thus this alternative would reduce fees on stocks with ticks of $0.001 and $0.002 relative to the proposal but would otherwise raise fees. Under the assumption that exchanges set their access fee at the cap and their rebate approximately 2 mils lower to maintain their estimated 2 mil net capture, the prevailing access fee would equal 3 mils and rebates 1 mil for stocks with a $0.001 tick. For stocks with a $0.002 tick size the access fee would be 6 mils and rebates 4 mils. Given the low level of these rebates, it is possible that exchanges might cease offering rebates because they are too low to play a role in routing decisions. On the other hand, under the same net capture assumption that places the rebate 2 mils lower than the cap, rebates may be more significant than under the proposal for stocks with a $0.005 tick. For stocks with a $0.01 tick and a 30 mil access fee the market could operate the same as it currently does; thus, the Commission expects the

[707] *See* Qianqiu Liu, S. Ghon Rhee, and Liang Zhang, *On the Trading Profitability of Penny Stocks,* (working paper Aug. 26, 2011), *available at https://ssrn.com/abstract=1917300* (retrieved from SSRN Elsevier database) for a description of the characteristics of low priced stocks.

[708] $1.00*0.3% = $0.0030 or 30 mils.

[709] This statement presumes prevailing market practice continues whereby exchanges charge one side of the transaction the full access fee for sub $1.00 transactions and offer no rebates. In this case, the Commission believes it reasonable to expect that following the reduction of the transaction fee cap for stocks priced less than $1.00, the average access fee charged would go down to the new and lower access fee cap for these transactions.

[710] *See supra* section V.D.6 for an estimate of the compliance costs associated with the proposal.

[711] *See supra* section V.D.3.

trading environment to be as described in the baseline section V.C.2.

As with the proposal, reducing the profit that can be earned by providing liquidity could induce some market participants that specialize in liquidity provision to reduce participation in such stocks. For stocks that are currently tick-constrained, this would likely improve market quality as it would reduce fill times, fill rates, and queue lengths on maker-taker exchanges due to less competition to provide liquidity. For stocks with wider spreads, the effect of lowering the access fee cap to 15 mils might not play a significant role in the participation rate of market makers given that the access fee and rebate for these stocks is such a small fraction of the spread.

Relative to the proposal, the Commission does not expect there would be significant operational costs added to exchanges or broker-dealers to implement a variable access fee regime. The Commission expects that each of the 15 exchanges that charge access fees for trading would be required to prepare and submit a Rule 19b–4 filing with the Commission at a cost of $48,400 per exchange for a total one-time cost of $726,000 across all exchanges. Although the anticipated cost of adding a variable access fee regime likely would not differ from the proposal, adding four access fee caps would increase the complexity of exchange fee and rebate structures because the exchanges would need to add at least four fee/rebate levels to reflect the four new access fee caps.

Relative to the proposal, and under the assumption that most exchanges maintain a net capture of 2 mils, this alternative is not likely to affect net capture for any exchange except potentially IEX. Because IEX is funded primarily through net capture, it appears to have a higher capture rate than other exchanges and, under this alternative, that would be bounded from above by 3 mils on stocks with tick sizes less than $0.001. Assuming a net capture of 6 mils, the proposed changes to rule 612, with a 5 mil access fee cap, would represent a reduction in the net capture on volume with a $0.001 tick of 1 mil. In section V.D.3 the Commission estimates that IEX would lose an estimated $3 million annually in revenue due to the 5 mil access fee cap reducing by 1 mil its net capture on volume that would be assigned a $0.001 tick. Using the same methodology, this alternative would increase the estimated decline in net transaction fee revenue to $9 million, or combining with a decrease in net transaction revenue among sub $1.00 stocks, a decline of 22% in total net transaction fee revenue. Thus, this alternative would disadvantage IEX more than the proposal.

Alternatively, the Commission could have proposed this alternative in combination with alternatives on the tick sizes that do not have a minimum increment as low as $0.001. In these cases, this alternative would not have this disadvantage. As a variation on this alternative, the Commission could tie access fees to exchanges at a level other than 30%. A fixed percentage rather than level would preserve the ability to reward liquidity providers when spreads are higher. However, relative to the proposal, access fees would remain high, or, depending on the level chosen, be higher.

c. Uniform 10 Mil Access Fees Regardless of Tick Size

The Commission could impose a uniform access fee cap of $0.0010, or 10 mils, across all NMS stocks for quotes equal to or greater than $1.00. A uniform 10 mil access fee cap would help to preserve the structure of the current transaction based business model for exchanges while still mitigating many of the distorting effects of rebates for stocks with tighter spreads. An additional benefit from having a uniform access fee cap would be to avoid any additional market complexity associated with a variable access fee cap. The Commission recognizes that an access fee cap of 10 mils for stocks that would otherwise have a 5 mil access fee cap under the proposal, would provide exchanges with enough pricing freedom to continue to offer economically meaningful rebate-tiering.

Implementing a uniform 10 mil access fee cap would necessitate an alternative tick size schedule as the access fee cap should not be greater than ½ of the tick size in order to preserve coherence between net and nominal price rankings of trading venues.[712] This would not be possible with an access fee cap of $0.001 and a lowest possible proposed tick size of the same amount, as would be the case for the smallest tick size tier from the proposal. For example, suppose that the quoted price on an inverted venue is one tick less competitive than that displayed on a maker-taker venue. If the access fee on the maker-taker venue and the rebate on the inverted venue are together greater than one tick (the difference in the nominal quoted prices), a marketable order would receive a better net execution on the inverted venue despite the maker-taker venue having a more competitive quoted price.[713] If the Commission were to adopt this alternative, the combination of tick size and access fee cap would allow for incoherent venue rankings, and there would be instances where some trades would have to execute at suboptimal net prices because current Regulation NMS rules dictate that marketable orders be routed to venues with the best nominal quoted prices without regard to what the net proceeds may be.[714] In order to accommodate a uniform access fee cap of $0.001, the Commission might also consider modifying the proposal to eliminate the $0.001 tick. In short, the Commission could impose a minimum tick of $0.002 on all transactions with Time-Weighted Average Quoted Spreads less than $0.02. The Commission does not expect that the adoption of this alternative tick size regime to introduce any differential implementation costs compared to those presented under the proposal.

Avg quoted spread	Tick	Access fee cap
$0.02 or less	$0.0020	$0.0010
$0.02–$0.05	0.0050	0.0010
Greater than $0.05	0.0100	0.0010

[712] Net and nominal price rankings are coherent if sorting trading venues on the competiveness of their nominal quoted prices yields the same ordering as sorting on prices net of fees and rebates.

[713] To illustrate, with a $0.001 tick size: Exchange A has a top bid quote of $10.011 and charges a taker fee of $0.0007, over half the tick size, so the net price to sell is $10.0103. Exchange B, an inverted venue, has a top bid of $10.010 with a taker rebate of $0.0006 so the net price to sell is $10.0106. On net, executing a sale on exchange B would result in a better execution than on exchange A even though exchange A is posting a better nominal price.

[714] *See* CFR 242.611.

Eliminating the $0.001 tick could mean that stocks that are currently tick-constrained would receive a $0.002 tick instead of a $0.001 tick. Thus, these stocks would have at most 5 ticks intra spread. To the extent that these stocks would further benefit from a smaller tick, as envisioned under the proposal, those benefits would be limited. However, based on the empirical analysis in section V.D.1 the Commission does not expect this change to significantly harm market quality for these stocks. However, for stocks with spreads that would have qualified them for a $0.001 tick under the proposal, the amount of price improvement that retail investors could receive from wholesalers or retail liquidity programs could be limited. The wider tick would make it more likely that a wholesaler would find it unprofitable to offer price improvement to a retail trade and could reduce the total price improvement offered to retail traders in these stocks.

d. Lower Uniform Access Fee

The Commission could require a uniform access fee cap for all transactions priced equal to or greater than $1.00 regardless of the tick size that is imposed for that given stock transaction to reflect the uniform nature of the variable costs incurred by the exchanges to facilitate transactions and that is as low as possible to allow most exchanges to maintain their estimated 2 mil net capture on protected transactions.[715] Consequently the Commission could impose a uniform access fee cap of 3 mils on all transactions priced equal to or greater than $1.00 regardless of the tick. This alternative is structurally similar to the proposal and thus the Commission believes that this alternative would carry with it the same implementation costs as the proposal.[716]

At this level most exchanges could maintain their estimated net capture of approximately 2 mils per transaction without leaving much, if any, excess revenue for the exchanges to fund rebates or volume based tiering. Thus, the economic effect of this alternative would be to effectively eliminate rebates and volume based tiering.

For an exchange, managing the system of fees and rebates along with associated volume based tiering is not costless. Thus, if the exchanges believe that the incentives offered through tiered pricing and rebates would not be meaningful enough to affect behavior sufficiently to justify the costs then it may cease to offer them opting instead for a simpler fee structure that might or might not include rebates. The Commission views this outcome as possible and even probable, however there would be significant uncertainty regarding how likely this outcome is because the Commission lacks data on how expensive these programs are to administer. What is certain is that the dramatic reduction in the range of fees and rebates that the exchanges could offer under a 3 mil fee cap would mean that even if the exchanges continue offering rebates or volume based tiering, the economic impact of these programs would be significantly diminished.[717]

The reduction or elimination of rebates that is expected to accompany the reduction in the access fee cap would significantly reduce the total revenue per share traded that liquidity providers earn on maker-taker exchanges relative to either the baseline or the proposal. Thus, this alternative would likely decrease the profits earned by liquidity providers specifically algorithmic and high-frequency traders that specialize in liquidity provision and rebate capture strategies. These traders would likely see their trading profits decrease more under this alternative than the proposal.

Another key difference with a 10 mil access fee cap is more apparent at larger tick levels, such as at a full cent tick, a 3 mil access fee would provide very little in the way of intra-tick pricing given that the access fee and associated rebate would be such a small fraction of the tick size. Thus, for stocks with larger ticks this alternative would be more restrictive than the proposal in terms of pricing levels that could be realized once fees and rebates are included in the price.

A significant disadvantage of this alternative relative to the proposal is that it would severely constrain exchanges like IEX that choose to fund themselves primarily through access fees. IEX has an estimated 6 mil net capture, and reducing the access fee cap to 3 mils would cut by around half IEX's net revenue from transactions. This reduction in revenue could require IEX to change its business model. The Commission estimates that if nothing else were to change concerning trading volume relative to the first six months of 2022, then this alternative could cost IEX as much as 40% of its transaction fee revenue (approximately $20 million per year).[718]

e. Ban on Rebates

The Commission could also ban rebates but leave the access fee cap unchanged, or lowered to 10 mils for transactions priced equal to or greater than $1.00. For stocks priced lower than $1.00 the Commission could either leave the access fee cap unchanged at 0.3% or lowered to 0.1% to match any reduction in the access fee cap for stock priced equal to or greater than $1.00 to 10 mils. This alternative would eliminate the liquidity provision distortions associated with rebates, to the extent these continue to exist under the proposal.[719] Also, because high access fees would not be needed to fund rebates, the Commission expects that this alternative would lead to access fees that are less than 5 mils on most exchanges. It would also provide an advantage relative to the proposal in that it would leave exchanges that use access fees as their primary source of revenue the opportunity to continue doing so without restriction. Consequently, if the Commission chose to ban rebates but leave the access fee cap unchanged relative to the baseline, then this alternative would have the advantage relative to the proposal in that it would not affect the exchange's net capture and thus the exchanges would not be financially worse off under this alternative. If the Commission chose to lower the access fee cap to 10 mils for stocks priced equal to or greater than $1.00 and to 0.1% for stocks priced less than $1.00, then the exchanges would still lose money on transactions priced below $1, but could still earn their full estimated net capture on transactions equal to or greater than $1.00. A disadvantage of this alternative relative to the proposal is that it restricts the ability for the exchanges to innovate with respect to

[715] For transactions below $1.00, the Commission could implement an access fee that harmonizes the access fee for greater than $1.00 transactions with those less than $1.00—*e.g.,* an access fee cap of 10 mils on transactions greater than $1 would be accompanied by an access fee cap of 0.10% for transactions below $1.00 and an access fee cap of 5 mils on transactions priced equal to or greater than $1.00 would be accompanied by an access fee cap of 0.05% for transactions less than $1.00. In this case, the access fee cap of 3 mils for transactions greater than $1.00 would coincide with an access fee cap of 0.03% on transactions less than $1.00.

[716] *See supra* section V.D.6. for a discussion of implementation costs related to the change in the access fee cap.

[717] The economic effects of rebates are discussed in *supra* section V.D.3 including liquidity provision effects, intra-tick pricing, and order routing. Each of these effects would be greatly mitigated with a lower access fee cap. Volume based tiering creates an incentive for broker-dealers to concentrate orders on one exchange to qualify for higher rebates or lower access fees. Reducing the access fee cap to 3 mils would significantly reduce this incentive by reducing the total amount of discount that an exchange could offer.

[718] This estimate uses the same methodology as is used to produce the estimates in Table 12 but applies a 3 mil net capture on trading volume at or above $1.00.

[719] *See supra* section V.D.3 for additional discussion of these distortions.

rebates. While rebates could be an inefficient and distortive form of liquidity subsidization, exchanges potentially could innovate with rebates to increase their efficiency and decrease their distortive effects. Banning rebates would foreclose such an outcome. Banning rebates could potentially result in exchanges using other means to attract liquidity which might have other drawbacks such as offering beneficial pricing for other products or special privileges to large liquidity providers.[720]

4. Do Not Accelerate Odd-Lot Information or Create BOLO

The Commission could alternatively accelerate the definition of round lot but not accelerate the odd-lot information from the MDI Rules or the requirement to establish a BOLO.[721] Doing so would help mitigate any potential deleterious effects that MDI acceleration would have on future competing consolidator (CC) competition as well as lower the implementation costs of the proposal for exchanges and SIPs. It could also reduce the costs on data users. However, the alternative would result in a stronger economic effect from the decline in depth expected from the reduction in tick size and the definition of round lot.[722]

This alternative would avoid harming the competition in the competing consolidator market that would result from the competitive advantage afforded to SIPs by the proposal. Requiring the exclusive SIPs to invest in the needed infrastructure necessitated by the proposed acceleration of the odd-lot information from the MDI Rules may increase the SIPs competitive advantage by reducing their costs to become competing consolidators.[723] The alternative would not provide this competitive advantage because the odd-lot information from the MDI Rules would be implemented during the transition period, allowing non-SIP competing consolidators the same opportunity as SIP competing consolidators to capture this market share.

This alternative would have lower implementation costs relative to the proposal as forgoing the proposed MDI acceleration would reduce many of the compliance costs necessitated by the proposal. The SIPs would not have to incur the costs associated with collecting and disseminating any additional information that would result from the inclusion of odd lot information in NMS data until the full implementation of the MDI Rules. The SIPs would avoid any redundant costs from having to update their systems twice. Similarly, the exchanges would not incur costs associated with reporting odd-lot information until the full implementation of the MDI Rules.[724]

This alternative would reduce the benefits of the MDI acceleration. In particular, this alternative would not result in the benefits associated with allowing individual investors whose broker-dealers subscribe to the data to visually monitor the market environment and determine profitable trading opportunities as early as they would be able to under the proposal. It would also not result in the benefits of offering market participants a standard benchmark that reflects available odd-lot liquidity.

The alternative would also increase the effects of a reduction in displayed depth at the NBBO resulting from either a smaller tick size or a smaller round lot. If the odd lot information is not included in the SIP data feed, the proposal could result in market participants who rely on the SIPs receiving less information regarding the liquidity available in the market. This is because the reduction in tick size is expected to distribute liquidity across more price levels, reducing the depth reported at the NBBO.[725] This loss of information could be further exacerbated with the implementation of the round lot definition, which will lower the depth of liquidity reported at the NBBO. Market participants who do not receive odd lot and depth of book information from proprietary data feeds would incur a loss of information content for stocks priced greater than $250. Avoiding such loss would entail incurring fees to subscribe to such data.

G. Request for Comment

The Commission is sensitive to the potential economic effects, including costs and benefits, of the proposed Rule. The Commission has identified certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary economic analysis, including with respect to the specific questions below. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits.

58. Has the Commission accurately described the market failures in this release? Why or why not? Are there additional market failures or other economic justifications related to these issues that are not described in this release?

59. Has the Commission sufficiently described the baseline for its economic analysis concerning tick sizes, access fees, and round lot data, its characteristics and structure? Are there additional relevant market features or participants that are not discussed in the baseline which relate to this release? If so, please describe.

60. Has the Commission accurately assessed the baseline of the use and prevalence of subpennies and subpenny price improvement? Why or why not? Are there any additional statistics or analysis that the Commission should consider in the baseline? If so, please provide that analysis.

61. Has the Commission accurately assessed the degree of tick-constraints in current markets? Why or why not? Is the Commission using appropriate conceptual and empirical definitions of tick-constrained and new tick-constrained? If not, what would be more appropriate definitions and what difference would those alternative definitions have on the baseline analysis, costs, and benefits? Are there additional statistics or analysis that the Commission should consider in the baseline? If so, please provide that analysis.

62. The tick size baseline incorporates the implementation of the MDI Rules. Has the Commission accurately assessed how the baseline for the proposal differs from the status quo, including in the data analyses presented? Why or why not?

63. Has the Commission accurately assessed the impact of access fees and rebates, and the inability to determine access fees at the time of trade, on potential conflicts of interest? Why or why not? Are there other sources of data or other analysis that the Commission could use to assess the impact of access fees and rebates and the inability to determine access fees at the time of trade on potential conflicts of interest? If so please provide such data and analysis.

64. Has the Commission accurately assessed the net capture of the exchanges between access fees and rebates on non-auction trading in shares

[720] Proposed rule changes cannot take effect unless approved by the Commission or otherwise permitted by subsection 19(b) of the Exchange Act. 15 U.S.C. 78s(b)(1).

[721] *See* section IV.B. regarding the acceleration of including odd lot information as a part of core data and implementing the round lot definition from the MDI Rules. *See* section IV.D. with regards to the proposed establishment of specifying the best odd lot orders to buy and sell (BOLO).

[722] *See* sections V.D.1. and V.D.5 for discussions of these effects.

[723] *See* section V.E.2.c. in relation to MDI acceleration and CC competition.

[724] *See supra* sections V.D.5 and V.D.6 for a discussion of the estimated costs of accelerating the MDI Rules.

[725] *See supra* section V.D.1.

priced greater than $1.00 as approximately 2 mils? Why or why not? If not please provide analysis supporting a different net capture level.

65. Has the Commission accurately assessed the net capture of the exchanges on non-auction trading in shares priced less than $1.00 as approximately 0.28% of value? Why or why not? If not please provide analysis supporting a different net capture level.

66. Has the Commission accurately described current market practice where fees and rebates are generally not passed through from broker-dealers to their customers? Why or why not? If not please provide analysis describing how and when fees and rebates are passed through to end customers.

67. Has the Commission accurately described the baseline of the MDI implementation? Why or why not? Is two years a reasonable estimate of when the round lot definition and the odd lot information will be implemented in the absence of this proposal? If not, what is a reasonable estimate?

68. Has the Commission accurately assessed the economic effects of lowering the tick size for some stocks? Why or why not? Are there significant economic effects that are not discussed? If so please explain and describe these effects.

69. The proposal would allow for stocks to potentially transition across multiple tick sizes, skipping one or more tick size tiers, in one evaluation period. Are there economic effects associated with transitioning across multiple tick sizes that are not discussed? If so, what are they? Please provide quantitative estimates of the effects and how frequently stocks might transition across multiple tick size tiers.

70. Has the Commission accurately assessed the economic effects of increased market complexity caused by the dynamic tiered structure of the proposed changes to rule 612? Why or why not? Are there significant economic effects that are not discussed? If so, please explain and describe these effects.

71. Has the Commission accurately assessed the economic effect of having an evaluation month for the tick size be once every three months with the associated tick size applying for the next three months? Why or why not? Are there other evaluation periods that may be more appropriate? If so please provide analysis supporting an alternative evaluation period.

72. Has the Commission accurately assessed the effect of the proposal to harmonize quoting and trading increments? Specifically, has the Commission correctly assessed the effect the proposed harmonization on retail price improvement and the resulting impact on execution quality? If not, then please provide a detailed explanation along with quantitative estimates, if possible. How would harmonization affect execution quality through it effect on competition for order flow between exchanges/ATSs and off-exchange dealers? Please explain.

73. Has the Commission accurately assessed the economic effects of lowering the access fee cap? Why or why not? Are there significant economic effects that are not discussed? If so please explain and describe these effects.

74. Based on the baseline, the Commission assumes that the prevailing maker-taker structure of fees and rebates has average rebates approximately 2 mils lower than average access fees on most exchanges. Is this assumption reasonable? Please explain. If not reasonable, how would a different assumed net capture affect the conclusions of the analysis? Please provide additional analysis and describe the market environment likely to result from the reduction in the access fee cap.

75. Has the Commission accurately assessed the economic effects of requiring access fees and rebates to be determinable at the time of execution? Why or why not? Are there significant economic effects that are not discussed? If so, please explain and describe these effects.

76. Has the Commission accurately assessed the economic effects of accelerating the implementation of the MDI round lot definitions? Why or why not? Is there a cost to accelerating the redefinition of a round lot, in the absence of depth of book data, resulting from a loss of information about liquidity? Are there significant economic effects that are not discussed? If so please explain and describe these effects.

77. Has the Commission accurately assessed the economic effects of accelerating the MDI implementation with respect to adding odd-lot information in NMS data? Why or why not? Are there significant economic effects that are not discussed? If so please explain and describe these effects.

78. Has the Commission accurately described the uncertainties associated with costs of data users making system changes at two times rather than once? Why or why not? Are there other sources of uncertainty? If so please provide such data and analysis with quantitative estimates of the costs if possible.

79. Has the Commission accurately described the uncertainties associated with potential costs for data users moving from two data providers (the exclusive SIPs) to one competing consolidator? Why or why not? Is there data or analysis that could help mitigate any of the cost uncertainties? If so please provide such data and analysis with quantitative estimates of the costs if possible.

80. Has the Commission accurately assessed the economic effects of requiring SIPs to disseminate odd lot information in NMS data? Why or why not? Are there significant economic effects that are not discussed? If so please explain and describe these effects.

81. Has the Commission accurately described the uncertainties associated with determining whether or not the exclusive SIPs would charge more for the data including odd-lot data? Why or why not? Is there data or analysis that could help mitigate any of the cost uncertainties? If so please provide such data and analysis with quantitative estimates of the costs if possible.

82. Has the Commission accurately assessed the economic effects of providing the best odd-lot order in NMS data? Why or why not? Are there significant economic effects that are not discussed? If so, please explain and describe these effects.

83. Has the Commission accurately quantified the compliance costs that the proposed Rule imposes on various market participants? If not, please provide alternative estimates. Are there any sources of compliance costs not included in the Commission's estimates? If so, please describe the activity that generates the cost and provide estimates.

84. Has the Commission accurately quantified the compliance costs associated with the proposal in terms of updating systems to adapt to the change in the tick size, specifically that compliance costs would likely be similar for large and small market-participants? Why or why not? Please provide a quantitative discussion if possible.

85. Has the Commission accurately described the uncertainties associated with the compliance costs of the proposal? Why or why not? Are there other sources of uncertainty? Is there data or analysis that could help mitigate any of the cost uncertainties? If so, please provide such data and analysis with quantitative estimates of the costs if possible.

86. How does the assumption on whether the SIPs will otherwise become competing consolidators affect SIP

compliance costs? How accurate are the Commission's estimates of compliance costs assuming the SIPs will become competing consolidators and how accurate are the costs assuming instead that SIPs will otherwise not become competing consolidators? Please explain and provide alternative estimates, if available.

87. Has the Commission accurately described the uncertainties associated with costs of SIPs who become competing consolidators and exchanges making system changes at two times rather than once? Why or why not? Are there other sources of uncertainty? If so, please provide such data and analysis with quantitative estimates of the costs if possible.

88. Has the Commission accurately described the uncertainties associated with the implementation date for the MDI Rules? Why or why not? Is there data or analysis that could help mitigate any of the cost uncertainties? If so, please provide such data and analysis with quantitative estimates of the costs if possible.

89. Do you believe that the proposal would significantly increase the amount of message data? In particular would an increase in the amount of odd-lot quotes resulting from the smaller tick size increase the anticipated implementation costs under the MDI Rules? Please explain.

90. Has the Commission accurately assessed the likely impacts of the proposal on efficiency, competition and capital formation? Why or why not?

91. Has the Commission accurately assessed the likely effects of the reduction in tick size for some NMS stocks and the reduction in the access fee cap for all NMS stocks on price efficiency through impacts on liquidity? Has the Commission accurately assessed the likely effects of the reduction in the access fee cap for all NMS stocks and on making fees and rebates determinable at the time of execution on price efficiency through impacts on conflicts of interest? Has the Commission accurately assessed the likely effects of the proposal on the efficiency of broker-dealers' best-execution assessment? Has the Commission accurately assessed the likely effects of the acceleration of the round lot definition and the inclusion of odd lot information proposal on efficiency? Please explain.

92. Has the Commission accurately assessed the likely effects of the proposal on the competitive landscape in trading services? Please explain. Would the proposal likely change the number of competitors in trading services and, if so, how would the change in the number of competitors affect the level competition? Please explain.

93. Has the Commission accurately assessed the likely effects of the proposal on the competitive landscape in liquidity provision? Please explain. Would the proposal change the playing field among different types of competitors? If so, how would this affect the level of competition? Please explain.

94. Has the Commission accurately assessed the likely effects of the proposal on the competitive landscape in broker-dealer services? Please explain.

95. Has the Commission accurately assessed the likely effects of the proposal on the competitive landscape in market data? Please explain. Would the proposal affect the number of eventual competing consolidators? If so, would this affect the level of competition among competing consolidators? Why or why not? What would be the resulting economic effects of any changes in competing consolidator competition?

96. Has the Commission accurately assessed the likely impact of the proposal on capital formation? Please explain.

97. Has the Commission accurately assessed the economic tradeoffs associated with reasonable alternatives contained in this economic analysis? Please explain. Has the Commission accurately assessed the compliance costs associated with the various alternatives? Why or why not? If not, please provide as much analysis as possible. Are there other costs associated with any of the alternatives which are not discussed? If so please provide a detailed analysis including quantitative estimates if possible. Should the Commission implement any other reasonable alternatives? If so, please describe such alternatives and how the potential costs and benefits of the alternative would compare to the proposal? Please provide quantification, if possible.

98. The Commission has discussed an alternative whereby trading would be required to occur on an increment no less than a minimum increment of $0.001 regardless of the tick size assigned. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

99. The Commission has discussed an alternative whereby rule 612 is not extended to apply to trades. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

100. The Commission has discussed alternatives whereby the tick size would not apply to segmented trades or that segmented trades would be subject to a tick size of $0.001. Has the Commission adequately described the economic effects of these alternatives? Why or why not? Please explain and provide as much analysis and discussion as possible.

101. The Commission has discussed a number of alternative quoted spread-based tick size structures. Has the Commission adequately described the economic effects of these alternatives? Why or why not? Please explain and provide as much analysis and discussion as possible.

102. Has the Commission accurately assessed the effect on compliance costs of alternatives that keep the overall structure of the proposal but change the number of tick sizes? Specifically, is the Commission's assumption that adding or removing additional tiers is likely to have a small effect on overall compliance costs reasonable? Why or why not? If not, please provide additional analysis with detailed costs estimates if possible.

103. The Commission has discussed alternative quoted-spread based tick size structures with different thresholds for tick levels and fewer tiers of tick sizes. Has the Commission adequately described the economic effects of these alternatives? Why or why not? Please explain and provide as much analysis and discussion as possible.

104. The Commission has discussed an alternative quoted spread-based tick size structure that would result in an increased tick size for some stocks. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

105. The Commission has discussed an alternative quoted spread-based tick size structure that mirror a structure from a NASDAQ white paper. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

106. The Commission has discussed an alternative that would add ''step-up/step-down'' mechanism to the proposal or to any of the quoted spread-based alternatives. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

107. The Commission discussed an alternative that would reduce the minimum tick size to $0.005 for all NMS stocks. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

108. The Commission discussed an alternative that would set tick sizes based on share price. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

109. The Commission has discussed an alternative put forth by Cboe for determining the tick size. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

110. The Commission has discussed a number of alternative access fee regimes to the proposal. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

111. Has the Commission accurately assessed the effect of alternatives that raise the access fee cap for stocks prices less than $1.00? Why or why not? If not please provide detailed additional analysis.

112. The Commission has discussed various tick size and access fee alternatives. These alternatives could be adopted separately or in combination. Has the Commission adequately described the economic effects of combining various alternatives? Why or why not? Please explain and provide as much analysis and discussion as possible.

113. The Commission has discussed an alternative that would accelerate the implementation of the round lot definition from the MDI Rules but would not accelerate the inclusion of odd lot information in NMS data and would not require a BOLO. Has the Commission adequately described the economic effects of this alternative? Why or why not? Please explain and provide as much analysis and discussion as possible.

114. In addition to the proposal, should the Commission also accelerate the inclusion of depth of book information in NMS data from the MDI Rules? What would be the costs and benefits or other economic effects of accelerating the inclusion of depth information in NMS data? How would such an acceleration impact eventual competition among competing consolidators or the realization of the anticipated costs and benefits of the MDI Rules? Please explain.

VI. Paperwork Reduction Act

Certain provisions of the proposed rules and proposed rule amendments contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). The Commission is submitting these collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title of the new collection of information is ''Odd-Lot Information Acceleration.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number.

The Commission does not believe that the proposed amendments to rules 610 and 612 contain any collection of information requirements as defined by the PRA, but the Commission encourages comments on this point.[726]

A. Summary of Collection of Information

The proposed rules and rule amendments would include a collection of information within the meaning of the PRA. Specifically, the proposed amendments to rule 603(b) would require the exclusive SIPs to collect, consolidate, and disseminate odd-lot information, including the best odd-lot orders to buy and sell. The exclusive SIPs would also be required to disseminate indicators of the applicable round lot size and minimum pricing increment for each NMS stock, both of which would be provided to the exclusive SIPs by the primary listing exchange.

B. Proposed Use of Information

The information collected under the proposed amendments to rule 603(b) would be consolidated and disseminated by the exclusive SIPs to market participants who would use this odd-lot information for trading. Widespread availability of odd-lot information promotes fair and efficient markets and facilitates the ability of brokers and dealers to trade more effectively and to provide best execution to their customers. The round lot and minimum pricing increment indicators that would be disseminated by the exclusive SIPs would provide market participants with information about the parameters for trading in a particular NMS stock.

C. Respondents

The collection of information in the proposed changes to rule 603(b) would apply to the two exclusive SIPs.

D. Total Annual Reporting and Recordkeeping Burden

1. Initial Burden Hours and Costs

The Commission preliminarily believes that the two exclusive SIPs would have to modify their systems to collect, consolidate, and disseminate the odd-lot information, including the best odd-lot orders to buy and sell, that they do not currently collect, consolidate, and disseminate[727] and to disseminate the round-lot and minimum pricing increment indicators provided by the primary listing exchange. These modifications would involve the addition of new hardware, network infrastructure, and bandwidth, as well as programming and development costs, to take in additional inbound odd-lot quotation messages from SROs, to calculate odd-lot information, and to consolidate and disseminate odd-lot information and the round lot and minimum pricing increment indicators to subscribers.

The Commission estimates that each exclusive SIP would incur 440 initial burden hours to modify its systems to collect, calculate, consolidate and disseminate odd-lot information and to disseminate the round-lot and minimum pricing increment indicators[728] and initial external costs of $412,500 to purchase the necessary technology to effect such modifications.[729] Thus, the

[726] 44 U.S.C. 3501 *et seq.*

[727] The exclusive SIPs currently disseminate odd-lot transaction data.

[728] The Commission estimates the monetized initial burden for this requirement to be $154,580, broken down as follows: [(Sr. Programmer at $368/hour for 210 hours) + (Sr. Systems Analyst at $316/hour for 180 hours) + (Compliance Manager at $344/hour for 20 hours) + (Director of Compliance at $542/hour for 10 hours) + (Compliance Attorney at $406/hour for 20 hours)] = 440 initial burden hours to modify its systems to comply with the requirement to collect, calculate, and disseminate odd-lot information. The Commission based these estimates on 10% of the initial burden hour estimates for each exclusive SIP to become a competing consolidator provided in the MDI Rules to account for the fact that this proposal does not require the exclusive SIPs to calculate and disseminate full consolidated market data (*e.g.,* depth of book data or auction information) as defined in the MDI Rules. *See* MDI Adopting Release, *supra* note 5, at 18712–13. The Commission derived the hourly rate figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[729] The Commission arrived at this estimate by dividing the initial external cost estimate provided

Continued

Commission estimates that the total initial burden hours for two exclusive SIPs would be 880 burden hours [730] and that total initial external costs would be $825,000.[731] The Commission solicits comment on the accuracy of these estimates.

2. Ongoing Burden Hours and Costs

The Commission preliminarily believes that the two exclusive SIPs would incur annual ongoing burden hours and external costs to operate and maintain their modified systems to collect, calculate, and disseminate odd-lot information and to disseminate the round-lot and minimum pricing increment indicators. The Commission estimates that each exclusive SIP would incur 132 ongoing, annual burden hours [732] and ongoing, annual external costs of $123,725 to operate and maintain its systems to collect, calculate, and disseminate odd-lot information and to disseminate the round-lot and minimum pricing increment indicators.[733] Thus, the Commission estimates that the total ongoing, annual burden hours for two exclusive SIPs would be 264 burden hours [734] and that total ongoing, annual external costs would be $247,450.[735] The Commission solicits comment on the accuracy of these estimates.

E. Collection of Information Is Mandatory

The collection of information discussed above would be a mandatory collection of information.

F. Confidentiality

This information collection would be public.

G. Revisions to Current MDI Rules Burden Estimates

Currently, the MDI Rules impose ''collection of information'' requirements within the meaning of the PRA. Specifically, pursuant to rule 603(b), SROs are required to make available all data necessary to generate consolidated market data to competing consolidators and self-aggregators. As explained in more detail below, the Commission is proposing to revise the burden estimates associated with this requirement in light of the amendments the Commission is proposing. In the MDI Rules, the Commission estimated that each SRO will require an average of 220 initial burden hours of legal, compliance, information technology, and business operations personnel time to prepare and implement a system to collect the information necessary to generate consolidated market data (for a total cost per SRO of $70,865).[736] The Commission estimated that each SRO would incur an annual average burden on an ongoing basis of 396 hours to collect the information necessary to generate consolidated market data required by Rule 603(b) (for a total cost per SRO of $128,064).[737]

As described above, the Commission is proposing to amend rule 603(b) to require SROs to make available all data necessary to generate odd-lot information to the exclusive SIPs. The SROs already provide certain quotation information to the exclusive SIPs, and many SROs already provide odd-lot quotation information to customers through their proprietary data feeds.[738] Nevertheless, providing the exclusive SIPs with the data necessary to generate odd-lot information may entail additional burdens. Specifically, technical development work may be needed to direct odd-lot quotations to the exclusive SIPs and to expand the capacity of the existing connections through which the SROs provide data to the exclusive SIPs to support the additional message traffic associated with odd-lot quotations. Therefore, the Commission is proposing to revise its burden estimates for rule 603(b) upwards by 5% to account for the provision of the data necessary to generate odd-lot information to the exclusive SIPs.[739] Specifically, the Commission is proposing to add 11 initial burden hours [740] and 19.8 annual

in the MDI Rules for each exclusive SIP to become a competing consolidator by three to account for the fact that the exclusive SIPs would not need to build aggregation systems in three separate data centers to collect, calculate, and disseminate odd-lot information. *See* MDI Adopting Release, *supra* note 5, at 18712–13.

[730] The Commission estimates the monetized initial burden for this requirement to be $309,160, broken down as follows: [(Sr. Programmer at $368/hour for 210 hours) + (Sr. Systems Analyst at $316/hour for 180 hours) + (Compliance Manager at $344/hour for 20 hours) + (Director of Compliance at $542/hour for 10 hours) + (Compliance Attorney at $406/hour for 20 hours)] × [(2 exclusive SIPs)] = 880 total initial burden hours across the exclusive SIPs.

[731] The Commission estimates total initial external costs as follows: initial external costs of $412,500 per exclusive SIP × (2 exclusive SIPs) = $825,000.

[732] The Commission estimates the monetized annual ongoing burden for this requirement to be $46,374, broken down as follows: [(Sr. Programmer at $368/hour for 63 hours) + (Sr. Systems Analyst at $316/hour for 54 hours) + (Compliance Manager at $344/hour for 6 hours) + (Director of Compliance at $542/hour for 3 hours) + (Compliance Attorney at $406/hour for 6 hours)] = 132 ongoing, annual burden hours to operate and maintain its systems to comply with the requirement to collect, calculate, and disseminate odd-lot information. The Commission based these estimates on 10% of the ongoing, annual burden hour estimates provided in the MDI Rules for each exclusive SIP competing consolidator to operate and maintain its systems to comply with Rules 614(d)(1) through (4) to account for the fact that this proposal does not require the exclusive SIPs to calculate and disseminate full consolidated market data (*e.g.,* depth of book data or auction information) as defined in the MDI Rules. *See* MDI Adopting Release, *supra* note 5, at 18712–13. The Commission derived the hourly rate figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[733] The Commission arrived at this estimate by dividing by three the ongoing, annual external cost estimate provided in the MDI Rules for each exclusive SIP competing consolidator to operate and maintain its systems to comply with rules 614(d)(1) through (4) to account for the fact that the exclusive SIPs will not need to build aggregation systems in three separate data centers to collect, calculate, and disseminate odd-lot information. *See* MDI Adopting Release, *supra* note 5, at 18712–13.

[734] The Commission estimates the monetized annual ongoing burden for this requirement to be $92,748, broken down as follows: [(Sr. Programmer at $368/hour for 63 hours) + (Sr. Systems Analyst at $316/hour for 54 hours) + (Compliance Manager at $344/hour for 6 hours) + (Director of Compliance at $542/hour for 3 hours) + (Compliance Attorney at $406/hour for 6 hours)] × [(2 exclusive SIPs)] = 264 total ongoing, annual burden hours across the exclusive SIPs.

[735] The Commission estimates total annual ongoing external costs as follows: annual ongoing external costs of $123,725 per exclusive SIP × (2 exclusive SIPs) = $247,450.

[736] The Commission estimated the monetized initial burden for this requirement to be $70,865. The Commission derived this estimate based on per hour figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead: [(Compliance Manager at $310 for 105 hours) + (Attorney at $417 for 70 hours) + (Sr. Systems Analyst at $285 for 20 hours) + (Operations Specialist at $137 for 25 hours)] = 220 initial burden hours and $70,865.

[737] The Commission estimated the monetized ongoing, annual burden for this requirement to be $128,064. The Commission derived this estimate based on per hour figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead: [(Compliance Manager at $310 for 192 hours) + (Attorney at $417 for 48 hours) + (Sr. Systems Analyst at $285 for 96 hours)] = 336 initial burden hours and $128,064.

[738] *See* MDI Proposing Release, *supra* note 39, at 16738; MDI Adopting Release, *supra* note 5, at 18599.

[739] The Commission believes that 5% of the initial and ongoing, annual burden hour estimates provided in the MDI Rules for each SRO to make the data necessary to generate consolidated market data available to competing consolidators and self-aggregators is appropriate because the SROs already collect the data necessary to generate odd-lot information and this information is a subset of consolidated market data as defined in the MDI Rules.

[740] The Commission estimates the monetized initial burden for this requirement to be $3,929. The Commission derived this estimate based on per hour figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead: [(Compliance Manager at $344 for 5.25 hours) + (Attorney at $462 for 3.5 hours) + (Sr.

burden hours [741] to its previous estimates.

In addition, the Commission is proposing to require the primary listing exchange for each NMS stock to provide an indicator of the round lot size to the applicable exclusive SIP for dissemination and to calculate and provide to competing consolidators, self-aggregators, and the applicable exclusive SIP an indicator of the applicable minimum pricing increment for dissemination. The primary listing exchange is already required to calculate the applicable round lot size and provide it to competing consolidators and self-aggregators under the MDI Rules, and the incremental burden of providing this indicator to the two exclusive SIPs is likely to be minimal. However, calculating the applicable minimum pricing increment and providing it to competing consolidators, self-aggregators, and the exclusive SIPs would entail additional burdens. Specifically, primary listing exchanges would need to program systems to calculate the applicable minimum pricing increment for each NMS stock that they list each quarter based on its Time Weighted Average Quoted Spread and to include this information in the data that they provide to competing consolidators, self-aggregators, and the exclusive SIPs. Therefore, the Commission is proposing to revise its burden estimates for rule 603(b) upwards to account for the calculation of the applicable minimum pricing increment and the provision of this information to competing consolidators, self-aggregators, and the exclusive SIPs. Specifically, the Commission is proposing to add 50 initial burden hours [742] and 32 annual burden hours [743] for each primary listing exchange to its previous estimates and 250 total initial burden hours [744] and 160 total annual burden hours [745] for five primary listing exchanges. The Commission solicits comment on the accuracy of these revised estimates.

In addition, the MDI Rules include a collection of information requirement under rules 614(d)(1) through (3), which require competing consolidators to collect from the SROs quotation and transaction information for NMS stocks, calculate and generate a consolidated market data product, and make the consolidated market data product available to subscribers.[746] As discussed above, the Commission is proposing to amend the definition of odd-lot information to include a specified best odd-lot order to buy and best odd-lot order to sell. Since the odd-lot quotes that a competing consolidator would use to identify and disseminate the best odd-lot orders—if the competing consolidator offers a consolidated market data product that includes this information—are already included in the data necessary to generate odd-lot information, the Commission believes that the existing burden estimates for rules 614(d)(1) through (3) account for the identification and dissemination of the best odd-lot orders. The Commission solicits comment on whether, and the extent to which, amending the definition of odd-lot information to include the best odd-lot orders would affect the burden estimates for rules 614(d)(1) through (3).

H. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

115. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

116. Evaluate the accuracy of our estimates of the burden of the proposed collection of information;

117. Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected;

118. Evaluate whether there are ways to minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology; and

119. Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number S7–30–22. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–30–22 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[747] the Commission requests comment on the potential effect of the proposed rule on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Regulatory Flexibility Act Certification and Initial Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (''RFA'') [748] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [749] of the Administrative Procedure Act,[750] as amended by the

Systems Analyst at $316 for 1 hour) + (Operations Specialist at $152 for 1.25 hours)] = 11 initial burden hours and $3,929.

[741] The Commission estimates the monetized ongoing, annual burden for this requirement to be $7,050. The Commission derived this estimate based on per hour figures from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1,800-hour work-year and inflation, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead: [(Compliance Manager at $344 for 10.6 hours) + (Attorney at $462 for 3.4 hours) + (Sr. Systems Analyst at $316 for 5.8 hours)] = 19.8 annual burden hours and $7,050.

[742] The Commission estimates the monetized initial burden for this requirement to be $19,000 per primary listing exchange. *See supra* notes 620–623 and accompanying text.

[743] The Commission estimates the monetized ongoing, annual burden for this requirement to be $9,000 per primary listing exchange. *Id.*

[744] 50 initial burden hours per primary listing exchange × 5 primary listing exchanges = 250 total initial burden hours. The Commission estimates the total monetized initial burden of this requirement to be $95,000 ($19,000 per primary listing exchange × 5 primary listing exchanges = $95,000). *Id.*

[745] 32 annual burden hours per primary listing exchange × 5 primary listing exchanges = 160 total annual burden hours. The Commission estimates the total monetized annual burden of this requirement to be $45,000 ($9,000 per primary listing exchange × 5 primary listing exchanges = $45,000. *Id.*

[746] MDI Adopting Release, *supra* note 5, at 18703.

[747] 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).

[748] 5 U.S.C. 601 *et seq.*

[749] 5 U.S.C. 603(a).

[750] 5 U.S.C. 551 *et seq.*

RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.'' [751] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which if adopted, would not have a significant economic impact on a substantial number of small entities'' [752]

A. Proposed Amendments to Rule 612—Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA), in accordance with the provisions of the RFA [753] regarding the proposed amendments to rule 612 of Regulation NMS.

1. Reasons for the Proposed Action

As discussed in section II.F., the Commission believes that rule 612 should be amended to update and modernize the rule for the current trading environment. Rule 612 establishes the minimum pricing increments for NMS stocks and these increments have not been adjusted since they were adopted in 2005. Today, several NMS stocks experience tick-constraint, in that they are unable to be priced in an amount that would be determined by competitive market forces and supply and demand. Further, while rule 612 does not restrict trading outside of the minimum pricing increments required by the rule, the structure of the market impedes the ability of certain trading centers to trade in sub-penny increments and allows others to readily trade in such increments. The proposed amendments to rule 612 would harmonize the trading in NMS stocks in the minimum pricing increments set forth in rule 612.

2. Legal Basis

Pursuant to the Exchange Act and, particularly, sections 3(b), 5, 6, 11A, 15, 15A, 17(a) and (b), 23(a), and 36 thereof, 15 U.S.C. 78c(b), 78e, 78f, 78k–1, 78o, 78o–3, 78mm, 78q(a) and (b), and 78w(a), the Commission proposes to amend rule 612.

3. Small Entities Subject to the Rule

Proposed rule 612 would apply to national securities exchanges, national securities associations, ATSs, vendors, and broker or dealers.

a. National Securities Exchanges and National Securities Associations

None of the national securities exchanges is a small entity as defined by Commission rules. Exchange Act Rule 0–10(e) [754] states that the term ''small business'' when referring to an exchange means any exchange that has been exempted from the reporting requirements of Exchange Act rule 601 and is not affiliated with any person that is not a small business or small organization. There is only one national securities association, and the Commission has previously stated that it is not a small entity as defined by 13 CFR 121.201.[755]

b. Broker-Dealers

Commission rule 0–10(c) defines a broker-dealer as a small entity for the purpose of this section if the broker-dealer had a 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, had less than $200 million of funds and securities in its custody of control at all times during the preceding fiscal year, and the broker-dealer is not affiliated with any person (other than a natural person) that is not a small entity.[756] The Commission estimates that as of June 30, 2022 there were approximately 761 Commission registered broker-dealers that would be small entities for purposes of the statute that would be required to comply with the proposed amendments to rule 612 regarding quotation and trading in the proposed minimum pricing increments.

Rule 612 apples to NMS stocks and therefore, the rule would apply to NMS Stock ATSs. NMS Stock ATSs that are not registered as exchanges are required to register as broker-dealers.[757] Accordingly, NMS Stock ATSs would be considered small entities if they fall within the standard for small entities that would apply to broker-dealers. The Commission examined recent FOCUS data for the 33 broker-dealers that currently operate NMS Stock ATSs and, applying the test for broker-dealers described above, believes that none of the NMS Stock ATSs currently trading NMS stocks were operated by a broker-dealer that is a ''small entity.''

c. Vendors

A vendor is defined in rule 600(b)(100) of Regulation NMS as any SIP engaged in the business of disseminating transaction reports, last sale data, or quotations with respect to NMS securities to brokers, dealers, or investors on a real-time or other current and continuing basis, whether through an electronic communications network, moving ticker, or interrogation device.[758] Commission rule 0–10(g) states that the term small business when referring to a SIP, means any SIP that had gross revenues of less than $10 million during the preceding year, provided service to fewer than 100 interrogation devices or moving tickers at all times during the preceding year, and is not affiliated with any person that is not a small business or small organization.[759] The Commission estimates that there are approximately 80 vendors, 13 of which would be small entities.

4. Reporting, Recordkeeping, and Other Compliance Requirements

Rule 612 as proposed to be amended would not impose any new reporting, recordkeeping, or other compliance requirements on market participants that are small entities.

5. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no federal rules that duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives

Pursuant to section 3(a) of the RFA, the Commission must consider the following types of alternatives: (a) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule, or any part thereof, for small entities.

The primary goal of rule 612 is to provide uniform minimum pricing increments for NMS stocks. This primary goal continues with the proposed amendments to rule 612. As

[751] The Commission has adopted definitions for the term ''small entity'' for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0–10 (Rule 0–10). *See* Securities Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982) (File No. AS–305).

[752] 5 U.S.C. 605(b).

[753] 5 U.S.C. 603.

[754] 17 CFR 240.0–10(e).

[755] *See, e.g.,* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556, 32605 n. 416 (June 8, 2010) (''FINRA is not a small entity as defined by 13 CFR 121.201.''); MDI Adopting Release, *supra* note 5, at 18808.

[756] 17 CFR 240.0–10(c).

[757] Rule 301(b)(1) of Regulation ATS.

[758] 17 CFR 242.600(b)(100).

[759] 17 CFR 240.0–10(g).

such, the Commission believes that imposing different compliance or reporting requirements or possibly a different timetable for implementing compliance or reporting requirements, for small entities could undermine the goal of uniformity. In addition, the Commission has concluded similarly that it would not be consistent with the primary goal to further clarify, consolidate or simplify the proposed amendments to rule 612 for small entities. The proposed amendments to rule 612 are performance standards and do not dictate for entities of any size any particular design standards (*e.g.,* technology) that must be employed to achieve the objectives of the proposed rule. The Commission also preliminarily believes that it would be inconsistent with the purposes of the Exchange Act to specify different requirements for small entities or to exempt broker-dealers from the proposed amendments to rule 612.

7. Request for Comments

The Commission encourages written comments on matters discussed in the IRFA. In particular, the Commission requests comments on (i) the number of small entities that would be affected by the proposed amendments to rule 612; (ii) the nature of any impact that the proposed amendments to rule 612 would have on small entities and empirical data supporting the extent of the impact; and (iii) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments to rule 612. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments to rule 612 are adopted, and will be placed in the same public comment file as comments on the proposed amendments to rule 612 itself.

B. Proposed Amendments to Rule 610

The proposed changes to rule 610(c) would apply to trading centers as defined in Rule 600(b)(95) that impose fees for access against a protected quotation or any other quotation of the trading center that is the best bid or best offer of a national securities exchange or national securities association. As discussed above, currently national securities exchanges are the only trading centers that publish protected quotations. Pursuant to Rule 0–10(e), none of the national securities exchanges are a small entities for the purposes of the RFA.[760]

Proposed rule 610(d) would apply to national securities exchanges registered with the Commission under section 6 of the Exchange Act. Pursuant to rule 0–10(e), none of the national securities exchanges are a small entities for the purposes of the RFA.[761]

Therefore, for the purposes of the RFA, the Commission certifies that the proposed amendments to rule 610(c) and proposed rule 610(d) would not have a significant economic impact on a substantial number of small entities.

The Commission requests comment regarding this certification. In particular, the Commission solicits comment on the following:

1. Do commenters agree with the Commission's certification? If not, please describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

C. Proposed Amendments to Rule 603 and Definitions Odd-Lot Information and Regulatory Data Under Rule 600

The proposed amendments to rule 603(b) and to the definitions of odd-lot information and regulatory data in rule 600(b) would apply to national securities exchanges registered with the Commission under section 6 of the Exchange Act, national securities associations registered with the Commission under section 15A of the Exchange Act, and the exclusive SIPs. Pursuant to rule 0–10(e), none of the national securities exchanges are small entities for the purposes of the RFA.[762] There is only one national securities association, and the Commission has previously stated that it is not a small entity as defined by 13 CFR 121.201.[763] With respect to the exclusive SIPs, neither SIAC nor Nasdaq[764] meet the criteria for a ''small business'' or ''small organization'' when used with reference to a securities information processor.[765] Thus, the proposed amendments to Rules 600(b) and 603(b) would not affect any small entities.

As discussed above, the proposed amendments to rule 603(b) and the definitions of odd-lot information and regulatory data under rule 600 would not apply to any ''small entities.'' Therefore, for the purposes of the RFA, the Commission certifies that the proposed amendments to rule 603(b) and rule 600(b) would not have a significant economic impact on a substantial number of small entities.

The Commission requests comment regarding this certification. In particular, the Commission solicits comment on the following:

1. Do commenters agree with the Commission's certification? If not, please describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

Statutory Authority and Text of the Proposed Rule Amendments

Pursuant to the Exchange Act, and particularly sections 2, 3(b), 5, 6, 11, 11A, 15, 15A, 17, 19, 23(a), and 36 thereof, 15 U.S.C. 78b, 78c, 78e, 78f, 78k, 78k–1, 78*o,* 78*o*–3, 78q, 78s, 78w(a), and 78mm the Commission proposes to amend Sections 242.600, 242.603, 242.610, and 242.612 of chapter II of title 17 of the Code of Federal Regulations.

List of Subjects in 17 CFR Part 242

Regulations M, SHO, ATS, AC, NMS, and SBSR and Customer Margin Requirements for Security Futures.

For the reasons stated in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78*o*(b), 78*o*(c), 78*o*(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

* * * * *

■ 2. Amend § 242.600 paragraph (b) by:

■ a. Removing in paragraph (59)(i) the text ''and'' from the end of the paragraph;

■ b. Adding in paragraph (59)(ii) the text ''and'' to the end of the paragraph;

■ c. Adding paragraph (59)(iii);

■ d. Removing in paragraph (78)(i)(D) the text ''and'' from the end of the paragraph;

[760] 17 CFR 240.0–10(e).

[761] 17 CFR 240.0–10(e).

[762] *See* 17 CFR 240.0–10(e). Paragraph (e) of rule 0–10 states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of rule 601 of Regulation NMS, 17 CFR 242.601, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in rule 0–10. Under this standard, none of the exchanges subject to the amendments to rules 600(b) or 603(b) are ''small entities'' for the purposes of the RFA. *See* MDI Adopting Release, *supra* note 5, at 18808.

[763] *See supra* note 755.

[764] *See supra* note 326.

[765] *See* 17 CFR 240.0–10(g). *See also* Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232, 11320 (Mar. 10, 2010) (determining that SIAC and Nasdaq are not small entities for purposes of the RFA).

■ e. Removing in paragraph (78)(i)(E) the period from the end of the paragraph and adding the text ''; and'' in its place;
■ f. Adding paragraphs (78)(i)(F) and (iv).

The additions and revisions read as follows:

§ 242.600 NMS security designation and definitions.

* * * * *

(b) * * *

(59) * * *

(iii) *Best odd-lot order to buy and best odd-lot order to sell.* The best odd-lot order to buy means the highest priced odd-lot order to buy that is priced higher than the national best bid, and the best odd-lot order to sell means the lowest priced odd-lot order to sell that is priced lower than the national best offer, for an NMS stock that are calculated and disseminated on a current and continuing basis by a competing consolidator or plan processor or calculated by a self-aggregator; provided, that in the event two or more market centers transmit to a competing consolidator, plan processor, or a self-aggregator identical odd-lot buy orders or odd-lot sell orders for an NMS stock, the highest priced odd-lot buy order or lowest priced odd-lot sell order (as the case may be) shall be determined by ranking all such identical odd-lot buy orders or odd-lot sell orders (as the case may be) first by size (giving the highest ranking to the odd-lot buy order or odd-lot sell order associated with the largest size), and then by time (giving the highest ranking to the odd-lot buy order or odd-lot sell order received first in time).

* * * * *

(78) * * *

(i) * * *

(F) An indicator of the applicable minimum pricing increment required under § 242.612.

* * * * *

(iv) The primary listing exchange shall also provide the information required under paragraphs (b)(78)(i)(E) and (F) of this section to the applicable plan processor for dissemination.

* * * * *

■ 3. Amend § 242.603 by revising the section heading and paragraph (b) to read as follows:

§ 242.603 Distribution, consolidation, dissemination, and display of information with respect to quotations for and transactions in NMS stocks.

* * * * *

(b) *Consolidation and dissemination of information.*

(1) Application of paragraphs (b)(2) and (3) of this section:

(i) Compliance with paragraph (b)(3) of this section is required until the date indicated by the Commission in any order approving amendments to the effective national market system plan(s) to effectuate a cessation of the operations of the plan processors that disseminate consolidated information regarding NMS stocks.

(ii) Compliance with paragraph (b)(2) of this section is required 180 calendar days from the date of the Commission's approval of the amendments, filed as required under § 242.614(e), to the effective national market system plan(s).

(2) Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans for the dissemination of consolidated market data. Every national securities exchange on which an NMS stock is traded and national securities association shall make available to all competing consolidators and self-aggregators its information with respect to quotations for and transactions in NMS stocks, including all data necessary to generate consolidated market data, in the same manner and using the same methods, including all methods of access and the same format, as such national securities exchange or national securities association makes available any information with respect to quotations for and transactions in NMS stocks to any person.

(3) Every national securities exchange on which an NMS stock is traded and national securities association shall act jointly pursuant to one or more effective national market system plans to disseminate consolidated information, including a national best bid and national best offer and odd-lot information, on quotations for and transactions in NMS stocks. Such plan or plans shall provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor and such single plan processor must represent quotation sizes in such consolidated information in terms of the number of shares, rounded down to the nearest multiple of a round lot. Every national securities exchange on which an NMS stock is traded and national securities association shall make available to a plan processor all data necessary to generate odd-lot information.

* * * * *

■ 4. Amend § 242.610 by:
■ a. Revising paragraph (c);
■ b. Redesignating paragraphs (d) and (e) as (e) and (f); and
■ c. Adding new paragraph (d).

The revisions and additions read as follows:

§ 242.610 Access to quotations.

* * * * *

(c) *Fees for access to quotations.* A trading center shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association in an NMS stock that exceed or accumulate to more than the following limits:

(1) If the price of a protected quotation or other quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than:

(i) $0.0005 per share for an NMS stock that has a minimum pricing increment of $0.001 and

(ii) $0.001 per share for an NMS stock that has a minimum pricing increment greater than $0.001; or

(2) If the price of a protected quotation or other quotation is less than $1.00, the fee or fees cannot exceed or accumulate to more than 0.05% of the quotation price per share.

(d) *Transparency of fees.* A national securities exchange shall not impose, nor permit to be imposed, any fee or fees, or provide, or permit to be provided, any rebate or other remuneration, for the execution of an order in an NMS stock that cannot be determined at the time of execution.

* * * * *

■ 5. Revise § 242.612 to read as follows:

§ 242.612 Minimum pricing increment.

(a) *Definitions.* For purposes of this rule only, the following terms shall have the meanings set forth in this rule.

Evaluation Period means the last month of a calendar quarter (March in the first quarter, June in the second quarter, September in the third quarter and December in the fourth quarter) of a calendar year during which the primary listing exchange shall measure the Time Weighted Average Quoted Spread of an NMS stock that is priced equal to or greater than $1.00 per share to determine the minimum pricing increment to be in effect for an NMS stock for the next calendar quarter, as set forth by paragraph (c) of this section.

Time Weighted Average Quoted Spread means the average dollar value difference between the NBB and NBO during regular trading hours where each instance of a unique NBB and NBO is weighted by the length of time that the quote prevailed as the NBB or NBO.

(b) *Minimum pricing increments (MPIs).* No national securities exchange, national securities association, alternative trading system, vendor, or broker or dealer shall display, rank, accept from any person, or execute a bid or offer, an order, or an indication of interest in any NMS stock priced in an increment smaller than the applicable increment required by paragraph (c) or (d) of this section.

(c) *MPIs for orders priced equal to or greater than $1.00.* Except as provided in paragraph (e) of this section, the minimum increment for any bid or offer, order, or indication of interest or trade in any NMS stock priced equal to or greater than $1.00 shall be:

(1) No smaller than $0.001, if the time weighted average quoted spread for the NMS stock during the Evaluation Period was equal to, or less than, $0.008;

(2) No smaller than $0.002, if the time weighted average quoted spread for the NMS stock during the Evaluation Period was greater than $0.008 but less than, or equal to, $0.016;

(3) No smaller than $0.005, if the time weighted average quoted spread for the NMS stock during the Evaluation Period was greater than $0.016 but less than, or equal to, $0.04;

(4) No smaller than $0.01, if the time weighted average quoted spread for the NMS stock during the Evaluation Period was greater than $0.04.

(d) *MPIs for orders priced less than $1.00.* Except as provided in paragraph (e) of this section, the minimum increment for any bid or offer, order, or indication of interest for an NMS stock that is priced less than $1.00 per share shall be no smaller than $0.0001.

(e) *Exceptions.* (1) Orders that execute at, but are not explicitly priced at, the midpoint between the national best bid and the national best offer or the midpoint between the best protected bid and the best protected offer; and

(2) Orders that execute at a price that was not based, directly or indirectly, on the quoted price of an NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made.

(f) *Exemptions.* The Commission, by order, may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

By the Commission.

Dated: December 14, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–27616 Filed 12–28–22; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 249 December 29, 2022

Part III

Securities and Exchange Commission

17 CFR Parts 229, 232, 240, et al.

Insider Trading Arrangements and Related Disclosures; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, 240, and 249

[Release Nos. 33–11138; 34–96492; File No. S7–20–21]

RIN 3235–AM86

Insider Trading Arrangements and Related Disclosures

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the rule under the Securities Exchange Act of 1934 (''Exchange Act'') that provides affirmative defenses to trading on the basis of material nonpublic information in insider trading cases. The amendments add new conditions to this rule that are designed to address concerns about abuse of the rule to trade securities opportunistically on the basis of material nonpublic information in ways that harm investors and undermine the integrity of the securities markets. We are also adopting new disclosure requirements regarding the insider trading policies and procedures of issuers, the adoption and termination (including modification) of plans that are intended to meet the rule's conditions for establishing an affirmative defense, and certain other similar trading arrangements by directors and officers. In addition, we are adopting amendments to the disclosure requirements for director and executive compensation regarding equity compensation awards made close in time to the issuer's disclosure of material nonpublic information. Finally, we are adopting amendments to Forms 4 and 5 to require filers to identify transactions made pursuant to a plan intended to meet the rule's conditions for establishing an affirmative defense, and to require disclosure of bona fide gifts of securities on Form 4.

DATES:

Effective date: The final rules are effective on February 27, 2023.

Compliance dates: See Section III for further information on transitioning to the final rules.

FOR FURTHER INFORMATION CONTACT: Sean Harrison, Special Counsel, Office of Rulemaking, at (202) 551–3430, Division of Corporation Finance, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are amending:

Commission reference	CFR citation (17 CFR)
Regulation S–K [17 CFR 229.10 through 229.1305]	
Item 402	§ 229.402
Item 408	§ 229.408
Item 601	§ 229.601
Regulation S–T [17 CFR 232.11 through 232.903]	
Item 405	§ 232.405
Securities Exchange Act of 1934 (Exchange Act) [15 U.S.C. 78a *et seq.*]	
Rule 10b5–1	§ 240.10b5–1
Schedule 14A	§ 240.14a–101
Rule 16a–3	§ 240.16a–3
Form 4	§ 249.104
Form 5	§ 249.105
Form 20–F	§ 249.220f
Form 10–Q	§ 249.308a
Form 10–K	§ 249.310

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Statutory Authority

I. Introduction

Congress enacted the Federal securities laws to promote fair and transparent securities markets, ''avoid[ ] frauds,'' and ''substitute a philosophy of full disclosure for the philosophy of caveat emptor and thus to achieve a high standard of business ethics in the securities industry.'' [1] The securities laws' antifraud prohibitions that proscribe certain insider trading, including Section 10(b) of the Exchange Act,[2] play an essential role in maintaining the fairness and integrity of our securities markets. The Securities and Exchange Commission (the ''Commission'') has long recognized that insider trading [3] and the fraudulent

[1] *Affiliated Ute Citizens of Utah* v. *United States,* 406 U.S. 128, 151 (1972); accord *Lorenzo* v. *SEC,* 139 S. Ct. 1094, 1103 (2019).

[2] 15 U.S.C. 78j(b).

[3] ''Insider trading'' as used in this release refers to the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the

misuse of material nonpublic information by corporate insiders [4] harms not only individual investors but also undermines the foundations of our markets by eroding investor confidence.[5] Congress has recognized the harmful impact of insider trading on multiple occasions, such as by providing for enhanced civil penalties specifically for insider trading.[6]

Section 10(b) is one of the securities laws' primary antifraud provisions. This provision makes it unlawful ''[t]o use or employ, in connection with the purchase or sale of any security . . . any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe.'' [7] The Supreme Court has recognized that the ''manipulative or deceptive device[s] or contrivance[s]'' prohibited by Section 10(b) and Rule 10b–5 include the purchase or sale of a security of any issuer on the basis of material nonpublic information about that security or its issuer, in breach of a duty owed directly, indirectly, or derivatively to the issuer of that security, to the shareholders of that issuer, or to any person who is the source of the material nonpublic information.[8]

The Commission adopted Rule 10b5–1 in 2000 to provide more clarity regarding the meaning of ''manipulative or deceptive device[s] or contrivance[s]'' prohibited by Section 10(b) and Rule 10b–5 with respect to trading on the basis of material nonpublic information.[9] At the time, Federal appellate courts diverged on the issue of what, if any, connection must be shown between a trader's possession of material nonpublic information and his or her trading to establish liability under Section 10(b) and Rule 10b–5. The Commission addressed this issue by providing that a purchase or sale of an issuer's security is on the basis of material nonpublic information about that security or issuer for purposes of Section 10(b) and Rule 10b–5 if the person making the purchase or sale *was aware of* the material nonpublic information when the person made the purchase or sale.[10] In addition, Rule 10b5–1(c) established an affirmative defense to liability under Section 10(b) and Rule 10b–5 for insider trading, which the Commission intended ''to cover situations in which a person can demonstrate that the material nonpublic information did not factor into the trading decision.'' [11] To that end, this defense provided that the trading was not made on the basis of material nonpublic information if the person can demonstrate, among other things, that the trade was made pursuant to a binding contract, an instruction to another person to execute the trade for the instructing person's account, or a written plan for the trading of securities (each a ''trading arrangement'' and collectively ''trading arrangements'') adopted at a time that the person was not aware of material nonpublic information.[12] The Commission believed that this defense would ''provide appropriate flexibility to those who would like to plan securities transactions in advance, at a time when they are not aware of material nonpublic information, and then carry out those pre-planned transactions at a later time, even if they later become aware of material nonpublic information.'' [13] Rule 10b5–1(c)(2) provides a separate affirmative defense designed solely for non-natural persons (*e.g.,* entities) that trade.[14]

shareholders of that issuer, or to any other person who is the source of the material nonpublic information. *See* Rule 10b5–1(a).

[4] We use the terms ''insider'' and ''corporate insider'' in this release to refer to persons (other than issuers) for whom the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, would represent a breach of a fiduciary duty or a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of a security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information. *See* Rule 10b5–1(a).

[5] *See In re Cady, Roberts & Co.,* 40 S.E.C. 907, 1961 WL 60638, at *4 n. 15 (1961) (''A significant purpose of the Exchange Act was to eliminate the idea that the use of inside information for personal advantage was a normal emolument of corporate office.''); *see also United States* v. *O'Hagan,* 521 U.S. 642, 658 (1997) (The insider trading prohibition is consistent with the ''animating purpose'' of the Federal securities laws: ''to insure honest securities markets and thereby promote investor confidence.'')

[6] *See* Insider Trading Sanctions Act of 1984, Public Law 98–376, 98 Stat. 1264; Insider Trading and Securities Fraud Enforcement Act of 1988, Public Law 100–704, 102 Stat. 4677, codified at Section 21A of the Exchange Act, 15 U.S.C. 78u–1. Congress has enacted other laws that build on the insider trading prohibition. *See, e.g.,* Section 20(d) of the Exchange Act, 15 U.S.C. 78t(d); Section 20A of the Exchange Act, 15 U.S.C. 78t–1; STOCK Act, Public Law 112–105, 126 Stat. 291 (2012).

[7] Rule 10b–5, adopted pursuant to Section 10(b), prohibits the use of ''any device, scheme, or artifice to defraud''; the making of ''any untrue statement of a material fact'' or the ''omi[ssion]'' of ''a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading''; or ''any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person'' [17 CFR 240.10b–5]. In addition to potential insider trading liability, issuers—and those acting on their behalf—are also subject to other prohibitions under the Federal securities laws.

[8] *See Salman* v. *United States,* 137 S.Ct. 420, 425 n. 2 (2016) (explaining that, under the classical theory of insider-trading liability, an insider who trades in the securities of his corporation on the basis of material nonpublic information ''breaches a duty to, and takes advantage of, the shareholders of his corporation'' while, under the misappropriation theory, ''a person commits securities fraud 'when he misappropriates confidential information for securities trading purposes, in breach of a duty owed to the source of the information,' such as an employer or client''); *O'Hagan,* 521 U.S. at 651–53 (''Under the 'traditional' or 'classical theory' of insider trading liability, § 10(b) and Rule 10b–5 are violated when a corporate insider trades in the securities of his corporation on the basis of material, nonpublic information,'' and ''the misappropriation theory outlaws trading on the basis of nonpublic information by a corporate 'outsider' in breach of a duty owed not to a trading party, but to the source of the information.''); *Chiarella* v. *United States,* 445 U.S. 222, 228–29 (1980); *see also* 15 U.S.C. 78u–1(a)(1); 17 CFR 240.10b5–2 (setting forth a non-exclusive definition of circumstances in which a person has the requisite duty for purposes of the ''misappropriation'' theory of insider trading liability). Liability for insider trading under Section 10(b) and Rule 10b–5 requires ''scienter,'' *i.e.,* ''an intent on the part of the defendant to deceive, manipulate or defraud.'' *Aaron* v. *SEC,* 446 U.S. 680, 686 & n. 5 (1980); *see also Selective Disclosure and Insider Trading,* Release No. 33–7881 (Aug. 15, 2000) [65 FR 51716 (Aug. 24, 2000)] (''2000 Adopting Release'') at 51727.

[9] *See* 2000 Adopting Release, *supra* note 8.

[10] *See* Rule 10b5–1(b) (emphasis added). The final amendments do not alter the ''awareness'' standard, which courts have held is ''entitled to deference.'' *United States* v. *Royer,* 549 F.3d 886, 899 (2d Cir. 2008) (applying *Chevron U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843–44 (1984)), *cert. denied,* 558 U.S. 934, and 558 U.S. 935 (2009); *see also United States* v. *Rajaratnam,* 719 F.3d 139, 157–61 (2d Cir. 2013), *cert. denied,* 134 S. Ct. 2820 (2014). Under that standard, a person is aware of material nonpublic information if they know, consciously avoid knowing, or are reckless in not knowing that the information is material and nonpublic. *See SEC* v. *Obus,* 693 F.3d 276, 286–88, 293 (2d Cir. 2012); *United States* v. *Gansman,* 657 F.3d 85, 91 n.7, 94 (2d Cir. 2011). The decision in *Fried* v. *Stiefel Labs., Inc.,* 814 F.3d 1288, 1295 (11th Cir. 2016), which concerned a private action that did not involve Rule 10b5–1, erroneously suggests that a person must ''use'' the inside information to purchase or sell securities. *See also infra* at p. 45 n. 145.

[11] 2000 Adopting Release, *supra* note 8 at 51728.

[12] Rule 10b5–1 does not modify or address any other aspect of insider trading law. It also does not provide an affirmative defense for other securities fraud claims, such as a claim under Rule 10b–5 for an ''untrue statement of a material fact.'' 17 CFR 240.10b–5(b).

[13] 2000 Adopting Release, *supra* note 8 at 51728.

[14] *See* Rule 10b5–1(c)(2) [17 CFR 240.10b5–1(c)(2)]. This affirmative defense is available to a person other than a natural person that can demonstrate that the individual making the investment decision on behalf of the person was not aware of the material nonpublic information, and the person had implemented reasonable policies and procedures to prevent insider trading.

Since the adoption of the Rule 10b5–1(c)(1) affirmative defense, courts,[15] commenters,[16] and members of Congress [17] have expressed concern that traders have sought to benefit from its liability protections while trading securities opportunistically on the basis of material nonpublic information. Furthermore, some academic studies have found that corporate insiders trading pursuant to Rule 10b5–1 plans [18] consistently outperform the trading of corporate insiders that is not conducted under such plans. These studies raise concerns that corporate insiders may be trading under Rule 10b5–1 in ways that harm investors and undermine the integrity of the securities markets.[19] Practices that have raised public concern include corporate insiders adopting multiple overlapping plans and subsequently selectively canceling certain trades under such plans while they are aware of material nonpublic information (allowing such insiders to buy or sell securities under the plans that provide the most advantageous price) or commencing trades pursuant to a new plan shortly after the adoption of such plan (in some cases on the same day as said adoption, which, when combined with comparatively larger trades made closer in time to adoption of a plan, suggests that those trades may be on the basis of material nonpublic information).[20] In September 2021, the Commission's Investor Advisory Committee (''IAC'') [21] recommended that we ''take the necessary steps to establish meaningful guardrails around the adoption, modification, and cancellation of Rule 10b5–1 trading plans,'' by addressing certain gaps in the rule that allow corporate insiders to unfairly exploit informational asymmetries.[22]

On January 13, 2022, the Commission proposed several rule and form amendments to address potentially abusive practices associated with Rule 10b5–1 plans, grants of options and other equity instruments with similar features, and the gifting of securities.[23] We received over 160 comment letters on the proposals, which we discuss in context below.[24] Having considered these comments, we are adopting the following amendments, which include modifications from the proposal in response to the comments:

- Amend the affirmative defense of Rule 10b5–1(c)(1) to: (1) include a cooling-off period applicable to directors and ''officers'' (as defined by 17 CFR 240.16a–1(f) (''Rule 16a–1(f)'') and a shorter cooling off period applicable to all other persons other than the issuer; (2) include a certification condition for directors and officers; (3) limit the ability of persons other than the issuer to use multiple overlapping Rule 10b5–1 plans; (4) limit the ability of these persons to rely on the affirmative defense for a single-trade plan to one single-trade plan during any consecutive 12-month period; and (5) add a condition that all persons entering into a Rule 10b5–1 plan must act in good faith with respect to that plan; [25]
- Require: (1) quarterly disclosure by registrants regarding the use of Rule 10b5–1 plans and certain other trading arrangements by a registrant's directors and officers for the trading of its securities; and (2) annual disclosure regarding a registrant's insider trading policies and procedures in new Item 408 of Regulation S–K and corresponding amendments to Forms 10–Q and 10–K;
- Add a mandatory Rule 10b5–1(c) checkbox to Forms 4 and 5;
- Require certain tabular and narrative disclosures regarding awards

[15] District courts in private securities law actions have ''acknowledge[d] the possibility that a clever insider might 'maximize' their gain from knowledge of an impending [stock] price drop over an extended amount of time, and seek to disguise their conduct with a 10b5–1 plan.'' *In re Immucor Inc. Sec. Litig.,* 2006 WL 3000133, at *18 n.8 (N.D. Ga. Oct. 4, 2006); *accord Nguyen* v. *New Link Genetics Corp.,* 297 F. Supp. 3d 472, 494–96 (S.D.N.Y. 2018); *Freudenberg* v. *E*Trade Fin. Corp.,* 712 F. Supp. 2d 171, 200 (S.D.N.Y. 2010); *Malin* v. *XL Cap. Ltd.,* 499 F. Supp. 2d 117, 156 (D. Conn. 2007), *aff'd,* 312 F. App'x 400 (2d Cir. 2009).

[16] In Dec. 2020, the Commission proposed to amend Forms 4 and 5 to add a checkbox to permit filers to indicate that the reported transaction satisfied Rule 10b5–1. *See Rule 144 Holding Period and Form 144 Filings,* Release No. 33–10991 (Dec. 22, 2020) [85 FR 79936]. The Commission received several comment letters in response expressing concern about potential abuse of Rule 10b5–1. *See, e.g.,* letter from David Larcker et al. (Mar. 10, 2021), *https://www.sec.gov/comments/s7-24-20/s72420-8488827-229970.pdf;* letter from Council of Institutional Investors (''CII'') (Apr. 22, 2021), *https://www.sec.gov/comments/s7-14-20/s71420-8709408-236962.pdf;* letter from CII (Mar. 18, 2021), *https://www.sec.gov/comments/s7-24-20/s72420-8519687-230183.pdf.* In response to its Fall 2018 semiannual regulatory agenda, the Commission also received a letter requesting that the Commission amend Rule 10b5–1 to address potential abuses of Rule 10b5–1 plans. *See* letter from CII (Dec. 13, 2018), *https://www.sec.gov/comments/s7-20-18/s72018-4766666-176839.pdf.*

[17] *See, e.g.,* ''Waters and McHenry Introduce Bipartisan Legislation to Curb Illegal Insider Trading,'' U.S. House Committee on Financial Services, (Jan. 18, 2019) *https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=401725;* letter from Senators Elizabeth Warren, Sherrod Brown and Chris Van Hollen (Feb. 10, 2021), *https://www.warren.senate.gov/imo/media/doc/02.10.2021%20Letter%20from%20Senators%20Warren,%20Brown,%20and%20Van%20Hollen%20to%20Acting%20Chair%20Lee.pdf.*

[18] We use the terms ''Rule 10b5–1 plan'' and ''Rule 10b5–1 trading arrangement'' throughout this release to refer to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c)(1).

[19] *See, e.g.,* Alan D. Jagolinzer, *SEC Rule 10b5–1 and Insiders' Strategic Trade,* 55 Mgmt. Sci. 224 (2009); M. Todd Henderson et al., *Offensive Disclosure: How Voluntary Disclosure Can Increase Returns from Insider Trading,* 103 Geo. L.J. 1275 (2015); Taylan Mavruk & H. Nejat Seyhun, *Do SEC's 10b5–1 Safe Harbor Rules Need to Be Rewritten?,* 2016 Colum. Bus. L. Rev. 133 (2016); Artur Hugon & Yen-Jung Lee, *SEC Rule 10b5–1 Plans and Strategic Trade Around Earnings Announcements,* (2016), *https://ssrn.com/abstract=2880878.*

[20] *See, e.g.,* John P. Anderson, *Anticipating a Sea Change for Insider Trading Law: From Trading Plan Crisis to Rational Reform,* 2015 Utah L. Rev. 339 (2015); David Larcker et al., *Gaming the System: Three ''Red Flags'' of Potential 10b5–1 Abuse,* Stan. Closer Look Series (Jan. 2021) (''Gaming the System'') (noting from their analysis of a sample of sales transactions made pursuant to Rule 10b5–1 plans between Jan. 2016 and May 2020 that trades occurring within 30 days of adoption of a Rule 10b5–1 plan are approximately 50 percent larger than trades made six or more months later); *see also infra* note 40 and accompanying text.

[21] The IAC was established in Apr. 2012 pursuant to Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [Pub. L. 111–203, sec. 911, 124 Stat. 1376, 1822 (2010)] to advise and make recommendations to the Commission on regulatory priorities, the regulation of securities products, trading strategies, fee structures, the effectiveness of disclosure, and initiatives to protect investor interests and to promote investor confidence and the integrity of the securities marketplace.

[22] *See* Recommendations of the Investor Advisory Committee Regarding Rule 10b5–1 Plans (Sept. 9, 2021) (''IAC Recommendations''), at *https://www.sec.gov/spotlight/investor-advisory-committee-2012/20210916-10b5-1-recommendation.pdf.* The IAC also held a panel discussion regarding Rule 10b5–1 plans at its June 10, 2021 meeting. *See* IAC, *Meeting Minutes* (June 10, 2021), *https://www.sec.gov/spotlight/investor-advisory-committee-2012/iac061021-minutes.pdf.*

[23] *See Rule 10b5–1 and Insider Trading,* Release No. 33–11013 (Jan. 13, 2022) [87 FR 8686 (Feb. 15, 2022)] (''Proposing Release'').

[24] The public comments we received are available at *https://www.sec.gov/comments/s7-20-21/s72021.htm.* Unless otherwise indicated, the comment letters cited herein are those received in response to the Proposing Release. One comment letter, dated Jan. 10, 2022, urged that the comment period for this proposal, among others, be extended to at least 60 days. *See* letter from Senator Pat Toomey and Representative Patrick McHenry. The Commission voted to issue the proposal at an open meeting on Dec. 15, 2021. The release was posted on the Commission website that day, and comment letters were received beginning that same date. On Jan. 13, 2022, the Commission voted to approve and issue a revised release that reflected certain, limited changes to the Paperwork Reduction Act and Initial Regulatory Flexibility Act Analysis sections. This proposal was posted on the Commission's website that same day, superseding the Dec. 15, 2021 release, and was published in the **Federal Register** on Feb. 15, 2022. The comment period closed on Apr. 1, 2022. We have considered all comments received since Dec. 15, 2021, and do not believe an extension of the comment period was necessary. Another comment letter raised concerns about the rulemaking process at the agency more broadly. *See* letter from Senator Thom Tillis. The process followed in adopting these amendments has complied with the Administrative Procedure Act and other legal requirements.

[25] We use the term ''the issuer'' in this release to refer to the issuer of the particular security or securities that are the subject of trades for which a person seeks the benefit of the affirmative defense under Rule 10b5–1(c)(1).

of options, stock appreciation rights (''SARs''), and/or similar option-like instruments granted to corporate insiders shortly before and immediately after the release of material nonpublic information in new paragraph (x) to Item 402 of Regulation S–K;

- Require registrants to tag the information specified by new Items 402(x), 408(a), and 408(b)(1) in Inline XBRL; and
- Require reporting of dispositions of equity securities by bona fide gifts on Form 4, rather than on Form 5.

These amendments are intended to improve investor confidence in the securities markets, and by extension enhance liquidity and capital formation, while continuing to provide appropriate flexibility to traders who would like to plan securities transactions in advance, when they are not aware of material nonpublic information. To achieve these goals, the amendments are designed to significantly reduce opportunities for corporate insiders to misuse Rule 10b5–1 to trade on material nonpublic information. Further, the amendments will increase transparency regarding the use of Rule 10b5–1 plans, issuers' insider trading policies and procedures, and their policies and practices with respect to awards of options, SARs, and/or similar option-like instruments close in time to the release of material nonpublic information.

II. Discussion of the Final Amendments

A. Amendments to Rule 10b5–1

Rule 10b5–1(c)(1) provides an affirmative defense to Section 10(b) and Rule 10b–5 liability if a person satisfies its conditions. First, the person must demonstrate that, before becoming aware of the material nonpublic information, they entered into a binding contract to purchase or sell the security, provided instruction to another person to execute the trade for the instructing person's account, or adopted a written plan for trading the securities.[26] Second, the person must demonstrate that the contract, instruction, or plan:

- Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;
- Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or
- Did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so.[27]

Third, the person must demonstrate that the purchase or sale was pursuant to this contract, instruction, or plan.[28] A purchase or sale is not pursuant to a contract, instruction, or plan if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to the securities.[29] Finally, this defense is only available if the contract, instruction, or plan ''was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions'' of Rule 10b–5.[30]

We are concerned that some corporate insiders use Rule 10b5–1 plans in ways that are not consistent with the objectives of the rule, and that harm investors and undermine the integrity of the securities markets. As the use of Rule 10b5–1 plans has become more widespread,[31] commentators have raised concerns that the design of Rule 10b5–1(c)(1) has enabled corporate insiders to trade on the basis of material nonpublic information while avoiding liability under Section 10(b) and Rule 10b–5.[32] Several commenters on the proposals reiterated those concerns.[33] These concerns stem from, among other things, the ability of corporate insiders to adopt multiple Rule 10b5–1 plans at a time when they lack material nonpublic information, and subsequently terminate some of the plans based on later-obtained material nonpublic information (notwithstanding the provision of the current affirmative defense that it is applicable only when the contract, instruction, or plan was entered into in good faith). For example, such plans might take financial positions that authorize trades at price points above and/or below the issuer's current stock price. When the insider becomes aware of material nonpublic information indicating likely future changes in the company's stock price, the insider could cancel the less advantageous plan or plans. Corporate insiders also could adopt multiple Rule 10b5–1 plans that direct trades only at price points above the current share price, anticipating that they will subsequently learn material nonpublic information that would reveal which of the plans would be most profitable. Then, when they become aware of material non-public information, they might cancel the less profitable ones. We are concerned that, in these situations, an insider's awareness of material nonpublic information may still ''factor into the trading decision,'' even if the insider's plans appear to satisfy the requirements of Rule 10b5–1(c)(1).[34]

Furthermore, multiple studies examining Rule 10b5–1 plans have identified potentially abusive activity, including when trades occur shortly after adoption of a plan. Some of these studies have observed, among other things, that trades that occur shortly after adoption of a Rule 10b5–1 plan demonstrate abnormal profitability, which suggests that some corporate insiders may be aware of material nonpublic information at the time of adoption of a Rule 10b5–1 plan that otherwise appears to meet the existing requirements of Rule 10b5–1.[35]

[26] Rule 10b5–1(c)(1)(i)(A).

[27] Rule 10b5–1(c)(1)(i)(B).

[28] Rule 10b5–1(c)(1)(i)(C).

[29] *Id.*

[30] Rule 10b5–1(c)(1)(ii).

[31] According to one survey, corporate insiders at 51% of S&P 500 companies used Rule 10b5–1 trading arrangements in 2015. *See* Morgan Stanley & Shearman & Sterling LLP, ''Defining the Fine Line: Mitigating Risk with 10b5–1 Plans'' (2018) *https://advisor.morganstanley.com/austin.cornish/documents/field/a/au/austin-cornish/Mitigating%20Risk%20with%2010b5-1%20Plans.pdf. Rule 10b5–1 plans are also used by issuers. See Skadden Insights: Share Repurchases* 4–6 (Mar. 16, 2020) *https://www.skadden.com/insights/publications/2020/03/share-repurchases (discussing the use of Rule 10b5–1 plans for issuer share repurchases).*

[32] *See* Tom McGinty & Mark Maremont, *CEO Stock Sales Raise Questions about Insider Trading,* Wall St. J. (June 29, 2022) (retrieved from Factiva database); *see also* Jean Eaglesham & Rob Barry, *Trading Plans Under Fire: Despite 2007 Warning, Experts Say Loopholes Remain for Corporate Insiders, Wall St. J.* (Dec. 13, 2012) (retrieved from Factiva database).

[33] *See, e.g.,* letters from American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''), Colorado Public Employees' Retirement Association (''CO PERA''), Council of Institutional Investors (''CII''), International Corporate Governance Network (''ICGN''), Better Markets (''Better Markets''), Public Citizen (''Public Citizen''), and North American Securities Administrators Association, Inc. (''NASAA'').

[34] *See* 2000 Release, *supra* note 8, at 51728.

[35] *See, e.g.,* Gaming the System, *supra* note 19 (observing that trades under Rule 10b5–1 plans systematically avoid losses and foreshadow considerable stock declines over the subsequent six months when: (1) trades executed under the plan occur as much as 60 days after plan adoption; or (2) a Rule 10b5–1 plan is adopted in a given quarter and begins trading before that quarter's earnings announcement); Yen-Jun Lee, *Insiders' Foreknowledge of Earnings Results and Rule 10b5–1 Sales Trades,* 38 J. Acctg., Auditing & Fin. 1, 9, 17, 19 (2020) (finding that insiders utilizing 10b5–1 plans tend to sell before negative earnings results, and that insiders particularly apt to engage in this

Continued

To address all of these concerns, we are amending Rule 10b5–1(c)(1) to apply a cooling-off period on persons other than the issuer, impose a certification requirement on directors and officers, limit the ability of persons other than the issuer to use multiple-overlapping Rule 10b5–1 plans, limit the use of single-trade plans by persons other than the issuer to one such single-trade plan in any 12-month period, and add a condition that all persons entering into a Rule 10b5–1 plan must act in good faith with respect to that plan.

1. Cooling-Off Period

a. Proposed Amendments

Rule 10b5–1(c)(1) does not currently impose a waiting period between the date that a trading plan is adopted and the date of the first transaction to be executed under the plan. A trader can therefore adopt a Rule 10b5–1 plan and execute a trade under it as early as the day of adoption. Investors and other commentators have suggested that requiring a minimum waiting period (a ''cooling-off period'') between the adoption of a Rule 10b5–1 plan and the date on which trading can commence reduces the risk that corporate insiders could benefit from any material nonpublic information of which they may have been aware when adopting the plan.[36] The Commission proposed to amend Rule 10b5–1(c)(1) to add the following cooling-off periods as conditions of the affirmative defense: (1) a minimum 120-day cooling-off period after the date of adoption of any Rule 10b5–1 plan (including adoption of a modified trading arrangement) by a director or ''officer'' (as defined in Rule 16a–1(f)) [37] before any purchases or sales under the new or modified trading arrangement; and (2) a minimum 30-day cooling-off period after the date of adoption of any Rule 10b5–1 plan by an issuer before any purchases or sales under the new or modified trading arrangement.

The Commission proposed the cooling-off periods to address concerns that some insiders may be adopting Rule 10b5–1 plans while aware of material nonpublic information, such as an issuer's upcoming quarterly earnings results, and then shortly thereafter trading before the information becomes public. We understand that corporate insiders are often aware of material nonpublic information. Although Rule 10b5–1(c)(1) precludes reliance on the affirmative defense when a person is aware of such information at the time of adoption of a Rule 10b5–1 plan, in practice, it is difficult for an outside party to determine whether the insider satisfied this condition.[38] With cognizance of this difficulty, some corporate insiders may use Rule 10b5–1 plans to execute trades on the basis of material nonpublic information and seek to assert the affirmative defense to avoid potential liability. The academic studies discussed above suggest that this may be the case as researchers have observed that trades made under Rule 10b5–1 plans that occur before the next earnings announcement are abnormally profitable.[39] Some corporate insiders also undertake other actions, such as cancellation of sales scheduled under Rule 10b5–1 plans ahead of favorable issuer disclosures, which appears consistent with an effort to exploit material nonpublic information.[40]

To address concerns that certain corporate insiders misuse Rule 10b5–1 by adopting and trading under trading arrangements despite their awareness of material nonpublic information, and in light of the evidence that suggests that trading arrangements that commence close in time to the plan's adoption and prior to an earnings announcement are more likely to result in abnormal returns, the Commission proposed requiring insiders to wait a period of time before trading under a new (or modified) plan could commence. Although many companies already impose such a cooling-off period for their own insiders,[41] not all do so, and, furthermore, among those that have a cooling-off period, there is little uniformity with respect to the duration of such periods. The Commission proposed a 120-day cooling-off period for officers and directors because such a period would extend beyond the fiscal quarter [42] in which the trading arrangement is established, meaning that trading generally would not occur under a Rule 10b5–1 plan adopted during a particular quarter until after the registrant announced its financial results for that quarter. Although the cooling-off period proposed by the Commission for officers and directors may have been longer than the cooling-off period used by many issuers or recommended by certain financial advisors, the Commission believed that the proposed duration would deter insiders from exploiting material nonpublic information for the relevant quarter. In addition, the Commission noted that a 120-day cooling-off period would align with the recommendations of a wide range of commentators.[43]

Under the proposed amendments, the cooling-off periods would have applied to directors and ''officers'' (as defined in Rule 16a–1(f)) of the issuer, as well as to an issuer that structures a share repurchase plan as a Rule 10b5–1 plan,

behavior are also more likely to begin trading within three months of establishing the plan); Mavruk & Seyhun, *supra* note 19, at 165 (observing that first trade pursuant to a Rule 10b5–1 plan showed abnormal profitability, suggesting that insiders set up Rule 10b5–1 plans when in possession of material nonpublic information); McGinty & Maremont, *supra* note 32; *see also* Jagolinzer, *supra* note 19, at 234–35 (finding that Rule 10b5–1 plans appear to allow insiders to trade close in time to earnings releases, and that there is a statistical relationship between plan adoption and upcoming negative news events). We provide additional discussion of these sources, including potential caveats about the data they analyze, *infra* Section V.B.1.

[36] *See* Rulemaking petition regarding Rule 10b5–1 Trading Plans, File No. 4–658 (Jan. 2, 2013) (''CII Rulemaking Petition'') at *https://www.sec.gov/rules/petitions/2013/petn4-658.pdf;* Alan D. Jagolinzer et al, *How the SEC Can and Should Fix Insider Trading Rules,* The Hill (Dec. 17, 2020), *https://thehill.com/opinion/finance/530668-how-the-sec-can-and-should-fix-insider-trading-rules;* IAC Recommendations, *supra* note 22.

[37] Exchange Act Rule 16a–1(f) provides that the term ''officer'' ''shall mean an issuer's president, principal financial officer, or principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the issuer in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer. Officers of the issuer's parent(s) or subsidiaries shall be deemed officers of the issuer if they perform such policy-making functions for the issuer.''

[38] *See* Henderson et al., *supra* note 19, at 1289.

[39] *See* Gaming the System, *supra* note 19 (''[P]lans that execute a trade in the window between when the plan is adopted and that quarter's earnings announcement anticipate large losses and foreshadow considerable stock price declines'').

[40] *See* Jagolinzer, *supra* note 19, at 235 (observing that there is evidence ''that participants terminate sales plans before positive shifts in firm returns''); Mavruk & Seyhun, *supra* note 19, at 120, 125 (noting patterns of trading consistent with cancellation of some planned trades are abnormally profitable). Based on our review of the data sources used in the sources cited, we understand them to use the term ''earnings announcement'' to refer to the earliest of quarterly or annual reporting or other earnings announcements for which the issuer furnishes a corresponding Form 8–K.

[41] This practice suggests that many companies have concluded that in general a cooling-off period, rather than individualized efforts to identify instances where an executive is aware of material nonpublic information, strikes an appropriate balance of precision, cost of implementation, and investor confidence.

[42] Quarters are about 90 days long and public reporting companies are required to disclose their quarterly results no later than 40 or 45 days after the end of their fiscal quarter, depending on their filing status. *See* 17 CFR 249.308(a). Nevertheless, companies on average disclose their quarterly results within 30 days of the end of the fiscal quarter. *See* Morgan Stanley & Shearman & Sterling LLP, *supra* note 29.

[43] *See* IAC Recommendations, *supra* note 22 (recommending a cooling off period of four months); *Gaming the System, supra* note 12, at 3 (recommending a minimum cooling-off period and noting that ''[a] cooling-off period of four to six months . . . is supported by the data in our sample''); letter from Senators Elizabeth Warren, Sherrod Brown and Chris Van Hollen *supra* note 17 (recommending a cooling off period of four to six months).

although in the latter case the Commission proposed a shorter, 30-day cooling-off period. This requirement would prevent directors, officers, and issuers who might be aware of material nonpublic information from adopting or modifying a trading arrangement and trading immediately pursuant to the arrangement. The proposed cooling-off period also was intended to discourage issuers, directors, and officers from selectively terminating or cancelling a planned trade under a Rule 10b5–1 plan because any subsequent trades upon the adoption of a new or modified plan would also be subject to a new cooling-off period.

The Commission noted that applying a cooling-off period to directors and ''officers'' as defined in Rule 16a–1(f) was appropriate because such individuals are more likely than others to be aware of material nonpublic information in the general course of events, and also more likely to be involved in making or overseeing key corporate decisions that have the potential to affect the issuer's stock price, including decisions about the timing of the disclosure of such information.[44] The Commission also requested comment, however, on whether the Rule 16a–1(f) definition was the appropriate definition of ''officer'' for purposes of the proposed amendment and further inquired whether the cooling-off period should apply to all traders who rely on the Rule 10b5–1(c)(1) affirmative defense.[45]

In addition, the Commission stated that applying a cooling-off period to issuers may help address the concern that issuers may conduct stock buybacks while aware of material nonpublic information. For example, corporate insiders who are aware of positive material nonpublic information can cause the issuer to buy its stock at a lower price from current shareholders who are unaware of this information because, once the information is publicly disclosed, the issuer's share price may increase. The Commission proposed a 30-day cooling-off period for issuers to help reduce the likelihood of this potential abuse and promote investor confidence. The Commission also proposed a note to Rule 10b5–1(c)(1) stating that any modification or amendment to a prior contract, instruction, or written plan would be deemed to be the termination of such prior contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan.[46]

b. Comments on the Proposed Amendments

Commenters expressed a range of views on the proposed cooling-off periods. Many commenters expressed general support for a cooling-off period for directors and officers.[47] Several of these commenters supported the proposed cooling-off period of 120 days.[48] For example, one commenter agreed that the proposed 120-day cooling-off period would deter officers and directors from adopting or modifying a Rule 10b5–1 plan while aware of material nonpublic information and prevent insiders from gaming Rule 10b5–1 plans by opportunistically canceling trades or modifying plans.[49] In addition, in expressing the view that this duration was appropriate, another commenter stated the concern that, given that directors and officers are more likely than other traders to be aware of material nonpublic information and involved in making or overseeing key corporate decisions that could affect the stock price, they could be involved with decisions regarding the timing of a range of issuer disclosures, including disclosures related to a merger or acquisition, departure of a named executive officer, or the financial statements.[50] Finally, another commenter, who did not support the proposed duration of the cooling-off period, nonetheless asserted that a cooling-off period would increase investor confidence that insiders were not using Rule 10b5–1 plans to benefit from nonpublic material information.[51]

At the same time, many commenters, including several commenters that expressed support for a cooling-off period for directors and officers, contended that the duration of the proposed cooling-off period was unnecessarily long.[52] For example, some of these commenters asserted that a 120-day cooling-off period would discourage insiders from adopting Rule 10b5–1 plans [53] and therefore result in larger, more concentrated volumes of insider-directed trades taking place during trading windows rather than being spread out under a Rule 10b5–1 plan, which could increase market volatility.[54]

Some of these commenters recommended alternative durations for the cooling-off period for directors and officers.[55] Shorter alternatives ranged from a cooling-off period of 30 days

[44] *See O'Hagan,* 521 U.S. at 651–52; *Chiarella,* 445 U.S. at 227; *Steginsky* v. *Xcelera Inc.,* 741 F.3d 365, 370 n.5 (2d Cir. 2014); *see also Colby* v. *Klune,* 178 F.2d 872 (2d Cir. 1949).

[45] Proposing Release, *supra* note 22, at 17.

[46] The proposed note would have codified prior Commission guidance on Rule 10b5–1(c)(1)(i)(C). *See infra* note 122 and accompanying text.

[47] *See, e.g.,* letters from American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''), Better Markets, Colorado Public Employees' Retirement Association (''CO PERA''), Council of Institutional Investors (''CII''), Cravath, Swaine & Moore LLP (''Cravath''), Davis Polk & Wardwell LLP (''Davis Polk''), DLA Piper (''DLA''), Fenwick & West (''Fenwick''), International Corporate Governance Network (''ICGN''), Craig M. Lewis et al. (''Lewis''), Manulife Financial Corp. (''Manulife''), Committee on Securities Law of the Business Law Section of the Maryland State Bar (''MD Bar''), North American Securities Administrators Association, Inc. (''NASAA''), New York City Comptroller (''NYCC''), NYSE Group, Inc. (''NYSE''), PNC Financial Services Group, Inc. (''PNC''), Public Citizen, Anthony O'Reilly (''O'Reilly''), Securities Industry and Financial Markets Association (''SIFMA'') (letter dated Apr. 1, 2022, from Kevin Carroll, ''SIFMA 3''), and Sullivan & Cromwell LLP (''Sullivan'').

[48] *See, e.g.,* letters from AFL–CIO, CII, CO PERA, ICGN, Public Citizen, O'Reilly, and NASAA.

[49] *See* letter from CII.

[50] *See* letter from ICGN.

[51] *See* letter from Manulife.

[52] *See, e.g.,* letters from Federal Regulation of Securities Committee of the Business Law Section of the American Bar Association (''ABA''); ACCO Brands Corp. (''ACCO''); Chevron Corp. (''Chevron''); Cravath; Davis Polk; DLA; Dow Inc. (''Dow''); Empire State Realty Trust (''Empire Trust''); FedEx Corporation (''FedEx''); Fenwick; HR Policy Association Center on Executive Compensation (''HRPA''); Jones Day; Kirkland & Ellis (''Kirkland''); Manulife, National Association of Manufacturers (''NAM''); National Venture Capital Association (''NVCA''); New York City Bar Association (''NYC Bar''); NYSE; Paul, Weiss, Rifkind, Wharton & Garrison LLP (''Paul Weiss''); PNC; Quest Diagnostics Inc. (''Quest''); William Quinn (''Quinn''); US Chamber of Commerce (letter dated Apr. 1, 2022) (''Chamber of Chamber 2''); American Property Casualty Insurance Association, American Securities Association, Center On Executive Compensation, U.S. Chamber of Commerce, Nareit, National Association of Manufacturers, and NIRI: The Association for Investor Relations (''Coalition Letter''); Shearman & Sterling LLP (''Shearman''); SIFMA 3; Simpson Thacher & Bartlett LLP (''Simpson''); Sullivan; and Wilson, Sonsini, Goodrich & Rosati (''Wilson Sonsini'').

[53] *See* letter from NYC Bar. This comment letter was initially submitted in Apr. 2022 and posted on the Commission website on Oct. 2022. The delayed posting of this comment letter to the website is unrelated to the technological error that resulted in the Oct. 2022 reopening of the comment files of certain other Commission releases. *See Resubmission of Comments and Reopening of Comment Periods for Several Rulemaking Releases Due to a Technological Error in Receiving Certain Comments,* Release Nos. 33–11117, 34–96005, IA–6162, IC–34724; File Nos. S7–32–10, S7–18–21, S7–21–21, S7–22–21, S7–03–22, S7–08–22, S7–09–22, S7–10–22, S7–13–22, S7–16–22, S7–17–22, S7–18–22 (Oct. 7, 2022). In Apr. 2022, the submitter of this comment letter withdrew the comment letters submitted on this rule and the proposing release for another rule and submitted replacement comment letters. Staff posted the replacement comment letter on the other rule, but inadvertently failed to post the replacement comment letter for the Proposing Release until the submitter of the comment letter again contacted Commission staff in Oct. 2022.

[54] *See, e.g.,* letters from Chamber of Commerce 2, Davis Polk, DLA, Fenwick, NYSE, SIFMA 3, Simpson, and Sullivan.

[55] *See, e.g.,* letters from ACCO, Chamber of Commerce 2, Dow, DLA, Fenwick, NAM, NYSE, Paul Weiss, Quinn, Simpson, and Sullivan.

from the date of adoption of a Rule 10b5–1 plan,[56] which some commenters asserted is a common practice many issuers have implemented,[57] to a maximum cooling-off period of 90 days after the adoption of a Rule 10b5–1 plan.[58] Other commenters recommended shortening the cooling-off period, in part, by taking into account when the issuer publishes its earnings announcement or results. These commenters suggested that the cooling-off period last until: (1) the earlier of 60 days or one business day after the earnings release for the fiscal quarter of adoption; [59] (2) the earlier of 60 days or 48 hours after the next release of annual or quarterly results; [60] (3) 90 days or fewer or, if the officer or director enters into the Rule 10b5–1 plan within five trading days of an earnings release, 30 days; [61] (4) the earlier of 90 days or the publication of results for the quarter during which the plan was adopted; [62] (5) one trading day after the next earnings announcement covering at least one fiscal quarter and filed or furnished with an Exchange Act report; [63] and (6) the earlier of 30 days or the release of quarterly earnings with an exception for plans entered into within five business days after an earnings release.[64] Another commenter, however, urged the Commission to consider lengthening the cooling-off period to 180 days.[65]

Among commenters who recommended that we link the end of the cooling-off period to the release of earnings or other financial results, most did not specify whether the end of the cooling-off period should be tied to the publication of such results in the form of a quarterly report on Form 10–Q or annual report on Form 10–K, or instead to the announcement of such results in a Form 8–K, that is filed or furnished with the Commission.[66] Some commenters suggested that the end of the cooling-off period should be tied to the ''next'' (relative to the adoption or modification of the Rule 10b5–1 plan) such release; [67] we understand that if an earnings announcement accompanied by a Form 8–K is made, it typically precedes the filing of a Form 10–Q or Form 10–K. One commenter suggested that the end of the cooling-off period should be tied to the earlier of the release of financial results or the start of the issuer's open trading window under the insider's trading policy.[68]

Finally, some commenters asked the Commission to provide exceptions from the cooling-off period. For example, one commenter asked that the cooling-off period not apply in cases of financial hardship for the officer or director, such as an unanticipated financial liability that is unrelated to the trading of securities.[69] Another commenter asked the Commission to exclude venture capital funds from the cooling-off period condition, or to provide a shorter cooling-off period for venture capital funds.[70]

Many commenters opposed a cooling-off period for issuers,[71] largely due to issuers' use of Rule 10b5–1 plans in connection with share repurchase plans under Exchange Act Rule 10b–18.[72] One of these commenters stated that Rule 10b5–1 plans allow issuers to more effectively coordinate and execute their share repurchases during open and closed trading windows.[73] Given this practice, several commenters contended that the proposed cooling-off period would limit the usefulness of Rule 10b5–1 plans and impede the ability of issuers to effectively carry out share repurchases and other transactions used by issuers to manage their capital.[74] Some of these commenters stated the concern that a cooling-off period for issuers could increase market volatility as issuer repurchase activity would be limited to much shorter trading windows.[75]

In addition, several of these commenters asserted that a cooling-off period for issuers was unnecessary because existing safeguards under the Federal securities laws and market practices protect investors from issuer abuse of Rule 10b5–1 plans.[76] Some commenters contended the Commission did not set forth any evidence of issuers abusing Rule 10b5–1 trading arrangements to justify this cooling-off period.[77]

In contrast, other commenters supported a cooling-off period for issuers.[78] One of these commenters contended that the proposed 30-day period was too short to address the concerns underlying the proposal and advocated for a 120-day cooling-off period for issuers, similar to the proposed cooling-off period for directors and officers.[79]

Several commenters urged the Commission to clarify that immaterial or administrative modifications to an existing Rule 10b5–1 trading arrangement would not constitute a modification that triggers a new cooling-off period.[80] For example, some commenters asserted that modifications should not trigger the cooling-off period unless they address the pricing, amount of securities to be purchased or sold, and/or the timing of purchases or sales.[81] In addition, another commenter urged the Commission not to trigger a new cooling-off period upon a modification of a Rule 10b5–1 plan.[82]

We also received comment on whether some or all of the proposed amendments should apply only to directors and officers, as defined in Rule

[56] *See, e.g.,* letters from ACCO, Chamber of Commerce 2, DLA, Fenwick, NYC Bar, NYSE, Paul Weiss, Quinn, and Sullivan.

[57] *See, e.g.,* letters from Chamber of Commerce 2, NYSE, Paul Weiss, and Simpson.

[58] *See, e.g.,* letters from Chevron, Dow, and Cleary, Gottlieb, Steen & Hamilton LLP (''Cleary'').

[59] *See* letter from ABA.

[60] *See* letter from Manulife.

[61] *See* letter from Dow.

[62] *See* letter from Cleary.

[63] *See* letter from Davis Polk.

[64] *See* letter from NAM.

[65] *See* letter from Senators Elizabeth Warren, Chris Van Hollen, Tammy Baldwin, and Bernard Sanders (''Sen. Warren et al.'').

[66] *See, e.g.,* letters from ABA, Cleary, and PNC.

[67] *See, e.g.,* letters from Davis Polk, DLA, and Simpson.

[68] *See* letter from DLA; *see also* letter from Quest (suggesting that there is no incremental material nonpublic information disclosed in a Form 10–Q when an issuer has already released an earnings announcement).

[69] *See* letter from Wilson Sonsini.

[70] *See* letter from NVCA.

[71] *See, e.g.,* letters from the Bank Policy Institute and the American Bankers Association (''BPI''), Home Depot, Inc. (''Home Depot''), Dow, Chevron, Empire Trust, FedEx, International Bancshares Corporation (''IBC''), Manulife, NYSE, HudsonWest LLC (''HudsonWest''), Guzman & Company (''Guzman''), Quest, Coalition Letter, Chamber of Commerce 2, HRPA, Lewis, NAM, NVCA, NYC Bar, Society for Corporate Governance (''SCG''), SIFMA (letter dated Apr. 1, 2022, from Joseph P. Corcoran) (''SIFMA 2''), ABA, Cravath, Davis Polk, Dorsey & Whitney LLP (''Dorsey''), Fenwick, Jones Day, Kirkland, Paul Weiss, Simpson, Shearman, Sullivan, Wilson Sonsini, and Vistra Corp. (''Vistra'').

[72] 17 CFR 240.10b–18. Rule 10b–18 provides issuers with a safe harbor from liability for manipulation under Sections 9(a)(2) and 10(b) of the Exchange Act [15 U.S.C. 78i(a)(2) and 78j(b)] when they repurchase their common stock in the market in accordance with the Rule's manner, timing, price, and volume conditions.

[73] *See* letter from Simpson.

[74] *See, e.g.,* letters from BPI, Home Depot, Dow, Chevron, FedEx, Quest, Chamber of Commerce 2, Coalition Letter, NAM, SCG, SIFMA 2, ABA, Cravath, Davis Polk, Jones Day, Paul Weiss, Simpson, Shearman, and Wilson Sonsini.

[75] *See, e.g.,* letters from NYSE and Sullivan.

[76] *See, e.g.,* letters from Cravath, Davis Polk, Dow, FedEx, Fenwick, Lewis, NAM, Paul Weiss, Quest, SCG, SIFMA 2, and Wilson Sonsini.

[77] *See, e.g.,* letters from BPI, Davis Polk, Cravath, and Wilson Sonsini.

[78] *See, e.g.,* letters from CO PERA, CII, ICGN, NYCC, Better Markets, Public Citizen, Stern Tannenbaum Bell LLP (''Stern''), ACCO, PNC, NASAA, and Sen. Warren et al.

[79] *See* letter from NASAA.

[80] *See, e.g.,* letters from Chamber of Commerce 2, NAM, SIFMA 2, ABA, Cleary, Cravath, Davis Polk, DLA, Fenwick, and Sullivan.

[81] *See, e.g.,* letters from Cravath, Cleary, Davis Polk, and DLA.

[82] *See* letter from NAM.

16a–1(f), or whether they should also apply to other insiders or traders more broadly. Several commenters indicated that the proposed cooling-off period and limitations on overlapping and single-trade plans should apply to all traders or all natural persons.[83] One of these commenters generally observed that the limitations should apply broadly because other officers and employees can potentially have access to and trade on material nonpublic information.[84] Another commenter suggested that any individual involved in a company's trading program or ''corporate decisions'' should be subject to the cooling-off requirement.[85] Two commenters also suggested that we extend the new Item 408(a) reporting obligation to cover any employee who adopts a 10b5–1 plan.[86]

Other commenters opposed any expansion of the amendments beyond directors and Rule 16a–1(f) officers.[87] Some of these commenters agreed with our observation that these officers were those most likely to have access to material nonpublic information.[88] Two commenters argued that trading by employees other than Rule 16a–1(f) officers is unlikely to adversely affect financial markets because of the limited authority of these employees over corporate decisions.[89] One of these commenters further observed that because other employees do not generally file Form 4, their trading activities are unlikely to affect public confidence in a company's securities.[90] Two other commenters suggested that non-executive employees are particularly likely to need to liquidate and diversify their company stock holdings, and so would be disproportionately harmed by limitations such as the cooling-off period.[91] One commenter also stated that making the affirmative defense more difficult to establish would reduce the likelihood that companies would require their non-executive employees to use Rule 10b5–1 plans, reducing the benefits of the rule.[92]

c. Final Amendment

After consideration of the comments, we are adopting a modified cooling-off period that will apply to all persons other than the issuer, with directors and ''officers'' (as defined in Rule 16a–1(f)) [93] of the issuer subject to a longer cooling-off period than applies to other persons (other than the issuer) who rely on the Rule 10b5–1(c)(1) affirmative defense.

Under the final rule, a director or ''officer'' (as defined in Rule 16a–1(f)) who adopts (including a modification of) a Rule 10b5–1 plan would not be able to rely on the Rule 10b5–1 affirmative defense unless the plan provides that trading under the plan will not begin until the later of (1) 90 days after the adoption of the Rule 10b5–1 plan or (2) two business days following the disclosure of the issuer's financial results in a Form 10–Q or Form 10–K for the fiscal quarter in which the plan was adopted or, for foreign private issuers, in a Form 20–F or Form 6–K that discloses the issuer's financial results (but in any event, the required cooling-off period is subject to a maximum of 120 days after adoption of the plan).[94]

This cooling-off period is intended to deter opportunistic trading that may be occurring under the current rule and, by extension, as noted by commenters, it may increase investor confidence that directors and officers are not using Rule 10b5–1 plans for such purposes.[95] The purpose of a cooling-off period is to provide a separation in time between the adoption of the plan and the commencement of trading under the plan so as to minimize the ability of an insider to benefit from any material nonpublic information. In addition, academic studies documenting abnormal trading results indicate that opportunistic trading may be occurring notwithstanding current Rule 10b5–1(c)(1) and that certain corporate insiders are earning profits unavailable to others.[96] For example, directors, officers, and other corporate insiders commonly have access to preliminary quarterly financial data before it is released to the public. As academic commentary has observed, ''[q]uarterly earnings announcements . . . offer the most important and frequent dates of material information disclosure by firms.'' [97] A cooling-off period could serve to avoid a situation in which, for example, an insider adopts a Rule 10b5–1 plan while aware of likely directional trends in quarterly results and trades under the plan before the disclosure of such information.

In addition, as the Proposing Release indicated, we are concerned that this type of opportunistic trading could occur in contexts other than in connection with quarterly results. For example, as a commenter noted, corporate insiders may be aware of material nonpublic information related to other types of upcoming events, such as a potential merger, acquisition, or departure of a named executive officer, and, with such information, adopt a Rule 10b5–1 plan and trade under it before that information is made public.[98]

Accordingly, the cooling-off period for officers and directors that we are adopting includes both a fixed (90-day) and a variable (two business days after the disclosure of the issuer's financial results) component. This cooling-off period is targeted at reducing information asymmetries in general as well as providing separation in time between adoption of the plan and trading under the plan so as to reduce the ability of corporate insiders to trade on material nonpublic information.

The approach we are adopting takes into account considerations raised by commenters. Some commenters observed that we could accomplish our goals by linking the end of the cooling-off period to the release of earnings results for the current quarter instead of a fixed period of days, and suggested that we adopt a variable cooling-off period that ends one or two business days following the issuer's next reporting of quarterly results.[99] Others suggested that we adopt a cooling-off period that would be the earlier of this date or some other fixed period, such as

[83] *See* letters from Better Markets, NASAA; *see also* letter from Sen. Warren et al. (suggesting the limitation apply to ''all employees'').

[84] *See* letter from NASAA.

[85] *See* letter from ICGN.

[86] *See* letters from BrilLiquid LLC (''BrilLiquid'') and NASAA.

[87] *See* letters from Chamber of Commerce 2, CII, Cravath, Davis Polk, NAM, SCG, and SIFMA.

[88] *See* letters from CII, Cravath, and SIFMA.

[89] *See* letters from Cravath and Davis Polk.

[90] *See* letter from Davis Polk.

[91] *See* letters from Chamber of Commerce 2 and NAM.

[92] *See* letter from Davis Polk.

[93] We are declining the request from one commenter to adopt a definition of ''officer or director'' that would expressly exclude certain venture capital funds whose partners may serve as a director on the board of an issuer. As we have noted, Rule 10b5–1 does not alter the law of insider trading and any potential liability under the circumstances described by the commenter would be determined according to established principles. We also are not convinced that the business circumstances of such a director are unique and thus warrant a distinctive set of affirmative defense requirements. We further note that Rule 10b5–1(c)(2) can provide an alternative affirmative defense for persons other than natural persons.

[94] The good faith requirement in Rule 10b5–1(c)(1)(ii) will continue to apply as a condition of the affirmative defense.

[95] *See, e.g.,* letters from AFL–CIO, CII, and Manulife.

[96] *See supra* note 35 and accompanying text.

[97] *See* U. Ali & D. Hirshleifer, *Opportunism as a Firm and Managerial Trait: Predicting Insider Trading Profits and Misconduct,* 126 J. Fin. Econ. 490, 491 (2017).

[98] *See* letter from ICGN; *see also* Henderson et al., *supra* note 19, at 1301 (noting that 25% of the price changes observed in their data are the results of corporate news events other than earnings).

[99] *See supra* note 63.

60 days.[100] In addition, while several commenters supported a 120-day cooling-off period,[101] other commenters expressed concerns that this duration would discourage the use of Rule 10b5–1 plans.[102] We agree that, in some cases, a full 120-day cooling-off period would be longer than needed to prevent the opportunistic trading with which we are concerned. Therefore, we have shortened the cooling off period for officers and directors from 120 days to the later of 90 days or the second business day following disclosure of the issuer's financial results for the fiscal quarter in which the plan was adopted.[103] This will result in a shortened cooling-off period, relative to what was proposed, when such results are disclosed sooner than 120 days following adoption of the plan.

In addition, to enhance clarity, the final rule provides that an issuer will be considered to have disclosed its financial results at the time it files a Form 10–Q or Form 10–K, or, in the case of foreign private issuers, files a Form 20–F or furnishes a Form 6–K that discloses the financial results. We disagree with commenters who suggested that there cannot be material nonpublic information contained in a Form 10–Q or similar filing when the issuer has already announced its earnings results.[104] For example, some academic researchers have found that information in periodic filings affects stock prices for issuers that also made an earlier earnings announcement for the same quarter.[105]

Further, the cooling-off period for officers and directors includes a two-business day period following the disclosure of the issuer's financial results, which provides a short interval for investors and other market participants to analyze those results.[106] Although some commenters suggested that the next business day after results are released would be adequate to ensure that market participants have access to the same information as the corporate insider, we have adopted a cooling-off period that extends to the second business day after results are released, as other commenters suggested.[107] We disagree with those commenters who suggested that a next-day approach would provide all market participants with the same access as the corporate insider, as it may be challenging to obtain and analyze the full details of an issuer's quarterly results within one day. In some cases, allowing trading such a short period after release would effectively authorize the director or officer to trade in the first minutes after that information's availability to the market.

While some commenters suggested that the cooling-off period need only take into account the publication of an issuer's quarterly results, we find that including a minimum duration of 90 days for the cooling-off period is necessary to deter the full scope of opportunistic trading that we intend to address and appropriately balances the comments, academic studies, and the purpose of an affirmative defense. This minimum period is a reduction from the proposed 120-day cooling-off period, in response to comments received stating that the length of the proposed cooling-off period could discourage corporate insiders from using Rule 10b5–1 plans, although we acknowledge that some of these commenters requested a shorter period than we are adopting.[108] Given that directors and officers may be aware of material nonpublic information related to upcoming events other than quarterly results, a cooling-off period based solely on the timing of the publication of quarterly results would be too narrow to accomplish the objective of assuring that trading under these plans is not on the basis of material nonpublic information.[109] For example, as noted above, directors and officers may be aware of material nonpublic information about a potential merger, acquisition, or departure of a named executive officer.[110]

Further, a cooling-off period that is linked only to the release of the next quarterly results (plus two business days) would in some cases cause the time between plan adoption and initial trading to be very short, such as two to three days, raising the risk that directors and officers could easily adopt and trade under a Rule 10b5–1 plan while aware of material nonpublic information that is unrelated to the earnings information that has been released. For all of these reasons, we are requiring a minimum cooling-off period of 90 days for officers and directors regardless of the date of the release of the subsequent quarter's results.[111]

We acknowledge that the cooling-off period that we are adopting for directors and officers is longer than many of the cooling-off periods recommended by several commenters and that academic studies do not provide a precise estimate of the length of time a cooling-off period should be to prevent insiders from realizing abnormal returns on their trades.[112] However, we have tailored the cooling-off period to provide a greater separation in time between plan adoption and commencement of trading

[100] *See supra* note 59.

[101] *See, e.g.,* letters from AFL–CIO, CII, CO PERA, ICGN, Public Citizen, O'Reilly, and NASAA.

[102] *See, e.g.,* letters from Chamber of Commerce 2, Davis Polk, DLA, Fenwick, SIFMA 3, Simpson, and Sullivan.

[103] If financial results are disclosed more than 120 days after adoption of the plan, 120 days would be the maximum duration of the required cooling-off period. In those circumstances, we agree with commenters who asserted that a 120-day cooling-off period would be an appropriate duration to better ensure that a corporate insider would not benefit from material nonpublic information related to earnings. *See, e.g.,* letters from AFL–CIO, and CII. The final rule would not foreclose issuers that may choose to impose a longer cooling-off period.

[104] *See* letters from DLA and Quest.

[105] *See* Erik R. Holzman et al., *Is All Disaggregation Bad for Investors? Evidence from Earnings Announcements,* 26 Rev. Acctg. Studies 520, 540–41 (2021); Yifan Li et al., *Opportunity Knocks But Once: Delayed Disclosure of Financial Items in Earnings Announcements and Neglect of Earnings News,* 25 Rev. Acctg. Studies 159 (2020); Bin Miao et al., *Limited Attention, Statement of Cash Flow Disclosure, and the Valuation of Accruals,* 21 Rev. Acctg. Studies 473 (2016). Some earlier work finds that there are incremental market responses to Form 10–K filings but not to Form 10–Q filings. Edward Xuejun Li & K. Ramesh, *Market Reaction Surrounding the Filing of Periodic SEC Reports,* 84 Acctg. Rev. 1171 (2009).

[106] *See SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833, 854 & n.18 (2d Cir. 1968) (noting that the ''permissible timing of insider transactions after disclosures of various sorts is one of the many areas of expertise for appropriate exercise of the SEC's rule-making power'').

[107] *See supra* note 63.

[108] *See, e.g.,* letters from Fenwick, Simpson, and Sullivan.

[109] *See* letter from ICGN.

[110] *See* Jagolinzer, *supra* note 18, at 234 (finding that 10b5–1 plan adoption is associated with adverse news events occurring an average of 72.2 days after adoption).

[111] We also note that, consistent with this view, many commenters stated that a cooling-off period for a fixed period of days (*i.e.,* one which in some cases would necessarily extend beyond release of the next quarter's results) is a common industry practice.

[112] One study found that abnormal returns persist on average among all observed Rule 10b5–1 plans for up to 60 days after plan adoption, but that abnormal returns for single-trade plans, which represent about half of the observed Rule 10b5–1 plans, persist for 120 days or more. *See* Gaming the System, *supra* note 20, at 2–3. The authors conclude that a cooling-off period of four to six months would be ''supported by our data,'' *id.* at 3, although the study did not consider whether this would still be the case if there were also limits on single-trade plans. A second study consistently found abnormal returns for the 60-day period after a Rule 10b5–1 plan is adopted, and found such returns under two of the three statistical methods employed for the 90-day period after plan adoption. *See* McGinty & Maremont *supra* note 32. Another study reported evidence that insiders trade on information that on average has value for between three and six months, and the authors suggest that a cooling-off period of that length would curtail these trades. *See* Mavruk & Seyhun, *supra* note 19 at 136, 163, 179. And another study found that insiders continue to earn abnormal returns after the fifth planned trade over a 350-day period, suggesting that Rule 10b5–1 plans do not on average involve very short-run information. *See* Jagolinzer, *supra* note 19, at 234–35. It also found that Rule 10b5–1 plans are statistically associated with negative news items occurring an average of 72.2 days after a plan is established.

under the plan to better ensure that the affirmative defense is available only in situations in which material nonpublic information, including information other than earnings information, did not factor into the trading decision. Finally, although a commenter recommended increasing the length of the cooling-off period,[113] we decline to do so to minimize the risk of excessively long cooling-off periods, which, as commenters stated, may discourage the use of Rule 10b5–1 plans.

Moreover, while we recognize that some issuers impose their own cooling-off periods, those cooling-off periods are voluntary and vary in duration. Including a cooling-off period as a condition of the affirmative defense will provide greater consistency for Rule 10b5–1 plans and thereby help address the investor protection concerns that motivated the adoption of Rule 10b5–1.

In choosing an appropriate cooling-off period for officers and directors, we are mindful of some commenters' concerns that a cooling-off period might reduce the appeal of Rule 10b5–1 plans, which could have undesirable effects on investor confidence.[114] We expect, however, that the period we are adopting will not have a significant impact on directors' and officers' desire to satisfy the requirements of the affirmative defense. Directors and officers have strong incentives to rely on a Rule 10b5–1 plan, due to the potential effects of the affirmative defense on the likelihood and outcome of any litigation. In addition, many issuers maintain trading windows that may restrict the trading activity of corporate insiders during an issuer's ''closed window'' period except through the use of a Rule 10b5–1 plan, and such periods may cover significant portions of the year. Similarly, Section 306 of the Sarbanes-Oxley Act,[115] and our implementing regulations,[116] prohibit most trades during issuer pension blackout periods other than through the use of a plan that satisfies the affirmative defense conditions of Rule 10b5–1(c).[117] Accordingly, for these reasons, we have selected a cooling-off period for officers and directors that we conclude strikes the proper balance in deterring insider trading without unduly discouraging the adoption of Rule 10b5–1 plans.

We are not imposing the same cooling-off period required for directors and officers to other persons, as some commenters suggested,[118] Instead, we are requiring a cooling-off period of 30 days for persons other than directors, officers or the issuer. We generally agree that persons other than directors and officers often have access to material nonpublic information. At the same time, we recognize that each of the proposed requirements of the affirmative defense may impose costs on such persons, whose needs for diversification and liquidity may differ from those of officers and directors, as some commenters noted.[119] In particular, we recognize that some persons will experience meaningful delays in their ability to liquidate a stock position, which may cause some financial strain particularly for employees who may lack the resources and access to alternative liquidity sources available to directors and officers. Therefore, we disagree with commenters who urged us to impose the same cooling-off period required for directors and officers to all other traders.

The 30-day cooling-off period we are adopting for persons other than directors, officers, or the issuer reflects a balancing of the considerations we have outlined above. We believe that when any insider enters into a Rule 10b5–1 plan, a period of time should elapse before trading under the plan can commence to help ensure that a trade is not on the basis of material nonpublic information. At the same time, we recognize the heightened burdens a cooling-off period may impose on insiders who are not directors or officers, and who may have more limited financial resources. In light of these considerations, we have adopted a shorter cooling-off period for persons other than officers and directors that is still long enough to reduce the potential for some opportunistic trades.[120]

We are not implementing commenters' suggestions to adopt a financial hardship exception from the cooling-off period due to the practical difficulties of administering this type of exception.[121] Assessing financial hardship would require careful scrutiny and balancing of each insider's assets, liabilities, and obligations, and this fact-intensive inquiry would undermine the predictability that the affirmative defense is intended to provide.

In addition, we agree with commenters that only certain types of modifications of an existing Rule 10b5–1 plan should trigger a new cooling-off period. We therefore are adopting a new paragraph to Rule 10b5–1(c)(1) that specifically provides that a modification or change to the amount, price, or timing of the purchase or sale of the securities (or a modification or change to a written formula or algorithm, or computer program that affects the amount, price, or timing of the purchase or sale of the securities) underlying a contract, instruction, or written plan as described in Rule 10b5–1(c)(1)(i)(A) is a termination of such contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan, and such new adoption will trigger a new cooling-off period. The final amendment codifies prior Commission guidance on existing Rule 10b5–1(c)(1)(i)(C) about the effect of modifications.[122] Under the final amendment, modifications that do not change the sales or purchase prices or price ranges, the amount of securities to be sold or purchased, or the timing of transactions under a Rule 10b5–1 plan (such as an adjustment for stock splits or a change in account information) will not trigger a new cooling-off period. We disagree with the commenter that urged us to not trigger a new cooling-off period upon a modification, because a corporate insider could easily change the key terms of an existing plan at a time when they are aware of material nonpublic information, such as by increasing the sales price to take advantage of favorable news, allowing the insider to profit from such information.[123]

Finally, we are not adopting a cooling-off period for the issuer at this time. In light of the comments we received on this aspect of the proposed rules, we believe that further consideration of potential application of a cooling-off period to the issuer is

[113] *See supra* note 65.

[114] *See, e.g.,* letters from Chamber of Commerce 2, NAM and SIFMA.

[115] 15 U.S.C. 7244.

[116] *See* 17 CFR 245.100 *et seq.*

[117] *See* 17 CFR 245.101(c)(2). Our rules also provide trades made pursuant to a Rule 10b5–1 plan more flexibility with respect to when an insider must report the trade on Form 4. *See* 17 CFR 240.16a–3(g)(2); 17 CFR 240.16a–3(g)(4).

[118] *See* letters from Better Markets, NASAA, and Senator Warren et al.

[119] *See* letters from Chamber of Commerce 2 and NAM.

[120] We recognize that we have previously observed that the affirmative defense would be available to an employee who acquires company stock through an employee stock purchase plan or a Section 401(k) plan. *See* 2000 Adopting Release, *supra* note8, at 51728. We do not believe that a 30-day cooling-off period will significantly affect non-officer employees' use of such plans, as we think that employees employ these plans primarily to make relatively regular purchases over long periods of time, such that a waiting period of two biweekly pay periods before planned trades can begin will not appreciably affect the employees' preferences.

[121] *See supra* note 69.

[122] *See* 2000 Adopting Release, *supra* note 8, at 51718 n 111.

[123] *See* letter from NAM.

warranted.[124] Although we are aware that many issuers currently use cooling-off periods in connection with their securities transactions and that such cooling-off periods may significantly mitigate the risk of investor harm, we are also mindful that the use and length of such cooling off periods is not uniform and that the misuse of material nonpublic information by issuers when trading in their own securities can result in significant investor harm because transactions by issuers often involve substantial quantities of securities. We are continuing to consider whether regulatory action is needed to mitigate any risk of investor harm from the misuse of Rule 10b5–1 plans by the issuer, such as in the share repurchase context. We note that, in general, a corporation is considered an insider with regard to its duty to either disclose or abstain when purchasing its own shares on the basis of material, nonpublic information.[125]

2. Director and Officer Certifications

a. Proposed Amendments

The Commission proposed to amend Rule 10b5–1(c)(1)(ii) to impose a certification requirement as a condition to the affirmative defense. Under the proposed amendment, if a director or officer (as defined in Rule 16a–1(f)) of the issuer of the securities adopts a new written Rule 10b5–1 plan, such director or officer would be required, as a condition to the affirmative defense, to promptly furnish to the issuer a separate written certification, certifying that at the time of the adoption of the plan:

- They are not aware of material nonpublic information about the issuer or its securities; and
- They are adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of Exchange Act Section 10(b) and Exchange Act Rule 10b–5.

In doing so, the Commission indicated that the use of the term ''officer'' as defined in Rule 16a–1(f) is appropriate for the reasons discussed above with respect to the cooling-off period (*i.e.,* these individuals are more likely to be aware of material nonpublic information regarding the issuer and its securities, as well as more likely to be involved in making or overseeing corporate decisions about whether and when to disclose information).

The Commission intended the proposed certification requirement to reinforce directors' and officers' cognizance of their obligation not to trade or adopt a trading plan while aware of material nonpublic information, their responsibility to determine whether they are aware of material non-public information when adopting Rule 10b5–1 plans, and the fact that the affirmative defense under Rule 10b5–1 requires them to act in good faith and not to adopt such plans as part of a plan or scheme to evade the insider trading laws. The Commission noted in the Proposing Release that the proposed certification involves important considerations, especially because directors and officers are often aware of material nonpublic information.

In addition, the Commission clarified that, subject to their confidentiality obligations, directors and officers can consult with experts to determine whether they can make this representation truthfully. Legal counsel can assist directors and officers in understanding the meaning of the terms ''material'' and ''nonpublic information.'' [126] The Commission stated, however, that the issue of whether a director or officer has material nonpublic information is an inherently fact-specific analysis. Thus, a director's or officer's completion of the proposed certification would reflect their personal determination that they do not have material nonpublic information at the time of adoption of a Rule 10b5–1 plan.

The proposed amendment also included an instruction that a director or officer seeking to rely on the affirmative defense should retain a copy of the certification for a period of ten years. The proposed amendments would not require a director, officer, or the issuer to file the certification with the Commission, and the proposed certification would not be an independent basis of liability for directors or officers under Section 10(b) and Rule 10b–5. Rather, the Commission intended the proposed certification to underscore the certifiers' awareness of their legal obligations under the Federal securities law related to trading in the issuer's securities.[127]

b. Comments on the Proposed Amendments

Commenters were divided on the certification requirement. Several commenters generally supported the proposed certification requirement for directors and officers.[128] Some of these commenters agreed that the proposed certification could reinforce directors' or officers' awareness of their legal obligations under the Federal securities law.[129] Another commenter noted that the certification should increase investor confidence.[130]

[124] *See supra* note 71 and accompanying text.

[125] *See, e.g., McCormick* v. *Fund Am. Cos.,* 26 F.3d 896 (9th Cir. 1994) (''Numerous authorities have held or otherwise stated that the corporate issuer in possession of material nonpublic information must, like other insiders in the same situation, disclose that information to its shareholders or refrain from trading with them.'') (citations omitted); *Shaw* v. *Digital Equip. Corp.,* 82 F.3d 1194, 1203–04 (1st Cir. 1996) (''Courts . . . have treated a corporation trading in its own securities as an 'insider' for purposes of the 'disclose or abstain' rule.'') (citations omitted); *Rogen* v. *Ilikon Corp.,* 361 F.2d 260, 266–68 (1st Cir. 1966); *Levinson* v. *Basic Inc.,* 786 F.2d 741, 746 (6th Cir. 1986), *vacated on other grounds,* 485 U.S. 224, 108 S. Ct. 978 (1988) (''[c]ourts have held that a duty to disclose [merger] negotiations arises in situations, such as where the corporation is trading in its own stock''); *Kohler* v. *Kohler Co.,* 319 F.2d 634, 638 (7th Cir. 1963) (the ''underlying principles'' regarding trading on inside information ''apply not only to majority stockholders of corporations and corporate insiders, but equally to corporations themselves''). Other rules promulgated pursuant to Section 10(b) demonstrate that issuers trading in their own stock have a duty to disclose or abstain. For example, Exchange Act Rule 10b–18 provides an issuer with a '''safe harbor' from liability'' under Rule 10b–5 under certain circumstances when the issuer is repurchasing its own stock. [17 CFR 240.10b–18]. But, as the Commission has explained, Rule 10b–18 ''confers *no* immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material non-public information concerning its securities.'' *Purchases of Certain Equity Securities by the Issuer and Others,* Release No. 33–6434, 1982 WL 33916 at *2, *16 n.5 (Nov. 17, 1982).

[126] As the Commission has stated previously, we rely on existing definitions of the terms ''material'' and ''nonpublic'' established in case law. Information is material if ''there is a substantial likelihood'' that its disclosure ''would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'' *See Basic* v. *Levinson,* 485 U.S. 224, 231 (1988) (quoting and applying *TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 449 (1976) to the Section 10(b) and Rule 10b–5 context); Rule 405 [17 CFR 230.405] of the Securities Act of 1933 (the ''Securities Act'') [15 U.S.C. 77a *et seq.*]; Exchange Act Rule 12b–2 [17 CFR 240.12b–2]. Information is nonpublic until the information is broadly disseminated in a manner sufficient to ensure its availability to the investing public generally, without favoring any special person or group. *See Dirks* v. *SEC,* 463 U.S. 646, 653–54 & n.12 (1983); *SEC* v. *Texas Gulf Sulphur Co.,* 401 F.2d 833, 854 (2d Cir. 1968), *cert. denied,* 394 U.S. 976 (1969); Regulation FD [17 CFR 243.101(e)]. For purposes of insider trading law, insiders must wait a ''reasonable'' time after disclosure before trading. What constitutes a reasonable time depends on the circumstances of the dissemination. *In re Faberge, Inc.,* 45 SEC. 249, 255 (1973) (*citing Texas Gulf Sulphur,* 401 F.2d at 854). Under the misappropriation doctrine, a recipient of inside information must make a ''full disclosure'' to the sources of the information that they plan to trade on or tip the information within a reasonable time before doing so. *O'Hagan,* 521 U.S. at 655, 659 n.9; *see also SEC* v. *Rocklage,* 470 F.3d 1, 11–12 (1st Cir. 2006).

[127] *See, e.g., O'Hagan,* 521, U.S. at 651–52; *Chiarella,* 445 U.S. at 227; *Steginsky* v. *Xcelera Inc.,* 741 F.3d 365, 370 n.5 (2d Cir. 2014).

[128] *See, e.g.,* letters from CII, CO PERA, ICGN, NYSE, and O'Reilly.

[129] *See* letters from CII and O'Reilly.

[130] *See* letter from ICGN.

A number of commenters, however, did not support the proposed certification requirement.[131] Many of these commenters contended that the certification was unnecessary because broker-dealers who execute Rule 10b5–1 plans usually require the director or officer to make similar representations.[132] Several commenters stated that any final rules should clearly provide that the certification does not establish an independent basis of liability for directors or officers under Section 10(b) and Rule 10b–5.[133] Another commenter expressed concern that the language included in the proposed certification indicating that the director or officer is ''not aware of material nonpublic information about the issuer or its securities'' at the time of adoption of a Rule 10b5–1 plan is inconsistent with Rule 10b–5 and insider trading jurisprudence.[134] This commenter asserted that, for trading activity to be unlawful under Exchange Act Section 10(b)(5), the person trading must not have been aware of material nonpublic information at the time that they made the purchase or sale. This commenter claimed that the affirmative defense should be available if either: (1) the person trading was not aware of any material nonpublic information about the issuer or the security when they entered into the Rule 10b5–1 trading arrangement; or (2) any such material nonpublic information is either public or no longer material at the time of the trade.

Several commenters suggested alternatives to requiring a separate certification. A few commenters suggested that the proposed amendment should provide that the certification should instead be included in the documentation for the Rule 10b5–1 plan.[135] Another commenter recommended that the Commission rely on the representations that traders make to the broker executing the Rule 10b5–1 plan.[136]

c. Final Amendment

We are adopting Rule 10b5–1(c)(1)(ii)(C) largely as proposed, but with certain modifications. Under the final rule, if a director or ''officer'' (as defined in Rule 16a–1(f)) of the issuer of the securities adopts a Rule 10b5–1 plan, as a condition to the availability of the affirmative defense, such director or officer will be required to include a representation in the plan certifying that at the time of the adoption of a new or modified Rule 10b5–1 plan: (1) they are not aware of material nonpublic information about the issuer or its securities; and (2) they are adopting the contract, instruction, or plan in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b–5.[137]

Since its adoption, Rule 10b5–1(c)(1) has required, as a condition of the affirmative defense, that a person ''demonstrate[]'' that they adopted their trading plan before becoming aware of material nonpublic information. The rule has also provided that the affirmative defense only applies when the trading arrangement was entered into in good faith. As discussed above, we are concerned that, notwithstanding these requirements, corporate insiders may be using Rule 10b5–1 plans in ways that are not consistent with the affirmative defense and that harm investors and undermine the integrity of the securities markets.[138]

The certification condition is intended to reinforce directors' and officers' cognizance of their obligation not to trade or enter into a trading plan while aware of material nonpublic information about the issuer or its securities, that it is their responsibility to determine whether they are aware of material non-public information when adopting Rule 10b5–1 plans, and that the affirmative defense under Rule 10b5–1 requires them to act in good faith and not to adopt such plans as part of a plan or scheme to evade the insider trading laws. As noted in the Proposing Release, we recognize that this certification involves important considerations, especially because directors and officers are often aware of material nonpublic information. Subject to their confidentiality obligations, directors and officers can consult with experts to determine whether they can make this representation truthfully. Legal counsel can assist directors and officers in understanding the meaning of the terms ''material'' and ''nonpublic information.'' [139] However, the issue of whether a director or officer has material nonpublic information is an inherently fact-specific analysis. Thus, a director or officer's completion of the proposed certification would reflect their personal determination that they do not have material nonpublic information at the time of adoption of a Rule 10b5–1 plan.

As suggested by some commenters,[140] however, we have modified the final amendment to require that the certification be included in the Rule 10b5–1 plan as representations, rather than prepared as a separate document to be presented to the issuer. Consistent with the intent behind the proposal, this approach will reinforce directors' and officers' cognizance of their obligations discussed above, but will eliminate any additional burden that separate documentation may create.

We are not persuaded, however, that any representations that corporate insiders may already make to broker-dealers obviate the need for a certification. While we note that broker-dealers may require similar representations from directors and officers before executing a Rule 10b5–1 plan, given that there is no requirement that they do so, such practices may not be universal, and the requirement may differ among the various broker-dealers that do require such representations. This rule therefore will better ensure that corporate insiders provide these representations. Further, because issuers must provide disclosure regarding the material terms (other than price) of their directors' and officers' Rule 10b5–1 plans under new Item 408(a) of Regulation S–K as described below, any representation made as part of such plans will also likely be requested by and made available to the issuer to facilitate its compliance with the disclosure requirement. To the extent that directors and officers provide issuers with these representations, they would likely have a greater effect on investor confidence that the officer or director in fact was not aware of material nonpublic information when making the representation due to the issuer's close relationship to its officers and directors.

In addition, we are not adopting the proposed instruction that a director or

[131] *See, e.g.,* letters from ACCO, Cravath, Davis Polk, DLA, Kirkland, MD Bar, NAM, Quinn, SGC, Shearman, Sullivan, and Wilson Sonsini.

[132] *See, e.g.,* letters from ACCO, Cravath, DLA, Kirkland, Shearman, and Sullivan.

[133] *See, e.g.,* letters from Cravath, DLA, Kirkland, Shearman, and Sullivan.

[134] *See* letter from MD Bar.

[135] *See, e.g.,* letters from Cravath and SIFMA 3.

[136] *See* letter from ACCO.

[137] The rule will not require these personal certifications where a director or officer terminates an existing Rule 10b5–1 plan and does not adopt a new/modified trading arrangement for which the affirmative defense is sought. However, new Item 408 of Regulation S–K will require registrants to disclose whether any director or officer has terminated a Rule 10b5–1 plan or non-Rule 10b5–1 trading arrangement. *See infra* Section II.B.1. An issuer's insider trading policies and procedures may otherwise govern such plan terminations. *See infra* at Section II.B.2. Finally, whether an inference can be drawn that an individual unlawfully traded on the basis of inside information may be informed by the manner in which they trade (*see, e.g., SEC* v. *Warde,* 151 F.3d, 42, 47 (2d Cir.1998), including where termination of a Rule 10b5–1 trading arrangement is soon followed by non-Rule 10b5–1 trades in the same security or issuer.

[138] *See supra* Section II.A.

[139] *See supra* note 126.

[140] *See, e.g.,* letters from Cravath and SIFMA 3.

officer seeking to rely on the affirmative defense should retain a copy of the certification for a period of ten years. The burden of establishing that the requirements of the affirmative defense have been met will fall on the corporate insider who wishes to rely on it. As a result, we find that the proposed instruction is unnecessary as directors and officers already have reason to keep accurate records, including the representations, to establish that they have satisfied the conditions of the affirmative defense.

Finally, we disagree with the commenter who argued that requiring directors or officers to certify that they lack material nonpublic information at the time of adopting a Rule 10b5–1 plan would be inconsistent with insider trading jurisprudence.[141] Specifically, the commenter argued that the certification should instead allow a trader to certify that any material nonpublic information the trader holds at the time the plan is entered into will be either public or no longer material at the time of the trade.[142] We concur with this commenter that, in general, liability under Rule 10b–5 and Section 10(b) requires a showing that a covered individual was aware of material nonpublic information at the time that a trade was executed. Rule 10b5–1, however, is intended to provide an affirmative defense against liability under circumstances where it is relatively unlikely that a trader will be able to trade on material nonpublic information. As noted earlier, this defense is designed to cover situations where a person can demonstrate that a trade was not based on material nonpublic information. Requiring a representation that a director or officer was not aware of material nonpublic information when adopting a Rule 10b5–1 plan as a condition of the affirmative defense better ensures that the defense is available only in those circumstances. Moreover, by its nature, an affirmative defense does not affect the substance of the underlying prohibition. Individuals who cannot satisfy this condition because they are aware of material nonpublic information at the time that they enter into a Rule 10b5–1 plan may still be able to trade without liability if they lack material nonpublic information at the time that their trade is actually executed. In such circumstances, however, they would not be able to benefit from the affirmative defense provided by Rule 10b5–1(c)(1). We also disagree with the commenter's suggestion that the representation condition we are adopting is a substantive change in what knowledge an individual may possess when adopting a plan that satisfies the conditions of Rule 10b5–1(c)(1).[143] The representation condition rather adds a requirement about how that knowledge is documented for purposes of the affirmative defense.

Finally, the Commission also proposed a technical change to incorporate the Preliminary Note to Rule 10b5–1 into Rule 10b5–1(b).[144] The Preliminary Note to Rule 10b5–1 states that the rule defines when a purchase or sale constitutes trading ''on the basis of'' material nonpublic information in insider trading cases brought under Section 10(b) of the Exchange Act and Rule 10b–5 thereunder, that the law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and that Rule 10b5–1 does not modify the scope of insider trading law in any other respect.[145] We are adopting this change as proposed.

The existing law of insider trading provides an established legal framework that makes directors and officers liable if they fraudulently purchase or sell securities on the basis of material nonpublic information in breach of a duty of trust or confidence. Rule 10b5–1 provides that a purchase or sale of a security of an issuer is on the basis of material nonpublic information for purposes of Section 10(b) and Rule 10b–5 if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. Rule 10b5–1 expressly ''does not modify the scope of insider trading law in any other respect.'' We think it is sufficiently clear that the certification would not create an independent basis of liability for insider trading and do not believe it is necessary to amend the rule in this regard, as suggested by several commenters.[146]

3. Restricting Multiple Overlapping Rule 10b5–1 Trading Arrangements and Single-Trade Arrangements

a. Proposed Amendments

Currently, a person is not entitled to the Rule 10b5–1(c)(1) affirmative defense for a trade if they enter into or alter a ''corresponding or hedging transaction or position'' with respect to the planned transactions.[147] In proposing this requirement, the Commission explained that it was

[141] *See* letter from MD Bar.

[142] The Commission is not adopting this alternative because of the difficulties a trader would face in assessing at the time of certification whether the information will become nonpublic or no longer material at the time of their future trading. For example, a trader may not be able to make a determination about whether and when other persons will disclose nonpublic information on behalf of an issuer by a certain time in the future. *See* 2000 Adopting Release, *supra* note 8 above (noting that public companies frequently ''designat[e] a limited number of persons who are authorized to make disclosures'' that can be considered as made ''on behalf of an issuer'' to comply with the securities laws); *see also* 17 CFR 243.100, 101(c). The certification condition that the Commission is adopting permits traders to make the relatively more straightforward determination whether they are aware of material nonpublic information at a given point in time.

[143] The 2000 adopting release made clear that a person could adopt a plan ''while the person was not aware of *any* inside information.'' 2000 Adopting Release at 51737 (emphasis added); *accord Selective Disclosure and Insider Trading,* Release No. 33–7787 (Dec. 20, 1999) [64 FR 72590 (Dec. 28, 1999)] at 72601 (''If the insider provides the instructions without awareness of *any* material nonpublic information, the Rule would permit him or her to complete the previously instructed sales plan even if he or she later became aware of inside information.'') (emphasis added).

[144] *See* Proposing Release at 8689.

[145] *See* 2000 Adopting Release *supra* note 8 at 51727. The Commission adopted an ''awareness'' standard in 2000 that provides that a purchase or sale of a security of an issuer is on the basis of material nonpublic information about that security or issuer ''if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale.'' 17 CFR 240.10b5–1(b) (2000). The Commission explained at that time that one view was that a trader may be liable for trading while in ''knowing possession of information,'' while a contrary view was that a trader is not liable unless it is shown that the trader ''used'' the information for trading. *Selective Disclosure and Insider Trading,* 65 FR 51716–01, 51726–27 (Aug. 24, 2000). The Commission ultimately adopted the ''awareness'' standard that balanced considerations of both views while being ''closer'' to the ''knowing possession'' standard than to the ''use'' standard. *Id.* One commenter suggested that the Commission lacked authority ''in the year 2000'' to adopt Rule 10b5–1(b)'s awareness standard. *See* letter from Pacific Legal Foundation. However, none of the modifications the Commission is adopting in this Release would alter the ''awareness'' standard that the Commission adopted in 2000. *See supra* at p.8 n. 9. In any event, by prohibiting any manipulative or deceptive device or contrivance ''in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or the protection of investors'' (Exchange Act Section 10(b)), Congress thereby authorized the Commission to ''prescribe legislative rules'' like Rule 10b5–1, and courts must accord Rule 10b5–1 ''controlling weight.'' *O'Hagan,* 521 U.S. at 673 (quoting *Chevron,* 467 U.S. at 844). Since its adoption in 2000, courts have appropriately deferred to the Commission's ''awareness'' standard, holding that the Commission's determination is ''entitled to deference.'' *Royer,* 549 F.3d at 899 (applying *Chevron*); *see also United States* v. *Rajaratnam,* 719 F.3d 139, 157–61 (2d Cir. 2013), *cert. denied,* 134 S. Ct. 2820 (2014). Furthermore, Congress has expressly authorized the Commission to seek and district courts to impose civil monetary penalties where a person has violated the securities laws by purchasing or selling a security ''while in possession of'' material nonpublic information. Exchange Act Section 21A(a)(1) [15 U.S.C. 78u–1(a)(1)]; *see also* Exchange Act Section 20(d) (liability for trading ''while in possession of'' material nonpublic information) [15 U.S.C. 78t(d)].

[146] *See, e.g.,* letters from Cravath, DLA, Kirkland, Shearman, and Sullivan.

[147] *See* Rule 10b5–1(c)(1).

designed to prevent persons from devising schemes to exploit material nonpublic information by setting up pre-existing hedged trading programs, and then canceling execution of the unfavorable side of the hedge, while permitting execution of the favorable transaction.[148]

In the Proposing Release, the Commission recognized that multiple overlapping plans can be used for these hedging purposes and in other ways that might allow material nonpublic information to ''factor into the trading decision'' of an insider who had complied with the other provisions of Rule 10b5–1. In particular, currently, a person can adopt and employ multiple overlapping Rule 10b5–1 trading arrangements and exploit material nonpublic information by setting up trades timed to occur around dates on which they expect that the issuer will likely release material nonpublic information (such as earnings releases) and then selectively cancel trades or terminate plans on the basis of material nonpublic information before the information is publicly disclosed. In this same vein, the Commission noted its concern that a person could circumvent the proposed cooling-off period by setting up multiple overlapping Rule 10b5–1 trading arrangements, and deciding later which trades to execute and which to cancel after they become aware of material nonpublic information, but before its release.

To address these concerns, the Commission proposed to amend Rule 10b5–1(c)(1) to provide as a condition of the affirmative defense that the person who has entered the plan has no outstanding (and does not subsequently enter into another) Rule 10b5–1 plan for open market purchases or sales of the same class of securities. The Commission also requested comment on whether it was appropriate to exclude multiple trading arrangements for open market purchases or sales of the same class of securities, and specifically asked commenters to weigh in on whether allowing a concurrent trading arrangement for each class of securities would ''create incentives for corporate insiders to own different classes of stock.'' [149]

This proposed limitation was designed to eliminate the ability of traders to use multiple plans to strategically execute trades based on material nonpublic information and still claim the protection of the affirmative defense for such trades.

The proposed amendment would not apply to transactions where a person acquires (or sells) securities through participation in employee stock ownership plans (''ESOPs'') or dividend reinvestment plans (''DRIPs''), which are not executed by the person on the open market. Participation in these programs is sometimes effected through Rule 10b5–1 plans, and because these transactions are directly with the issuer, the Commission concluded they were less likely to give rise to insider trading concerns.[150] Thus, the Commission proposed this exception to preserve the benefits of flexibility for plan participants with respect to such plans.

In addition to restricting the use of multiple overlapping trading arrangements, the Commission proposed to amend Rule 10b5–1(c)(1)(ii) to limit the availability of the affirmative defense for a trading arrangement designed to cover a single trade, by providing that the affirmative defense would only be available for one single-trade plan during any 12-month period. Under the proposed amendment, the affirmative defense would not be available for a single-trade plan if the trader had purchased or sold securities pursuant to another single-trade plan within the preceding 12-month period. In proposing this amendment, the Commission noted that some recent research indicated that single-trade plans are consistently loss-avoiding and their adoption often precedes stock price declines.[151] At the same time, the Commission recognized the use of single–trade plans to address one-time liquidity needs. The proposed limitation on single-trade plans was intended to balance accommodating the use of single-trade plans for one-time liquidity needs against the potential for abuse of such plans.

b. Comments on the Proposed Amendments

Several commenters generally supported both the proposed restriction on multiple overlapping trading arrangements, and the limitation on single-trade plans.[152] One commenter expressed support for the prohibition on multiple overlapping trading arrangements, but did not address single-trade plans.[153] A few commenters supported the proposed prohibition on multiple overlapping trading arrangements but asked the Commission to limit the prohibition to directors and officers, noting that individuals have many legitimate reasons to have overlapping plans, such as gifts and estate-planning transactions, and that directors and officers are the group most likely to have material nonpublic information.[154]

With respect to single-trade plans specifically, commenters had mixed responses. One commenter expressed support for the limitation on single-trade plans,[155] while another commenter recommended that the Commission eliminate the availability of the Rule 10b5–1 affirmative defense for all single-trade plans.[156] On the other hand, some commenters noted that single-trade plans often have legitimate uses.[157] For example, one commenter maintained that, if adopted, the Commission should provide exceptions for derivative transactions, gifts, estate-planning transactions, and employee benefit plan transactions.[158] Other commenters indicated that the proposed restriction could be evaded by splitting one trade that would be authorized under such a plan into two trades.[159]

In addition, several commenters expressed concern that the proposed restrictions on multiple overlapping and single-trade Rule 10b5–1 plans would negatively impact certain employee compensation plan transactions that are structured as Rule 10b5–1 plans, such as sales of securities used to generate funds to cover the withholding taxes associated with equity vesting and elections under 401(k) plans or employee stock purchase plans that may be structured as Rule 10b5–1 plans (''sell-to-cover transactions'').[160] Some of these commenters asserted that these transactions do not implicate the concerns that the proposed amendment is intended to address because a

[148] *See Selective Disclosure and Insider Trading,* Release No. 33–7787 (Dec. 20, 1999) [64 FR 72590 (Dec. 28, 1999)].

[149] Proposing Release, *supra* note 23, at 8692 (request for comment number 13).

[150] However, the Supreme Court has explained that lower courts ''should consider the extent to which an ERISa-based obligation either to refrain on the basis of inside information from making a planned trade or to disclose inside information to the public could conflict with the complex insider trading and corporate disclosure requirements imposed by the federal securities laws or with the objectives of those laws.'' *Fifth Third Bancorp* v. *Dudenhoeffer,* 573 U.S. 409, 429 (2014). Officers and directors also need to follow Regulation Blackout Trading Restrictions, *see* 17 CFR 245.100 through 245.104.

[151] *See* Gaming the System, *supra* note 20; *see also infra* Section V.B.

[152] *See, e.g.,* letters from AFL–CIO, Better Markets, CO PERA, MD Bar, NYCC, NASAA, and Public Citizen.

[153] *See* letter from Kirkland.

[154] *See, e.g.,* letters from SIFMA 3 and Sullivan.

[155] *See* letter from NYSE.

[156] *See* letter from Sen. Warren et al.

[157] *See, e.g.,* letters from Monday.com Ltd (''Monday.com''), BioNJ, SCG, SIFMA 3, Davis Polk, Fenwick, Jones Day, Shearman, and Wilson Sonsini

[158] *See* letter from Sullivan.

[159] *See* letter from Cravath and Davis Polk.

[160] *See, e.g.,* letters from Fenwick, HP, Monday.com, SCG, Sullivan, and Wilson Sonsini.

corporate insider has limited discretion as to the timing or the number of shares sold to cover the tax liability.[161] Other commenters generally stated that under the proposed limitations, insiders could not maintain both a traditional Rule 10b5–1 plan and a plan designed to execute sell-to-cover transactions.[162]

With respect to the aspect of the proposed definition of ''multiple concurrent trading arrangements'' under which an insider could establish a separate arrangement for each ''class of securities,'' several commenters generally supported the limitation on multiple overlapping plans as proposed.[163] One commenter, however, argued that the proposed definition would encourage insiders to establish parallel trading arrangements for common stock, preferred stock, and options.[164] Because the values of these instruments are all highly correlated, the commenter stated, the proposed rule would still allow insiders to opportunistically use material nonpublic information by establishing such parallel arrangements and then cancelling one or more of them.

Many commenters did not support the proposed restriction on multiple overlapping Rule 10b5–1 plans.[165] Some commenters asserted that this limitation was unnecessary, because, given that the affirmative defense already does not permit adoption of hedged plans in which a person takes offsetting financial positions, there is no additional abusive conduct to address.[166]

As with single-trade plans, a number of commenters indicated that there are legitimate, common uses of multiple, overlapping Rule 10b5–1 plans.[167] Some commenters noted, for example, that issuers often use multiple concurrent Rule 10b5–1 plans with different brokers to execute share repurchase transactions.[168] Other commenters indicated that directors and officers often employ multiple Rule 10b5–1 plans because they hold shares in different accounts with multiple financial institutions.[169] They noted, for example, that a corporate insider may hold shares received upon the exercise of stock options in an account with the financial institution that is the administrator of the issuer's incentive equity plan, and hold shares acquired through open market transactions or other means in a separate account with a different financial institution.

A number of commenters expressed concern that the wording of the proposed amendment regarding multiple overlapping plans was overly broad as it could encompass every open market transaction, including transactions that are not executed under a Rule 10b5–1 plan.[170] Several commenters urged the Commission to clarify that this provision would not prohibit the adoption of a new Rule 10b5–1 plan while an existing plan is in effect as long as no trades could commence under the new plan until the existing plan has expired.[171]

Finally, several commenters contended that the proposed cooling-off period for Rule 10b5–1 plans was a more effective method to address the concerns over potential abusive uses of multiple overlapping and single-trade Rule 10b5–1 plans.[172]

c. Final Amendments

After considering the comments, we are adopting the proposed amendment addressing multiple overlapping Rule 10b5–1 plans with certain modifications. With respect to multiple overlapping Rule 10b5–1 contracts, instructions or plans, the final amendment will add a condition to the Rule 10b5–1(c)(1) affirmative defense that persons, other than issuers, may not have another outstanding (and may not subsequently enter into any additional) contract, instruction or plan that would qualify for the affirmative defense under the amended Rule 10b5–1 for purchases or sales of any class of securities of the issuer on the open market during the same period. We disagree with commenters who urged us to limit these provisions only to directors and officers.[173] While it is true, as commenters note and as we observed in the Proposing Release, that officers and directors are most likely to have access to material nonpublic information,[174] other traders may at times also have such access. Trading by these other persons can impact investors and investor confidence in much the same ways as trading by officers and directors. For example, we think it could undermine investor confidence to learn that insiders who are not Section 16 officers were able to opportunistically manipulate their trading after receiving material nonpublic information, so that the insider could profit at the expense of uninformed investors. As we explain below, we think that any financial impact on insiders other than officers and directors resulting from these limitations will be more limited than in the case of the cooling-off period.

Accordingly, we disagree with those commenters who suggested that trades by individuals other than officers and directors would not affect the integrity of securities markets.[175] While other traders may not necessarily control corporate trading or disclosure decisions, they still may stand to profit substantially from trading on any material nonpublic information to which they have access. Further, because Form 4 may reveal potentially opportunistic trades to the public, we think the fact that most persons, other than Section 16 officers, do not file Form 4 is a reason for more safeguards with respect to their trading, not fewer.

In reaching our determination, we are mindful that some traders, such as rank-and-file employees, may have liquidity and diversification needs that are greater than those of more highly compensated officers, as commenters noted.[176] In recognition of these needs, we are adopting a modification to the proposed limitations, described in more detail below, under which traders may employ multiple plans to satisfy certain tax obligations incident to equity compensation. For insiders who are already trading under an existing plan when such liquidity needs arise, meeting those needs will typically require the insider to modify the existing plan, as our limitation on multiple plans will prevent the insider from adopting an additional plan to cover the newly planned transactions. This modification will in turn likely require the insider to pause trading under the preexisting plan for the duration of the insider's cooling-off

[161] *See, e.g.,* letters from BioNJ, Monday.com, and Simpson Thatcher.

[162] *See, e.g.,* Sullivan and Wilson Sonsini.

[163] *See* letters from Better Markets, CII, and CO PERA.

[164] *See* letter from NASAA.

[165] *See, e.g.,* letters from ABA, ACCO, BioNJ, Chamber of Commerce 2, Chevron, Coalition Letter, Cravath, Davis Polk, DLA, Dow, FedEx, Fenwick, HP, HRPA, HudsonWest, Jones Day, K&L Gates, Kirkland, Manulife, Monday.com, NAM, NVCA, NYC Bar, Paul Weiss, PNC, Quest, Quinn, SCG, Shearman, Simpson, and Wilson Sonsini.

[166] *See, e.g.,* letters from Davis Polk and Shearman.

[167] *See, e.g.,* letters from Chamber of Commerce 2, Cravath, Davis Polk, Dow, FedEx, HP, Jones Day, Manulife, Monday.com, NVCA, NYC Bar, Quest, Shearman, Sullivan, and Wilson Sonsini.

[168] *See, e.g.,* letters from Cravath, Davis Polk, Dow, FedEx, Quest, Shearman, and Sullivan.

[169] *See, e.g.,* letters from Quest, and Wilson Sonsini.

[170] *See, e.g.,* letters from Dow, SCG, ABA, Cleary, Paul Weiss, Shearman, Sullivan, and Wilson Sonsini.

[171] *See, e.g.,* letters from Jones Day, Kirkland, Paul Weiss, Simpson, Shearman, and Wilson Sonsini.

[172] *See, e.g.,* letters from Manulife, Cravath, NAM, and Cleary.

[173] *See* letters from Sullivan and SIFMA 3.

[174] *See* Proposing Release at 23; letters from CII, Cravath, and SIFMA.

[175] *See* letters from Cravath and Davis Polk.

[176] *See* letters from Chamber of Commerce 2 and NAM.

period. Because the cooling-off period for insiders other than officers and directors is 30 days, however, we believe that any resulting impact on the insider should be limited. While we agree that it is possible this cost, or other barriers, may reduce the appeal of requiring non-officers to make use of a Rule 10b5–1 plan, as one commenter noted, [177] we think on balance that it is better to ensure that any Rule 10b5–1 plans that are adopted in fact impose meaningful limits on opportunistic trading. More widespread adoption of Rule 10b5–1 plans is unlikely to be helpful to investors or markets if such plans do not constrain many opportunistic trades.

We are modifying the original proposal by removing the reference to ''same class of securities,'' so that the multiple overlapping plans restriction will apply to contracts, instructions or plans for any class of securities of the issuer. We agree with the commenter who argued that, given the strong likelihood that the values of different classes of securities of a given issuer are highly correlated, allowing the use of multiple plans for trading in the securities of one issuer would allow for significant possibility of opportunistic behavior.[178] As a result, persons (other than the issuer) may only have one such contract, instruction or plan, rather than one contract, instruction or plan for each class of securities.

This condition is intended to address the concerns discussed above about an insider's use of multiple overlapping plans in ways that could allow material nonpublic information to factor into the trading decision. Because these concerns are not limited to hedged plans where a trader takes offsetting financial positions, we disagree with those commenters who asserted that the existing hedging restriction of the Rule 10b5–1 affirmative defense renders this limitation unnecessary. With a sufficient number of different plans, an insider could achieve a desired trading outcome. For example, an insider could adopt several plans to sell their company stock at varying prices in excess of the current share price, and then cancel the plans authorizing trades at the lowest of these prices upon learning nonpublic information that the insider expects to substantially increase the share price. For similar reasons, we disagree with commenters that the cooling-off period sufficiently addresses our concerns given that an insider could maintain multiple overlapping plans that satisfy the cooling-off period and then cancel plans based on later-obtained material nonpublic information.

In light of comments received, we are making three further modifications to this condition. The first addresses an insider's use of multiple brokers to execute trades pursuant to a single Rule 10b5–1 plan that covers securities held in different accounts. Specifically, a series of separate contracts with different broker-dealers or other agents acting on behalf of the person (other than the issuer) to execute trades thereunder may be treated as a single ''plan,'' provided that the contracts with each broker-dealer or other agent, when taken together as a whole, meet all of the applicable conditions of and remain collectively subject to the provisions of Rule 10b5–1(c)(1). A modification of any such contract will be a modification of each other contract or instruction such single plan. We agree with commenters that in circumstances where a corporate insider holds securities in separate accounts with different financial institutions, the execution of trades by multiple brokers under a Rule 10b5–1 plan is less likely to raise the concerns underlying this condition of the rule. We recognize that a trader will typically enter into a formally distinct contract or agreement with each agent authorized to conduct trades. Thus, for purposes of the multiple overlapping plans restriction, a series of formally distinct such contracts may be treated as a single ''plan'' where taken together the contracts otherwise satisfy the conditions of the rule. As we have described, the overlapping-plans condition is intended to prevent selective alteration or cancellation of Rule 10b5–1 plans to achieve a particular trading outcome when an insider is aware of material nonpublic information, and for that reason, we are providing that modification (as defined in the Rule) of a contract with any given agent will also be treated as a modification of the other contracts making up the plan.

In addition, the final amendment provides that a broker-dealer or other agent executing trades on behalf of the insider pursuant to the Rule 10b5–1 plan may be substituted by a different broker-dealer or other agent as long as the purchase or sales instructions applicable to the substituted broker and the substitute are identical, including with respect to the prices of securities to be purchased or sold, dates of the purchases or sales to be executed, and amount of securities to be purchased or sold. Under this provision, an insider will not lose the benefit of the affirmative defense where the insider closes a securities account with a financial institution and transfers the securities to a different financial institution. If an insider provides instructions to the new broker-dealer in accordance with this provision, there is more limited possibility for selective cancellation because substituting a broker authorized to trade under a Rule 10b5–1 plan would not change the remaining trades in ways that likely would allow the insider to profit on material nonpublic information. We note, however, that a plan modification, such as the substitution or removal of a broker that is executing trades pursuant to a Rule 10b5–1 arrangement on behalf of the insider that changes the purchase or sale amount, price or date on which purchases or sales are to be executed is a termination of such plan and the adoption of a new plan. This will further limit opportunities for opportunistic manipulation of broker-dealers executing trades on behalf of the insider.

The second change permits persons (other than the issuer) to maintain two separate Rule 10b5–1 plans at the same time so long as trading under the later-commencing plan is not authorized to begin until after all trades under the earlier-commencing plan are completed or expire without execution.[179] This provision would not be available for the later-commencing plan, however, if the first trade under the later-commencing plan is scheduled to begin during the ''effective cooling-off period''—namely, the cooling-off period that would be applicable under paragraph (c)(1)(ii)(B) to the later-commencing plan if the date of adoption of the later-commencing plan were deemed to be the date of termination of the earlier-commencing plan.[180] Absent this qualification, an

[177] *See* letter from Davis Polk.

[178] *See* letter from NASAA.

[179] *See* Rule 10b5–1(c)(1)(ii)(D) which provides that a contract, instruction, or plan that would meet the other requirements of Rule 10b5–1(c)(1)(i) may still qualify for the affirmative defense where the director or officer has one other contract, instruction, or plan that would qualify for the affirmative defense for purchases or sales of the same class of securities on the open market and trading under one contract, instruction, or plan (''later-commencing plan'') is not authorized to begin until after all trades under the other contract, instruction, or plan (''earlier-commencing plan'') are completed.

[180] For example, an insider who is not an officer or director has in place an existing Rule 10b5–1 plan with a scheduled date for the latest authorized trade of May 31, 2023. On May 1, 2023, that insider adopts a later-commencing plan, intended to qualify for the affirmative defense under Rule 10b5–1, with a scheduled date for the first authorized trade of June 1, 2023. If the insider terminates the earlier-commencing plan on May 15, the later-commencing plan will not receive the benefit of the affirmative defense, because June 1 is within 30 days of May 15, the date of termination of the earlier-commencing plan, and thus June 1 is during

Continued

insider might cancel the earlier-commencing plan before its scheduled completion but still trade under the later-commencing plan in fewer than the minimum 90 days (or 30 days) that would otherwise be required for a new plan that is established after a plan termination. Both plans must meet all other conditions of the affirmative defense, including the cooling-off period. Under these circumstances, we agree with commenters that there would be a much lower risk of a corporate insider who is aware of material nonpublic information profiting by opportunistically canceling a trading plan as the Rule 10b5–1 plans would not authorize trading during the same period of time.

Third, we are adopting a modification for plans authorizing certain ''sell-to-cover'' transactions in which an insider instructs their agent to sell securities in order to satisfy tax withholding obligations at the time an award vests. Under this modification, an insider will not lose the benefit of the affirmative defense with respect to an otherwise eligible Rule 10b5–1 plan if the insider has in place another plan that would qualify for the affirmative defense, so long as the additional plan or plans only authorize qualified sell-to-cover transactions. Such plans that authorize only such qualified sell-to-cover transactions are eligible for the affirmative defense notwithstanding the fact that the insider may have another plan eligible for the affirmative defense in place. A plan authorizing sell-to-cover transactions is qualified for this provision where the plan authorizes an agent to sell only such securities as are necessary to satisfy tax withholding obligations incident to the vesting of a compensatory award, such as restricted stock or stock appreciation rights, and the insider does not otherwise exercise control over the timing of such sales.[181]

We are providing this modification because we agree with commenters who contended that under these limited circumstances, there is little danger of opportunistic trading. Because vesting schedules are generally set in advance by the issuer, the amount of securities to be sold would be determined by the value of the award and the taxes due on that value. We are further stipulating that eligible plans cannot provide the insider with control over the timing of any sales. For these reasons, we think it is highly unlikely that insiders would be able to make opportunistic use of such additional plans.

We are not extending this modification to include sales incident to the exercise of option awards because it could create a risk of opportunistic trading. Option exercises occur at the discretion of the insider, and such decisions could occur when the insider later obtains material nonpublic information. To the extent that commenters have suggested that an insider with a sell-to-cover plan tied to an option exercise could not use the revised Rule 10b5–1 affirmative defense, we disagree.[182] The revised affirmative defense would not prevent a corporate insider from entering into a Rule 10b5–1 plan that includes instructions directing a broker to sell securities sufficient to meet the tax withholding obligations incident to an option or similar award exercise. For example, the insider might provide that a designated agent is authorized to sell sufficient securities to cover any tax withholding obligations incident to an option exercise. Such instructions can be included in a single Rule 10b5–1 plan along with instructions to sell based on other financial variables. Accordingly, an officer or director may take advantage of the affirmative defense both for sell-to-cover transactions and other planned trades, provided that the conditions of the affirmative defense are met, including the cooling-off period.

In addition, we are not adopting the proposed limitation on multiple plans and single-trade plans for the issuer at this time. As with the cooling-off period, we believe that further consideration of potential application to the issuer is warranted.

Finally, we are adopting the proposed limitation on single-trade plans with modifications. Consistent with the approach to multiple overlapping plans, the limitation will apply to the Rule 10b5–1 plans of all persons, other than the issuer. As a result, the final rule provides that if the contract, instruction, or plan is designed to effect the open-market purchase or sale of the total amount of securities as a single transaction, the contract, instruction or plan will not receive the benefit of the affirmative defense unless: (1) the person who entered into the contract, instruction, or plan has not, during the prior 12-month period, adopted another contract, instruction, or plan that was designed to effect the open-market purchase or sale of the total amount of securities subject to that plan in a single transaction; and (2) such other contract, instruction, or plan in fact was eligible to receive the affirmative defense. A person (other than the issuer) will be able to rely on the Rule 10b5–1(c)(1)(ii) affirmative defense for only one single-trade plan during any 12-month period. The defense will only be available for a single-trade plan if the person had not, during the preceding 12-month period, adopted another single-trade plan, where the other plan qualified for the affirmative defense under Rule 10b5–1.[183] We disagree with the commenter who argued that, due to the possibility that an insider might divide their planned single trade into multiple trades, any limit on single-trade plans would be ineffective.[184] For example, certain insiders who divide a planned trade over several days are likely to realize reduced profits from trading after a Form 4 is filed, which at least in part, will reduce an insider's incentives to engage in trading while aware of material nonpublic information.

For this purpose, a plan is ''designed to effect'' the purchase or sale of securities as a single transaction when the contract, instruction, or plan has the practical effect of requiring such a result. In contrast, a plan is not designed to effect a single transaction where the plan leaves the person's agent discretion over whether to execute the contract, instruction, or plan as a single transaction. Similarly, a plan is also not designed to effect the purchase or sale of securities as a single transaction when (1) the contract, instruction, or plan does not leave discretion to the agent, but instead provides that the agent's future acts will depend on events or data not known at the time the plan is entered into, such as a plan providing for the agent to conduct a certain volume of sales or purchases at each of several given future stock prices; and (2) it is reasonably foreseeable at the time the plan is entered into that the contract, plan, or instruction might result in multiple transactions.

We are adopting the limitation on single-trade plans because we are concerned that trades under such plans may provide particularly profitable opportunities for insiders who are trading while aware of material

the ''effective cooling-off period.'' However, if the later-commencing plan were scheduled to begin trading on July 1, 2023, it could still receive the benefit of the affirmative defense because July 1, 2023 is more than 30 days after May 15 and thus is outside the ''effective cooling-off period.''

[181] In our view, a plan that authorizes an agent to sell only such securities as are necessary to satisfy tax withholding obligations incident to the vesting of a compensatory award meets the requirement that the plan does ''not permit the person to exercise any subsequent influence over how, when, or whether to effect . . . sales,'' Rule 10b5–1(c)(1)(B)(3) [17 CFR 240.10b5–1(c)(1)(B)(3)].

[182] *See supra* note 161.

[183] We have added this qualification because we do not intend for a plan that is ineligible for the affirmative defense to preclude the affirmative defense for another plan, even if both trades are single-trade plans.

[184] *See* letter from Davis Polk.

nonpublic information. As we described in the Proposing Release, a recent study found that trades under a single-trade plan avoid losses that appear statistically unlikely to be avoided by uninformed traders.[185] This pattern persisted even when the first such trade occurred more than 120 days after adoption of the plan, suggesting that a cooling-off period alone may not be sufficient to prevent opportunistic single-trade plans.[186] For these reasons, we disagree with the commenters who suggested that the cooling-off period would be sufficient to address the problem addressed by the single-trade limitation.[187]

Several commenters expressed concern about potential ambiguity or uncertainty around the concept of a single-trade plan and asked us to clarify the scope of this provision, such as its potential application to block trades of venture capital funds.[188] We agree with those commenters who indicated that an insider should not be at risk of losing the benefit of the affirmative defense due to decisions outside the insider's control when the insider did not design the Rule 10b5–1 plan to effect the authorized purchases or sales in a single transaction, such as in the case where the insider's agent exercises their own discretion to complete all authorized trading in a single transaction. For that reason, we have added the ''designed to effect'' provision discussed above. We are concerned, however, that further delineating what constitutes a single transaction for purposes of this rule could create incentives to design Rule 10b5–1 plans that avoid application of the single-trade plan limitation.

For reasons similar to those we have explained with respect to multiple overlapping trades, in response to comments, we are modifying the proposed single-trade limitation with respect to qualified sell-to-cover transactions. This modification applies to the same plans eligible for the sell-to-cover provision of the overlapping trade limitation. Again, we think that such plans present little, if any risk, of opportunistic trading.

Also for reasons similar to those we have explained with respect to multiple overlapping trades, we are applying the single-trade limitation to all persons other than the issuer. The single-trade limitation helps to ensure that the affirmative defense provides meaningful constraints on the extent to which material nonpublic information affects an insider's decision to trade. While we recognize that the limitation also may impose some moderate limitations on insiders' ability to obtain liquidity and diversification, as noted, we think that there are alternative means for such insiders to achieve these goals.

Because single-trade plans may have legitimate uses to address one-time liquidity needs, we also disagree with the commenter who suggested that the affirmative defense should not be available for any single-trade plan.[189] Overall, the limitation we are adopting is intended to balance legitimate uses of single-trade plans against the potential for abuse.

4. The Amended Good Faith Condition

a. Proposed Amendments

The Rule 10b5–1(c)(1) affirmative defense is only available if a trading arrangement was entered into in good faith and not as part of a plan or scheme to evade the prohibitions of the rule. The Commission proposed to amend this condition to require that the contract, instruction, or plan also be ''operated'' in good faith.

In proposing this amendment, the Commission noted its concern that some corporate insiders may try to improperly influence the timing of corporate disclosures to benefit their trades under a Rule 10b5–1 trading arrangement, such as by delaying or accelerating the release of material nonpublic information.[190] The Commission also noted its concern that a Rule 10b5–1 plan may be canceled or modified in an attempt to evade the prohibitions of the rule without affecting the availability of the affirmative defense. Moreover, the Commission stated that requiring that a trader both enter into and operate a Rule 10b5–1 plan in good faith would help deter fraudulent and manipulative conduct and enhance investor protection throughout the duration of the trading arrangement. Thus the Commission intended the proposed amendment to make clear that the affirmative defense would not be available to a trader who, for example, modifies their plan in an effort to evade the prohibitions of the rule or uses their influence to affect the timing of corporate disclosure to occur before or after a planned trade to make it more profitable or to avoid or reduce a loss.

b. Comments on the Proposed Amendments

Several commenters generally supported the proposed amendment.[191] Some of these commenters indicated that the proposed amendment would deter opportunistic trading in connection with Rule 10b5–1 plans and increase investor confidence.[192] One of these commenters also expressed the view that, among other things, this requirement would ensure that there is liability where persons attempt to manipulate the timing of corporate announcements to benefit trades made pursuant to a Rule 10b5–1 plan.[193] Another commenter asserted that adding the ''operate in good faith'' requirement would be helpful in improving the insider trading compliance programs of issuers.[194]

A number of commenters, however, opposed adding the condition that a Rule 10b5–1 plan be ''operated'' in good faith.[195] Many of these commenters indicated that the concept of ''operated in good faith'' was not sufficiently clear and would lead to uncertainty surrounding the availability of the affirmative defense.[196] Similarly, another commenter asked the Commission to clarify the extent to which a failure to operate a Rule 10b5–1 plan in good faith would invalidate the affirmative defense for transactions that were executed under the plan.[197] Some commenters contended that, given that the scope of conduct or activity covered by the phrase was potentially extensive, this condition could inhibit the use of Rule 10b5–1 plans.[198] Finally, another commenter suggested requiring that a Rule 10b5–1 plan be ''modified in good faith'' as an alternative.[199] This commenter contended that ''modified'' is a clearer term and would cover circumstances where a trader amends or terminates a Rule 10b5–1 plan based on material nonpublic information.

[185] *See* Gaming the System, *supra* note 20 at 2, 14 (observing that ''trades of single-trade plans are consistently loss-avoiding regardless of cooling-off period''). *But see infra* note 400.

[186] *See id.*

[187] *See* letters from Manulife, Cravath, NAM, and Cleary.

[188] *See* letters from Sullivan, SIFMA 3 and NVCA.

[189] *See* letter from NASAA.

[190] *See* Proposing Release, *supra* note 23, at 8693.

[191] *See, e.g.,* letters from CII, AFL–CIO, Better Markets, CO PERA, NYCC, NASAA, NYSE, and O'Reilly.

[192] *See, e.g.,* letters from AFL–CIO, Better Markets, CII, and NASAA.

[193] *See* letter from Better Markets.

[194] *See* letter from O'Reilly.

[195] *See, e.g.,* letters from Dow, Quest, HRPA, Cleary, Cravath, Davis Polk, DLA, Fenwick, Shearman, Wilson Sonsini, PNC, SIFMA 2, and SIFMA 3.

[196] *See, e.g.,* letters from Quest, Cleary, Cravath, Davis Polk, DLA, Fenwick, Shearman, Wilson Sonsini, and PNC, SIFMA 2, SIFMA 3 and Chamber of Commerce 2.

[197] *See* letter from PNC.

[198] *See, e.g.,* letters from Dow, Quest, HRPA, Cleary, Cravath, Davis Polk, DLA, Fenwick, Shearman, Wilson Sonsini, PNC, SIFMA 2, and SIFMA 3.

[199] *See* letter from Fenwick.

c. Final Amendment

Having considered the comments received, we are adopting the amendment to Rule 10b5–1(c)(1)(ii) with a modification in response to comments concerning the term ''operated in good faith.'' The final rules add the condition that the person who entered into the Rule 10b5–1 contract, instruction, or plan ''has acted in good faith with respect to'' the contract, instruction, or plan. As discussed above, since the time that Rule 10b5–1 was adopted, we have become concerned that corporate insiders may take actions after adopting a Rule 10b5–1 plan to benefit from material nonpublic information the insider acquires after establishment of the plan. We therefore agree with commenters that this requirement will help ensure that traders do not engage in opportunistic trading in connection with Rule 10b5–1 plans, and will help deter corporate insiders from improperly influencing the timing of corporate disclosures to benefit their trades under such a plan.[200]

Many commenters appeared to understand that the proposed ''operated in good faith'' language was intended to govern the behavior of the trader.[201] Some commenters, however, expressed concern that the term ''operated'' could be ambiguous or cause confusion because it could be read to apply, or might apply only, to the insider's agents, such as brokers who executed the trades authorized by the insider.[202] To make clear that the good faith obligation applies to the activities of the insider (including the insider's efforts to direct the activities of others), we have modified this language to state that the trader must ''act[ ] in good faith with respect to the contract, instruction, or plan.''

In adopting this amendment, we disagree with commenters that the expanded good faith requirement is not sufficiently clear. The concept of ''good faith'' should be familiar to corporate insiders as it has been a component of Rule 10b5–1 since its adoption two decades ago.[203] This amendment extends this familiar concept from the time of adoption through the duration of the Rule 10b5–1 plan to better ensure that material nonpublic information does not factor into the decision to trade under such plans, as it would when, for example, a corporate insider materially modifies a planned trade at their own direction and to their own benefit,[204] based on material nonpublic information acquired after the plan was entered into. Indeed, a corporate insider would not be operating a Rule 10b5–1 plan in good faith if the corporate insider, while aware of material nonpublic information, directly or indirectly induces the issuer to publicly disclose that information in a manner that makes their trades under a Rule 10b5–1 plan more profitable (or less unprofitable). In such a scenario, notwithstanding that the Rule 10b5–1 plan may have been adopted or entered into in good faith, the corporate insider would not be entitled to the affirmative defense. Moreover, we disagree with commenters who argue that this requirement will deter adoption of Rule 10b5–1 plans by individuals who do not intend to misuse material nonpublic information.

Commenters also asked us to clarify whether the obligation to act in good faith would not be met in other factual settings, such as in the event an issuer halts any trading by insiders under Rule 10b5–1 plans due to a possible merger, or where it similarly blocks sales transactions after learning of material nonpublic information that it expects will lead to a decline in the market price of its securities.[205] As we have stated, this amendment relates to activities within the control of the insider. Accordingly, we agree with the commenter that cancellations directed by the issuer where such cancellations are outside the control or influence of the insider may not, by themselves, implicate the good faith condition.

Finally, we disagree with the commenter who recommended that we instead require good faith ''modification'' of a plan as this narrower condition would not address all of our concerns. For example, as we have noted, efforts to manipulate the timing of releases of corporate information to benefit an officer's or a director's planned trades may not involve a modification of a plan but would be inconsistent with established notions of good faith. While the condition that we are adopting would cover such efforts, the commenter's alternative might not do so.

B. Additional Disclosures Regarding Rule 10b5–1 Trading Arrangements

Currently, there are no mandatory disclosure requirements concerning the use of Rule 10b5–1 trading arrangements or other trading arrangements by issuers or corporate insiders.[206] The lack of comprehensive public information about the use of these arrangements—whether pursuant to a Rule 10b5–1 plan or otherwise—creates an environment in which it is more difficult for investors to assess whether those parties may be misusing their access to material nonpublic information. This lack of transparency may allow improper trading to go undetected and thereby undermine the deterrent impact of our insider trading laws. In addition, the lack of public information about the use of these arrangements by corporate insiders limits investors' ability to assess potential incentive conflicts and information asymmetries when making investment and voting decisions. Requiring more robust disclosure of particular trading arrangements should reduce potential abuse of the rule, and inform investors and the Commission regarding potential violations of Rule 10b–5.

In addition, issuers are currently not required to disclose their insider trading policies or procedures. In the Proposing Release, the Commission stated that information about insider trading policies and procedures is important, and would help investors to understand and assess how the registrant protects material nonpublic information from misuse. While the codes of ethics that registrants are required to disclose pursuant to Item 406 of Regulation S–K may address insider trading issues, they may lack the detail necessary for investors to assess actual practices

[200] *See, e.g.,* letters from AFL–CIO, Better Markets, CII, and NASAA.

[201] *See* letters from Davis Polk, DLA Piper, Dow, Home Depot, and Shearman & Sterling.

[202] *See* letters from Cravath, Fenwick, and PNC.

[203] *See* 2000 Adopting Release, *supra* note 8.

[204] A modification of a Rule 10b5–1 plan in an effort to allow the individual to trade on the basis of material nonpublic information would not constitute acting in good faith. In light of our adoption of a limitation on multiple plans, however, we anticipate that an individual will generally not be able to engage in any trade under a Rule 10b5–1 plan following a cancellation of such a plan, and therefore the applicability of the affirmative defense will not be at issue in that situation.

[205] *See, e.g.,* letters from Davis Polk, Shearman (requesting that we clarify that cancellations for legitimate reasons are not bad faith); and Wilson Sonsini (requesting we clarify that cancellations are not per se bad faith).

[206] Form 144 (17 CFR 239.144) under the Securities Act contains a representation that is used by a filer of the form to indicate whether such person has adopted a written trading plan or given trading instructions to satisfy Rule 10b5–1. Form 144 is a notice form that must be filed with the Commission by an affiliate of an issuer who intends to resell restricted or ''control'' securities of that issuer in reliance upon Securities Act Rule 144 (17 CFR 230.144). In 2002, the Commission proposed amendments to Form 8–K that, among other things, would have required registrants to report on the form any adoption, modification or termination of a Rule 10b5–1 trading arrangement by any director and certain officers of the registrant. *See Form 8–K Disclosure of Certain Management Transactions,* Release No. 33–8090 (Apr. 12, 2002) [67 FR 19914 (Apr. 23, 2002)]. The Commission did not adopt this proposal.

surrounding potential insider trading. General statements such as that an issuer ''has a policy regarding insider trading'' or ''prohibits insider trading'' do not meaningfully assist investors in their assessments of whether an issuer's efforts to prevent insider trading are likely to be effective. While not every individual component of an insider trading policy is necessarily material on its own, together, a comprehensive description of an insider trading policy can help investors to assess the thoroughness and seriousness with which the issuer addresses the prohibition of trading on the basis of material nonpublic information by its officers, directors and employees. More detailed disclosure about these policies and procedures could therefore improve investor confidence, and in turn, potentially contribute to market liquidity and capital formation.

To address these information gaps, the Commission proposed new Item 408 under Regulation S–K and corresponding amendments to Forms 10–Q and 10–K to require: (1) quarterly disclosure of the use of Rule 10b5–1 and other trading arrangements by a registrant, and its directors and officers for the trading of the issuer's securities; and (2) annual disclosure of a registrant's insider trading policies and procedures. The Commission also proposed new Item 16J to Form 20–F to require similar annual disclosure of a foreign private issuer's insider trading policies and procedures. In addition, the Commission proposed amendments to Forms 4 and 5 to require insiders to identify whether a reported transaction was executed pursuant to a Rule 10b5–1(c) trading arrangement.

1. Quarterly Reporting of Rule 10b5–1 and Non-Rule 10b5–1 Trading Arrangements

a. Proposed Amendments

Proposed new Item 408(a) of Regulation S–K would require registrants to disclose:

- Whether, during the registrant's most recently completed fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report), the registrant adopted or terminated any contract, instruction or written plan to purchase or sell securities of the registrant, whether or not intended to satisfy the affirmative defense conditions of Rule 10b5–1(c), and provide a description of the material terms of the contract, instruction or written plan, including:
  - The date of adoption or termination; [207]
  - The duration of the contract, instruction or written plan; and
  - The aggregate amount of securities to be sold or purchased pursuant to the contract, instruction or written plan.
- Whether, during the registrant's last fiscal quarter, any director or ''officer'' (as defined in Rule 16a–1(f)) has adopted or terminated any contract, instruction or written plan for the purchase or sale of securities of the registrant, whether or not intended to satisfy the affirmative defense conditions of Rule 10b5–1(c), and provide a description of the material terms of the contract, instruction or written plan, including:
  - The name and title of the director or officer;
  - The date on which the director or officer adopted or terminated the contract, instruction or written plan;
  - The duration of the contract, instruction or written plan; and
  - The aggregate number of securities to be sold or purchased pursuant to the contract, instruction or written plan.

Under the proposed rule, the disclosures would be required in Forms 10–Q and 10–K, as applicable. Registrants would be required to provide this information if, during the quarterly period covered by the report, the registrant, or any director or officer who is required to file reports under Section 16 of the Exchange Act, [208] adopted or terminated a Rule 10b5–1 plan. Such disclosures would allow investors to assess whether, and if so, how, issuers monitor trading by their directors and officers for compliance with insider trading laws and whether their compliance programs are effective at preventing the misuse of material nonpublic information.

The Commission stated that the proposed rule would provide material information that would better allow investors, the Commission, and other market participants to observe how directors, officers and issuers use Rule 10b5–1 plans. For example, disclosure of the termination (including a modification) of a trading arrangement by an officer, even in the absence of subsequent trading by the officer, could provide investors or the Commission with important information about the potential misuse of inside information such as, for example, if the termination occurs close in time to the release of material nonpublic information by the issuer. Making information about these arrangements public may also serve as a deterrent against potential abuses of Rule 10b5–1 plans or other trading arrangements by making those who use these arrangements more likely to focus on following the requirements applicable to such arrangements and compliance with Rule 10b–5. In addition, requiring disclosure of these events on a quarterly basis would present this disclosure to investors in a consolidated manner in a single document. The Commission also proposed to require similar disclosure with respect to the adoption or termination of other pre-planned trading contracts, instructions, or plans (''non-Rule 10b5–1 trading arrangements'') through which the issuer, officer or director seeks to transact in the issuer's securities.

b. Comments on the Proposed Amendments

Many commenters generally supported the proposed reporting requirements.[209] For example, one of these commenters stated that the proposed disclosures would provide important information regarding insider stock trades and useful information to investors to inform their own investment decisions.[210] Another commenter asserted that the proposed disclosures would provide long-term shareholders with information about insider trades that complete the partial picture provided by Form 144 and Section 16 reports.[211] A few commenters supported the proposed requirements, but asked that issuers also report plans with respect not only to officers and directors, but also more generally any employee of the issuer.[212]

Several commenters, however, did not support the proposed reporting requirements.[213] Some of these commenters contended that the proposed disclosures are unnecessary because they would be duplicative of the disclosures that would be required under the proposed amendments to Forms 4 and 5.[214] One of these commenters also asserted that it would be a significant burden on issuers to

[207] As discussed above, the Commission also proposed to state explicitly in the rule that any modification or amendment of an existing Rule 10b5–1 trading arrangement would be the equivalent of terminating the existing arrangement and adopting a new arrangement. *See supra* note 46.

[208] 15 U.S.C. 78p.

[209] *See, e.g.,* letters from AFL–CIO, Better Markets, CII, CO PERA, DLA, ICGN, NASAA, O'Reilly, and Simpson.

[210] *See* letter from AFL–CIO.

[211] *See* letter from CII.

[212] *See, e.g.,* letters from BrilLiquid and NASAA.

[213] *See, e.g.,* letters from ACCO, IBC, MD Bar, NVCA, NAM, SCG, Sullivan and Wilson Sonsini.

[214] *See, e.g.,* letters from Sullivan and Wilson Sonsini.

provide the proposed disclosures concerning all of the trading actions of their directors and officers.[215]

A number of commenters expressed concern regarding the requirement for registrants to provide a description of the ''material terms'' of the Rule 10b5–1 trading arrangement.[216] Several commenters indicated that the proposal could be interpreted as requiring registrants to disclose specific details of a trading arrangement, such as pricing information.[217] Many commenters stated that the disclosure of pricing information and other details of a Rule 10b5–1 plan could facilitate the front-running of transactions under the plan by other traders.[218]

Due to these concerns, commenters were divided in their recommendations of what information about trading arrangements should be disclosed. Some commenters stated that the final rule should not require disclosure of the number of shares covered by a trading arrangement or the duration of the arrangement.[219] Other commenters recommended that the Commission limit disclosures to the name of the person adopting the plan, the date of adoption or termination of the plan, and the plan's duration.[220] In contrast, other commenters opposed requiring disclosure of the termination of a plan, contending that this information could signal to the market that there has been a material development concerning the issuer, such as an impending merger agreement.[221]

In addition, a number of commenters recommended that the Commission should not require disclosure regarding non-Rule 10b5–1 trading arrangements.[222] Several commenters asserted that this term was confusing and overly broad.[223] One commenter indicated that this term would raise a number of interpretive issues as it potentially encompasses a wide range of transactions, such as transactions related to open market purchases, derivative securities and employee benefit plans.[224] Other commenters claimed that this disclosure would not provide valuable information to investors, the Commission, or other market participants.[225] For example, some of these commenters stated that the details of trades executed under a non-Rule 10b5–1 trading arrangement are already required to be disclosed in Section 16 filings.[226]

A few commenters recommended that the disclosure requirements regarding registrant trading arrangements should be removed from proposed Item 408(a) and included with the pending proposed rulemaking[227] to update the disclosure requirements for purchases of equity securities by an issuer and affiliated purchasers under Item 703 of Regulation S–K.[228]

Another commenter suggested the Commission exempt smaller reporting companies (''SRCs'')[229] from the proposed disclosure requirement.[230] This commenter claimed SRCs and their insiders are less likely to engage in the kinds of trading in the securities of their companies that would cause concern, but that the reporting burden could disproportionately impact these issuers.

Finally, one commenter suggested that it would be more appropriate to include proposed Item 408(a) disclosure in Part II, Item 9(B) of Form 10–K, and Item 408(b) disclosure in Part III, Item 10 of Form 10–K.[231] This commenter claimed that requiring Item 408(a) disclosure in Item 9(B) rather than Item 10 of Form 10–K would align with the Commission's proposal to require Item 408(a) disclosure in Item 5 of Form 10–Q because both Items cover similar types of information. Further, this commenter posited that this approach would ensure that Item 408(a) disclosure, which relates to the last fiscal quarter, appears in each periodic report.

c. Final Rule

We are adopting new Item 408(a) with several modifications in response to comments. Specifically, we are not adopting the proposed requirement regarding contracts, instructions, or plans of registrants; we are providing that the description of material terms need not address pricing terms; and we are adding a definition of ''non-Rule 10b5–1 trading arrangement.'' As proposed, these disclosures will be required in Forms 10–Q and 10–K.[232]

The final rule will require registrants to (1) disclose whether, during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report), any director or ''officer'' (as defined in Rule 16a–1(f)) has adopted or terminated (i) any contract, instruction or written plan for the purchase or sale of securities of the registrant that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) (a ''Rule 10b5–1(c) trading arrangement''), and/or (ii) any written trading arrangement for the purchase or sale of securities of the registrant that meets the requirements of a non-Rule 10b5–1 trading arrangement as defined in Item 408(c) (a ''non-Rule 10b5–1 trading arrangement''); and (2) provide a description of the material terms of the Rule 10b5–1 trading arrangement or non-Rule 10b5–1 trading arrangement other than terms with respect to the price at which the individual executing the respective trading arrangement is authorized to trade, such as:

- The name and title of the director or officer;
- The date of adoption or termination of the trading arrangement;
- The duration of the trading arrangement; and
- The aggregate number of securities to be sold or purchased under the trading arrangement.

With respect to any given trading arrangement subject to disclosure under Item 408(a), the registrant must indicate whether such trading arrangement is a Rule 10b5–1 trading arrangement or is a non-Rule 10b5–1 trading arrangement.

In addition, any modification or change to a Rule 10b5–1 plan by a director or officer that falls within the meaning of new Rule 10b5–1(c)(1)(iv) would also be required to be disclosed under Item 408(a) as it constitutes the termination of an existing plan and the adoption of a new contract, instruction, or written plan.

[215] *See* letter from Sullivan.

[216] *See, e.g.,* letters from ABA, Davis Polk, Cleary, DLA, FedEx, Fenwick, Kirkland, NVCA, NAM, Quest, SCG, SIFMA 2, Sullivan and Wilson Sonsini.

[217] *See, e.g.,* letters from ABA, Cleary, Davis Polk, DLA, Fenwick, Quest, SCG, SIFMA 2, and Wilson Sonsini.

[218] *See, e.g.,* letters from Davis Polk, DLA, Fenwick, NVCA, SCG, SIFMA 2, and Wilson Sonsini.

[219] *See, e.g.,* letters from Quest and Simpson.

[220] *See, e.g.,* letters from Fenwick and Shearman.

[221] *See* letters from Sullivan and SIFMA 3.

[222] *See, e.g.,* letters from Cleary, Cravath, Davis Polk, Shearman, Sullivan, and Simpson.

[223] *See, e.g.,* letters from Cleary, Cravath, SIFMA 3, and Sullivan.

[224] *See* letter from Sullivan.

[225] *See, e.g.,* letters from Cleary, Cravath, Shearman, and Simpson.

[226] *See, e.g.,* letters from Cravath and Shearman.

[227] *See Share Repurchase Disclosure Modernization,* Release No. 34–93783 (Dec. 15, 2021) [87 FR 8443 (Feb. 15, 2022)].

[228] *See, e.g.,* letters from Cravath and Simpson.

[229] ''Smaller reporting company'' is defined in Securities Act Rule 405 and Exchange Act Rule 12b–2 as an issuer that is not an investment company, an asset-backed issuer (as defined in 17 CFR 229.1101), or a majority-owned subsidiary of a parent that is not a smaller reporting company and that had: (1) a public float of less than $250 million; or (2) annual revenues of less than $100 million and either: (a) no public float; or (b) a public float of less than $700 million.

[230] *See* letter from MD Bar.

[231] *See* letter from ABA.

[232] In a slight modification, we are adopting the approach suggested by a commenter to include new Item 408(a) in Part II, Item 9(B) of Form 10–K. *See* letter from ABA.

Having considered comments received, we view this information as necessary to better allow investors, the Commission, and other market participants to observe how directors and officers use Rule 10b5–1 plans and other non-Rule 10b5–1 trading arrangements. The information also will add important context to other disclosures of trades by directors and officers, such as in Forms 4 and 5, and may aid investors in obtaining a more accurate valuation of the issuer's shares and making more informed investment decisions.[233] Furthermore, this information will provide investors with valuable information about the specific uses of such arrangements, which could bring focus to the particular arrangements and deter potential abuses. While it is true, as commenters observed, that Forms 4 and 5 may already include some of this information, we expect it will be more useful and time-saving for investors to have information regarding all of the trading arrangements for directors and officers of a given issuer in a single location. We are also requiring disclosure of details about the content of such arrangements that is not mandated on Form 4 or Form 5, which, pursuant to the amendments that we are adopting as described below, will require only the date of adoption of the Rule 10b5–1 plan.

In response to the concerns expressed by some commenters that the proposal could require the disclosure of pricing information,[234] however, we have revised the final rules to clarify that new Item 408(a) does not require disclosure of the price at which the individual executing the trading arrangement is authorized to trade. We agree with these commenters that disclosing this information could allow other persons to trade strategically in anticipation of an officer's or a director's planned trades, increasing the costs or reducing the profitability of that officer's or director's trading. Although we recognize that some commenters urged us to not require disclosure of the trading arrangement's duration or the aggregate number of securities that could be purchased and sold under it, we view this information as necessary context for a trading arrangement that does not raise similar concerns because, in most cases, general information about the volume and duration of an officer's or director's Rule 10b5–1 plan or non-Rule 10b5–1 trading arrangement will not be sufficient to permit strategic trades by other market participants. We also disagree with commenters that we should not require disclosure related to terminations because, first, Rule 10b5–1 plans or non-Rule 10b5–1 trading arrangements may be terminated for many reasons, making it unlikely that a termination would be interpreted as an indication of a pending material event (such as a merger announcement), and second, because the interval between a termination and the filing of the Form 10–Q or Form 10–K disclosing the termination should mitigate any such potential strategic trading.

In addition, the final rule will also require disclosure regarding the adoption or termination of non-Rule 10b5–1 trading arrangements. In response to the concerns expressed by some commenters that the term ''non-Rule 10b5–1 trading arrangements'' was confusing and overly broad,[235] we are adopting a definition of this term to clarify the types of pre-planned trading arrangements that should be disclosed under Item 408(a). To ensure that market participants are familiar with how to apply this concept, the definition we adopt accords with the requirements of the Rule 10b5–1 affirmative defense that the Commission adopted in 2000. Under the final rule, a trading arrangement with respect to a director or ''officer'' (as defined in Rule 16a-1(f)) would be a ''non-Rule 10b5–1 trading arrangement'' where the director or officer asserts that, at a time when they were not aware of material nonpublic information about the security or the issuer of the security, they

- adopted a written arrangement for trading the securities; and
- The trading arrangement:
  - Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be subsequently purchased or sold;
  - Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which the securities were to be purchased or sold; or
  - Did not permit the covered person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the trading arrangement did exercise such influence must not have been aware of material nonpublic information when doing so.

In adopting this requirement, we recognize that Rule 10b5–1 provides affirmative defenses, but that corporate insiders may assert other defenses to liability under Section 10(b). Absent this disclosure requirement, directors and officers may be more likely to choose to trade in reliance on alternative defenses to liability other than this affirmative defense in order to avoid the disclosure requirements for Rule 10b5–1 plans, as well as avoiding the other requirements of the affirmative defense. Further, we believe these disclosures would be useful to investors for largely the same reasons that disclosure of plans that fully satisfy Rule 10b5–1 is useful: they provide important context about how insiders use their trading plans, such as in the case where an insider cancels a plan close in time to the release of material nonpublic information. We therefore disagree with commenters who assert this information would not be useful to investors.

At this time, we are not adopting the proposal to require corresponding disclosure regarding the use of trading arrangements by the issuer. In light of the various comments we received on this proposal,[236] we believe that further consideration of potential application of the disclosure requirement for purchases of equity securities by an issuer is warranted. We are also declining to extend disclosure obligations to plans adopted by insiders other than officers and directors, as suggested by some commenters, because we have concluded that collecting such information could be significantly burdensome for issuers, and because we think that granular disclosure about the adoption, termination, modification, and material terms of such plans is likely to be less important to investors than plans adopted by directors and officers.

Finally, we are not exempting SRCs from the disclosure requirements, as recommended by a commenter.[237] While we are aware of the potential for a disproportionate impact on SRCs, we disagree that corporate insiders at SRCs are less likely to engage in the types of trading with which we are concerned. In our view, stock ownership by corporate insiders is common at SRCs, and exempting SRCs from this disclosure

[233] *See infra* Section V.C.2. The mandatory Rule 10b5–1 plan checkbox disclosures on Forms 4 and 5, in combination with this disclosure will provide greater transparency to investors regarding the use of Rule 10b5–1 plans for trading. All of this information will provide investors with valuable context for interpreting other corporate disclosure, which should help them value the companies' shares and make informed voting and investment decisions.

[234] *See, e.g.,* letters from ABA, Cleary, Davis Polk, DLA, Fenwick, Quest, SIFMA 2, SCG, and Wilson Sonsini.

[235] *See, e.g.,* letter from Sullivan.

[236] *See, e.g.,* letters from Cravath and Simpson.

[237] *See supra* note 230.

requirement would deprive investors in those issuers of material information about the use, and potential abuse, of Rule 10b5–1 plans and non-Rule 10b5–1 trading arrangements by an SRC's officers or directors.

2. Disclosure of Insider Trading Policies and Procedures

a. Proposed Amendments

The Commission proposed new Item 408(b) of Regulation S–K, which would require registrants to:

- Disclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, officers, and employees or the registrant itself that are reasonably designed to promote compliance with insider trading laws, rules, and regulations, and any listing standards applicable to the registrant. If the registrant has not adopted such insider trading policies and procedures, explain why it has not done so; and
- If the registrant has adopted insider trading policies and procedures, disclose such policies and procedures.

These disclosures would be required in a registrant's annual reports on Form 10–K and proxy and information statements on Schedules 14A and 14C.[238] Foreign private issuers (''FPIs'') would also be required to provide analogous disclosure in their annual reports pursuant to a new Item 16J in Form 20–F.

In the Proposing Release, the Commission stated that well-designed policies and procedures that address the potential misuse of material nonpublic information can play an important role in deterring and preventing trading on the basis of material nonpublic information. Specific disclosures concerning registrants' insider trading policies and procedures would benefit investors by enabling them to assess registrants' corporate governance practices and to evaluate the extent to which those policies and procedures protect investors from the misuse of material nonpublic information.

Item 406 of Regulation S–K requires a registrant to disclose whether it has adopted a code of ethics that applies to its principal executive officer, chief financial officer, and other appropriate executives and, if it has not adopted such a code, to state why it has not done so.[239] Many registrants also are required to maintain codes of ethics or conduct under exchange listing standards.[240] These codes may contain specific policies and restrictions that address insider trading.[241] Apart from these codes of ethics or conduct, some registrants have other policies and procedures specifically addressing insider trading. The Commission structured the proposed amendments to provide investors with comprehensive information regarding a registrant's insider trading policies and procedures to enable investors to better assess the manner in which the registrant promotes compliance with insider trading laws and protects material nonpublic information from misuse.

The Commission recognized that insider trading policies and procedures may vary from issuer to issuer and that decisions as to specific provisions of the policies and procedures are best left to the issuer. Therefore, the proposed amendments did not specify the information that a registrant would be required to provide regarding its insider trading policies and procedures.

b. Comments on the Proposed Amendments

Commenters were divided over disclosure of a registrant's insider trading policies and procedures. Several commenters generally supported the proposed disclosure.[242] One of these commenters asserted that this disclosure would improve transparency for investors and potentially create incentives for corporate boards and management teams to scrutinize the issuer's ''corporate hygiene'' regarding material nonpublic information and insider trading.[243] Other commenters, however, asserted that the proposed disclosures would not meaningfully benefit investors, or that they would not be material.[244] Another commenter expressed concern that requiring this disclosure in both annual reports and proxy statements would create administrative burdens on issuers by requiring them to craft additional disclosure for two separate compliance documents.[245]

Several commenters recommended modifications to the proposal. For example, several commenters recommended that the Commission should provide flexibility and allow issuers to post their insider trading policies and procedures on their website and direct readers to the posting in their annual report on Form 10–K rather than disclosing such policies in the Form 10–K, similar to the existing disclosure requirements for an issuer's code of ethics under Item 406(c)(2) of Regulation S–K.[246] Another commenter similarly recommended that the final rules should allow issuers to post their insider trading policies and procedures on their website or file their insider trading policy as an exhibit to the annual report to satisfy this disclosure requirement.[247] A few commenters suggested that the final rule should use the word ''describe'' rather than ''disclose'' to elicit disclosure that is consistent in tone and detail with the other Regulation S–K disclosure requirements of the proxy statement or the annual report.[248]

Finally, several commenters recommended that the Commission exempt FPIs from these disclosure requirements.[249] These commenters contended that FPIs are already subject to home country corporate governance disclosure requirements, and that the disclosure requirement could function as an implicit requirement that FPIs adopt insider trading policies.

c. Final Rule

We are adopting new Item 408(b) and new Item 16J with certain modifications in response to comments. Under the final rule,[250] registrants will be required

[238] Item 1 of Schedule 14C requires that a registrant furnish the information called for by all of the items of Schedule 14A (other than Items 1(c), 2, 4 and 5) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting.

[239] 17 CFR 229.406; *see also* Section 406 of the Sarbanes-Oxley Act of 2002 (''SOX'') [15 U.S.C. 7264].

[240] *See, e.g.,* NYSE Listed Company Manual Section 303A.10 (stating in relevant part that every NYSE ''listed company should proactively promote compliance with laws, rules and regulations, including insider trading laws'' and that ''[i]nsider trading is both unethical and illegal, and should be dealt with decisively''); *see also* NASDAQ Listing Rule 5610 (requiring every Nasdaq listed company to adopt a code of conduct that complies with the definition of a ''code of ethics'' set out in SOX Section 406 (c) and that applies to all directors, officers, and employees).

[241] Insider trading policies and procedures may be part of the standards that are reasonably necessary to promote: honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and compliance with applicable governmental rules and regulations. *See* 15 U.S.C. 7264(c); *see also supra* Section I.

[242] *See, e.g.,* letters from Better Markets, BrilLiquid, CO PERA, CII, ICGN, NASAA, O'Reilly, and Sullivan.

[243] *See* letter from NASAA.

[244] *See, e.g.,* letters from Davis Polk, Home Depot, NAM, and Simpson.

[245] *See* letter from Dow.

[246] *See, e.g.,* letters from Cravath, Fenwick, Home Depot, and Shearman.

[247] *See* letter from Dow.

[248] *See, e.g.,* letters from Davis Polk, and SIFMA 2.

[249] *See, e.g.,* letters from Cravath, Jones Day, SIFMA 2, and Sullivan.

[250] While the Proposing Release stated that proposed Item 408(b)(1) would include insider trading policies and procedures governing the

to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale, and other dispositions of their securities by directors, officers, and employees, or the registrant itself that are reasonably designed to promote compliance with insider trading laws, rules, and regulations, and any listing standards applicable to the registrant. If a registrant has not adopted such insider trading policies and procedures, it must explain why it has not done so. These disclosures will be required in annual reports on Form 10–K and proxy and information statements on Schedules 14A and 14C. Pursuant to new Item 16J in Form 20–F, FPIs will be required to provide analogous disclosure in their annual reports on that form. We disagree that requiring this disclosure in both annual reports and proxy or information statements would impose an unreasonable burden on registrants by requiring them to prepare additional disclosures for two documents as suggested by a commenter.[251] In this regard, we note that under General Instruction G to Form 10–K, a registrant can incorporate by reference the information required by Item 408(b) from a definitive proxy or information statement involving the election of directors, if the proxy or information statement is filed within 120 days of the end of the fiscal year.[252] In a modification of the proposal and in response to comments,[253] the final rules do not require disclosure of the registrant's policies and procedures within the body of the annual report or proxy/information statement. Instead, we are adopting amendments to Item 601 of Regulation S–K and Form 20–F to require issuers to file a copy of their insider trading policies and procedures as an exhibit to Forms 10–K and 20–F, respectively. We considered permitting registrants to post their policies and procedures on their website in lieu of providing disclosure in the filing, as suggested by some commenters,[254] similar to Item 406(c)(2), which allows a registrant to post its codes of ethics on its website and disclose the internet address in its annual report to satisfy the code of ethics disclosure requirement. Requiring registrants to file their insider trading policies and procedures as an exhibit would make the document available online through our Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. Documents that are filed as exhibits to registration statements and periodic reports must be hyperlinked from the exhibit index of the document,[255] which facilitates investor access to the exhibit.

EDGAR allows active hyperlinks to documents that are filed on EDGAR but does not allow hyperlinks to non-EDGAR documents.[256] We therefore believe that the approach of hyperlinking to an exhibit filed on EDGAR would facilitate better access for investors as compared to permitting registrants to post their insider trading policies and procedures on their website and provide a web address (without a hyperlink) in their annual report. If all of the registrant's insider trading policies and procedures are included in its code of ethics (as defined in Item 406(b)) and the code of ethics is filed as an exhibit pursuant to Item 406(c)(1), a hyperlink to that exhibit accompanying the registrant's disclosure as to whether it has insider trading policies and procedures would satisfy this component of the disclosure requirement.

We disagree with commenters who suggested that the disclosure regarding these policies and procedures would not be material and useful information to investors. The thoroughness and precision of such policies and procedures may help investors to understand whether they will be successfully implemented, even if any single detail taken on its own may not otherwise be material. An investor might reasonably conclude that an issuer adopting a policy generally prohibiting insider trading, but without disclosing how it prevents the unlawful communication of and trading on material nonpublic information, provides fewer such assurances to investors than an issuer that has developed and disclosed more particular and thorough policies and procedures. As noted in the Proposing Release, investors may find useful, to the extent it is included in the issuer's relevant policies and procedures, information on the issuer's process for analyzing whether directors, officers, employees, or the issuer itself when conducting an open-market share repurchase have material nonpublic information; the issuer's process for documenting such analyses and approving requests to purchase or sell its securities whether through Rule 10b5–1 plans or otherwise; and/or how the issuer enforces compliance with any such policies and procedures it may have. Investors may also use this information to assess the strengths and weaknesses of particular elements of these policies and procedures, which would help show how well the issuer protects its material nonpublic information from being misused in unlawful communications and securities trading, and how its protections compare with its competitors. Furthermore, the disclosure under Item 408 and Item 16J would address not only policies and procedures that apply to the purchase and sale of the registrant's securities, but also other dispositions of the registrant's securities where material nonpublic information could be misused, such as through gifts of such securities.[257]

In extending this disclosure requirement to FPIs, we are cognizant of the concerns raised by commenters, such as the concern that some issuers may already be subject to home-country governance disclosure and that additional disclosure may pressure an FPI to adopt additional measures not required by its home jurisdiction. To the extent that an FPI already discloses similar information under its home country rules, the additional burden imposed by the final rule may be minimal. As we have discussed, information about the efforts an issuer undertakes to prevent misuse of its material nonpublic information is likely to be important to investors, regardless of whether it is a domestic issuer or an FPI. Indeed, we are aware that one reason FPIs register in the United States is to provide greater transparency and

purchase, sale, and/or other dispositions of the registrant's securities by directors, officers and employees or the registrant itself, the language ''or the registrant itself'' was inadvertently omitted from the proposed regulatory text. *See* Proposing Release, *supra* note 22, at 8695, 8712, and 8728. We have corrected this omission in the final rules, which now include the language ''or the registrant itself.'' *See* Item 408(b)(1).

[251] *See supra* note 245.

[252] *See* Note 2 to General Instruction G(2) to Form 10–K.

[253] *See, e.g.,* letters from Davis Polk, Dow, and SIFMA 2 (all recommending that the final rule not require full disclosure of the policies and procedures within the body of the filing).

[254] *See supra* note 246.

[255] *See* 17 CFR 229.601(a)(2) and 17 CFR 232.102(d).

[256] *See* 17 CFR 232.105(b).

[257] The Exchange Act does not require that a ''sale'' of securities be for value, and instead provides that the ''terms 'sale' or 'sell' each include any contract to sell or otherwise dispose of.'' *Compare* Exchange Act Section 3(a)(14) [15 U.S.C. 78c(a)(14)], *with* Securities Act Section 2(a)(3) [15 U.S.C. 77b(a)(3)] (''[T]he terms 'sale' or 'sell' shall include every contract of sale or disposition of a security or interest in a security, for value.''). For example, a donor of securities violates Section 10(b) if the donor gifts a security of an issuer in fraudulent breach of a duty of trust and confidence when the donor was aware of material nonpublic information about the security or issuer, and knew or was reckless in not knowing that the donee would sell the securities prior to the disclosure of such information. The affirmative defense under Rule 10b5–1(c)(1) is available for planned securities gifts.

assurances of the reliability of their disclosures to investors.

Finally, the disclosures that are required in Forms 10–K and 20–F discussed in this section as well as those discussed in Section II.B.1 will be subject to the certifications required by Section 302 of the Sarbanes-Oxley Act of 2002.[258] Section 302 requires an issuer's principal executive officer and principal financial officer to certify, among other things, that based on their knowledge, the Form 10–K or Form 20–F that they have signed does not contain untrue statements of material facts or omit to state material facts necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the periods covered by the reports.[259] In making these certifications, principal executive and principal financial officers attest to the accuracy of the statements in their Form 10–K or Form 20–F.[260] Thus, principal executive and principal financial officers may be liable under Rule 13a–14 if they certify as to a fact ''about which [they are] ignorant or which [they] know[ ] is false.'' [261]

3. Identification of Rule 10b5–1 and Non-Rule 10b5–1 Transactions on Forms 4 and 5

a. Proposed Amendments

Section 16(a) of the Exchange Act provides that every person who beneficially owns, directly or indirectly, more than 10 percent of any class of equity security (other than an exempted security) registered pursuant to Exchange Act Section 12, or who is an officer or director of the issuer of such security, shall file with the Commission an initial report disclosing the amount of all equity securities of such issuer of which the insider is the beneficial owner, and a subsequent transaction report to disclose any changes in beneficial ownership. Section 16 was designed to provide the public with information on securities transactions and holdings of corporate officers, directors, and principal shareholders, and to deter those individuals from seeking to profit from short-term trading in the securities of their corporations while in possession of material nonpublic information.[262]

Persons subject to Section 16 reporting must disclose changes in their beneficial ownership on Form 4 [263] or 5, [264] which are publicly available on EDGAR. In December 2020, the Commission proposed, among other things, amendments to Form 4 and Form 5 [265] to add a checkbox to these forms that would permit filers, at their option, to indicate whether a transaction reported on the form was made pursuant to a contract, instruction, or written trading plan for the purchase or sale of equity securities of the issuer that satisfies the conditions of Rule 10b5–1(c).[266] In response to this proposal, the Commission received feedback from several commenters who asserted, based on analyses of sales of securities executed under Rule 10b5–1 plans, that many of the surveyed transactions may have been made on the basis of material nonpublic information.[267] These commenters recommended that the proposed Rule 10b5–1 checkbox disclosure be mandatory on Forms 4 and 5 because such disclosure would help investors and the public better discern whether Rule 10b5–1 plans are being used to engage in opportunistic trading on the basis of material nonpublic information.[268]

In consideration of this feedback, the Commission proposed to add a Rule 10b5–1(c) checkbox as a mandatory disclosure requirement on Forms 4 and 5. A Form 4 or 5 filer would be required to indicate via the checkbox whether a transaction reported on that form was made pursuant to Rule 10b5–1(c). Filers would also be required to provide the date of adoption of the Rule 10b5–1 plan, and would have the option to provide additional relevant information about the reported transaction. Requiring this disclosure on Forms 4 and 5 would provide greater transparency around the use of Rule 10b5–1 plans and would be consistent with the primary purpose of Section 16.[269] It also would provide information that could be used by registrants to comply with their Item 408 disclosure obligations.

In addition, the Commission proposed to add a second, optional checkbox to both of Forms 4 and 5. This optional checkbox would allow a filer to indicate whether a transaction reported on the form was made pursuant to a pre-planned contract, instruction, or written plan for the purchase or sale of equity securities of the issuer that does not satisfy the conditions of Rule 10b5–1(c).

b. Comments on the Proposed Amendments

Most of the commenters who discussed this matter generally supported the proposal to add a mandatory checkbox on Forms 4 and 5 for the disclosure of trades under a Rule 10b5–1 trading arrangement.[270] For example, some of these commenters indicated that these checkboxes would provide useful information to investors and other market participants and may help prevent misuse of Rule 10b5–1 plans.[271] Another commenter, however, expressed the view that these checkboxes likely would not provide useful information if the Commission adopted the proposed cooling-off period.[272]

In addition, one of the commenters that generally supported the proposal did so subject to a recommended change. This commenter urged the Commission to amend the Rule 10b5–1 checkbox to state ''whether a transaction was intended to satisfy'' the Rule 10b5–1 affirmative defense rather than

[258] Public Law 107–204, 116 Stat. 745 (2002).

[259] In effectuating this statutory responsibility, the principal executive and financial officers of an issuer may be aided by a written representation (such as a sub–certification) from the issuer's principal legal or compliance officer (or person performing similar functions) that, based on a reasonable review, they have determined the issuer's insider trading practices and procedures comport with what the issuer is disclosing about them in its periodic reports. However, it would not be reasonable for a principal executive or financial officer to rely on such a representation if they are aware of information that is inconsistent with, or raises doubts about the reliability of, the representation.

[260] *See, e.g., SEC* v. *Jensen,* 835 F.3d 1100, 1112–13 (9th Cir. 2016); *see also GAF Corp.* v. *Milstein,* 453 F.2d 709, 720 (2d Cir. 1971) (''the obligation to file *truthful* statements implicit in the obligation to file'') ((emphasis in original)).

[261] *Id.* at 1113.

[262] *See Ownership Reports and Trading By Officers, Directors and Principal Security Holders,* Release No. 34–28869 (Feb. 8, 1991) [56 FR 7242 (Feb. 21, 1991)].

[263] A person subject to Section 16 must report specified changes in beneficial ownership on Form 4 before the end of the second business day following the date of execution of the transaction. *See* 17 CFR 240.16a–3(g).

[264] Form 5 is a year-end report to be used by a person subject to Section 16 to disclose certain transactions that were exempt from Section 16(b), and transactions and holdings that were required to be reported during the fiscal year, but were not. *See* 17 CFR 240.16a–3(f).

[265] Form 5 is a year-end report to be used by any person who was an officer, director or a 10% beneficial owner during any portion of the issuer's fiscal year to disclose transactions and holdings that are exempt from Section 16(b) or that were required to be reported during the fiscal year, but were not.

[266] *See Rule 144 Holding Period and Form 144 Filings,* Release No. 33–10911 (Dec. 22, 2020) [86 FR 5063 (Jan. 19, 2021)] (''December 2020 Proposing Release'').

[267] *See* letters from Council of Institutional Investors (dated Mar. 18, 2021), Alan Jagolinzer (dated Mar. 10, 2021), and David Larcker et al. (dated Mar. 10, 2021), available at *https://www.sec.gov/comments/s7-24-20/s72420.htm.*

[268] *Id.*

[269] *See* S. Rep. No. 1455, 73d Cong., 2d Sess. 55 (1934).

[270] *See, e.g.,* letters from ACCO, CII, Cravath, and Quinn.

[271] *See* letters from CII and Quinn.

[272] *See* letter from Cravath.

whether a transaction ''was made'' pursuant to the affirmative defense.[273] This commenter was concerned that, for a number of reasons, it could be difficult for a reporting person to definitively affirm whether a transaction was in fact made pursuant to the Rule 10b5–1 affirmative defense. This commenter also stated that using ''intended to satisfy'' would be consistent with the Commission's approach in other proposed rules, such as proposed Item 703(c)(2)(iii) of Regulation S–K.[274]

A few commenters opposed the optional non-Rule 10b5–1 checkbox on Forms 4 and 5.[275] These commenters indicated that this checkbox would not provide any valuable information to investors, the Commission or other market participants because the details of such transactions are already provided in Forms 4 and 5.

c. Final Amendment

After considering these comments, we are adopting the mandatory Rule 10b5–1 checkboxes to Forms 4 and 5 as proposed with one modification. In response to the concerns expressed by a commenter that the proposed checkbox language would have required a filer to definitively state that the reported transaction was in fact made pursuant to the Rule 10b5–1 affirmative defense,[276] we have revised the text accompanying the checkboxes to state that a reported transaction is pursuant to a plan that is ''intended to satisfy the affirmative defense conditions'' of Rule 10b5–1(c).

This checkbox will help investors and the public better understand how trading plans that rely on the revised Rule 10b5–1(c) affirmative defense are being used by corporate insiders, including whether they are being used to engage in opportunistic trading. We disagree with the commenter who indicated that the checkbox would not provide useful information to investors in light of the cooling-off period that we are adopting for officers and directors. The checkbox provides transparency into the use of Rule 10b5–1 plans to help deter potential misuse of those plans, which would complement the cooling-off period. For example, the checkbox might be useful to investors in combination with disclosures regarding the adoption and termination of Rule 10b5–1 plans as it may help them to identify instances in which an officer or director may have opportunistically cancelled a trade or terminated a plan. Moreover, the potential effects of such a disclosure could discourage such opportunistic cancellations.

Finally, we are not adopting the optional checkbox that would allow a filer to indicate whether a transaction reported on the form was made pursuant to a non-Rule 10b5–1 trading arrangement. We are persuaded by commenters who stated that this checkbox would not provide investors and other market participants with useful information because the details of the transaction will already be disclosed in the form.

C. Disclosure Regarding Option Grants and Similar Equity Instruments Made Close in Time to the Release of Material Nonpublic Information

1. Proposed Amendments

Since the enactment of the Securities Act and the Exchange Act, the Commission has sought to enhance its rules regarding the disclosure of executive and director compensation and to improve the presentation of this information to investors.[277] One area of focus for the Commission has been disclosure related to equity-based compensation. Many companies use stock options as a form of compensation for their employees and executives.[278] In a simple stock option award, a company may grant an employee the right to purchase a specified number of shares of the company's stock at a specified price, called the exercise price, which is typically set as the fair market value of the company's stock on the grant date. Stock options with exercise prices at or above the fair market value of the underlying stock are designed to motivate the recipient to work to increase company value, because the option holder would only benefit if the company's stock price exceeds the exercise price at the time of exercise.[279] Alternatively, if a company is aware of material nonpublic information that is likely to decrease its stock price, it may decide to delay a planned option award until after the release of such information (a practice commonly referred to as ''bullet-dodging'').[280]

In 2006, the Commission revised its executive compensation disclosure rules to, among other things, provide investors with a more complete picture of compensation paid to principal executive officers, principal financial officers, and the other highest paid executive officers and directors.[281] In the 2006 Executive Compensation Release, the Commission stated that under the principles-based compensation disclosure requirements of Item 402 of Regulation S–K, registrants may be required to disclose in their Compensation Discussion and Analysis (''CD&A'') information about the timing of option grants in close proximity to the release of material nonpublic information by the company.[282] Such disclosure should include, for example, whether a company is aware of material nonpublic information that is likely to result in an increase of its stock price, such as a product development announcement or positive earnings, and grants stock options immediately before the release of this information. Timing option grants to occur immediately before the release of positive material nonpublic information (a practice commonly referred to as ''spring-loading'') can benefit executives with an option award that will likely be in-the-money as soon as the material nonpublic information is made public.[283]

In the 2006 Executive Compensation Release, the Commission noted that the existence of a program, plan, or practice to select option grant dates for executive officers in coordination with the release of material nonpublic information

[273] *See* letter from Sullivan.

[274] In a separate release, the Commission proposed amendments to Item 703(c)(2)(iii) of Regulation S–K to require disclosure of a plan that ''is intended to satisfy'' the conditions of Rule 10b5–1(c). *See Share Repurchase Disclosure Modernization,* Release No 34–93783 (Dec. 15, 2021) [87 FR 8443 (Feb. 1, 2022)] (proposing amendments to modernize and improve disclosures about repurchases of an issuer's equity securities that are registered under the Exchange Act).

[275] *See, e.g.,* letters from Cravath and Cleary.

[276] *See* letter from Sullivan.

[277] *See, e.g., Executive Compensation and Related Person Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158 (Sept. 8, 2006)] (hereinafter ''2006 Executive Compensation Release'') at 53160 at n. 45; *Proxy Disclosure Enhancements,* Release No. 33–9089 (Dec. 16, 2009) [74 FR 68334 (Dec. 24, 2009)].

[278] The term ''option'' includes stock options, SARs and similar instruments with option-like features. *See* 17 CFR 229.402(a)(6).

[279] When the exercise price for an option is less than the fair market value of the underlying security, the option is ''in the money.'' If the exercise price and fair market value are the same, the option is ''at the money.'' If the exercise price is greater than the fair market value, the option is ''out of the money.''

[280] *See* Allan Horwich, *The Legality of Opportunistically Timing Public Company Disclosures in the Context of SEC Rule 10b5–1,* 71 Bus. Law. 1113, 1143 (2016) (noting that ''bullet-dodging'' occurs when a board delays the grant of an option until adverse material nonpublic information known to the board is disclosed, which reduces the market price and the option exercise price that is set at the time of the grant).

[281] 2006 Executive Compensation Release, *supra* note 277.

[282] *See* 17 CFR 229.402(b)(2)(iv) and 2006 Executive Compensation Release, *supra* note 277, at 53163–4.

[283] *See* Lucian A. Bebchuk & Jesse M. Fried, *Paying for Long-Term Performance,* 158 U. Pa. L. Rev. 1915, 1937–39 & n. 63 (2010) (noting that the practice of spring-loading may also disguise an in-the-money option award as having been granted at-the-money).

would be material to investors and should be fully disclosed.[284]

In the Proposing Release, the Commission expressed concern that our existing disclosure requirements do not provide investors with adequate information regarding an issuer's policies and practices on stock option awards timed to precede or follow the release of material nonpublic information. The Commission noted that, under the current executive compensation disclosure rules, compensation-related equity interests (including options, restricted stock, and similar grants) are required to be presented in a tabular format and accompanied by appropriate narrative disclosure necessary for an understanding of the information presented in a table. Option grants that are spring-loaded or bullet-dodging are not required to be separately identified in these tables. Investors therefore may not have a clear picture of the effect of an option award that is made close in time to the release of material nonpublic information on the executives' or directors' compensation and on the company's financial statements. Understanding that issuers may have reasons for granting these types of options, but that increased transparency may be warranted, the Commission proposed amendments that would require registrants to disclose in a new table any option awards to a ''named executive officer'' [285] (''NEO'') or director that is made close in time to the release of material nonpublic information such as an earnings announcement.

Specifically, to identify if any such timed options are granted, the Commission proposed adding a new paragraph to Item 402 of Regulation S–K that would require: (1) tabular disclosure of each award of stock options, SARs, or similar option-like instruments (*i.e.* the grant date, number of securities underlying the award, the exercise price of the award, and the grant date fair value of the award) granted within 14 calendar days before or after the filing of a periodic report, an issuer share repurchase, or the filing or furnishing of a current report on Form 8–K that discloses material nonpublic information (including earnings information); (2) the market value of the underlying securities the trading day before disclosure of the material nonpublic information; and (3) the market value of the underlying securities one trading day after disclosure of material nonpublic information.

The proposed 14-day window was designed to cover the period that an issuer would be aware of material nonpublic information at the time that its board of directors grants these awards. The Commission noted that many issuers also voluntarily communicate material nonpublic information regarding their results of operations or financial condition for a completed fiscal quarter or annual period through an earnings release.[286] After completion of a fiscal quarter, a company's board of directors will usually meet a week or two before the earnings release.[287] During this period, the board would likely be aware of material nonpublic information that could affect the price of the company's stock.

To further address these concerns, the Commission also proposed to require narrative disclosure about an issuer's policies and practices regarding the timing of grants of these awards in relation to the disclosure of material nonpublic information by the issuer, including how the board determines when to grant such awards and whether, and if so, how, the board or compensation committee takes material nonpublic information into account when determining the timing and terms of an award; and whether the issuer has timed the disclosure of material nonpublic information for the purpose of affecting the value of executive compensation. For issuers that are subject to the CD&A, the proposed narrative disclosure could be included in the CD&A.

Overall, the Commission intended the proposed amendments to provide shareholders with a full and complete picture of any spring-loaded or bullet-dodging option grants during the fiscal year. The Commission found it important for shareholders to understand company practices with respect to these types of grants as they consider their say-on-pay votes, and director elections. Accordingly, the Commission proposed to require this disclosure in annual reports on Form 10–K, [288] as well as in proxy statements and information statements related to the election of directors, shareholder approval of new compensation plans, and solicitations of advisory votes to approve executive compensation.[289]

Under the proposal, SRCs and emerging growth companies (''EGCs'') [290] would be subject to the new disclosure requirement. However, consistent with the scaled approach to their executive compensation disclosure, [291] they would be permitted to limit their disclosures about specific option awards to the PEO, the two most highly compensated executive officers other than the PEO at fiscal year-end, and up to two additional individuals who would have been the most highly compensated but for not serving as executive officers at fiscal year-end.[292]

2. Comments on the Proposed Amendments

Many commenters supported the proposed tabular and narrative disclosures.[293] Some of these commenters generally indicated that the proposed disclosures would increase investor confidence and might deter or discourage the use of spring-loaded and bullet-dodging option grants.[294] For example, they agreed that these disclosures would help investors make informed choices when voting on director elections and on executive pay and other compensation matters.

[284] 2006 Executive Compensation Release, *supra* note 277, at 53163.

[285] Named executive officers include all individuals serving as the registrant's Principal Executive Officer (''PEO'') or Principal Financial Officer (''PFO'') during the last completed fiscal year, the registrant's three most highly compensated officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year, and up to two additional individuals for whom disclosure would have been provided but for the fact that the individual was not serving as an executive officer at fiscal year-end. *See* Item 402(a)(3) of Regulation S–K.

[286] The staff estimates that approximately 63% of the Form 10-Qs filed with the Commission in calendar year 2017 were accompanied by a prior or concurrent earnings release by the issuer.

[287] While some companies provide earnings releases in advance of the corresponding Form 10–Q filings, many companies also issue earnings releases concurrently with their Form 10–Q filings.

[288] The executive compensation disclosure requirements in Part III of Form 10–K may be incorporated by reference from a proxy or information statement involving the election of directors, if filed within 120 days of the end of the fiscal year. *See* Note 3 to General Instruction G(3) to Form 10–K.

[289] Exchange Act Rule 14a–21 [17 CFR 240.14a–21] requires, among other things, that companies soliciting proxies for an annual or other meeting of shareholders at which directors will be elected include a separate resolution subject to a shareholder advisory vote to approve the compensation of named executive officers.

[290] An EGC is defined as a company that has total annual gross revenues of less than $1.235 billion during its most recently completed fiscal year and, as of Dec. 8, 2011, had not sold common equity securities under a registration statement. A company continues to be an EGC for the first five fiscal years after it completes an IPO, unless one of the following occurs: Its total annual gross revenues are $1.235 billion or more; it has issued more than $1 billion in non-convertible debt in the past three years; or it becomes a ''large accelerated filer,'' as defined in Exchange Act Rule 12b–2. *See* Securities Act Rule 405; Exchange Act Rule 12b–2.

[291] *See* Item 402(*l*) of Regulation S–K.

[292] *See* Item 402(m)(2) of Regulation S–K.

[293] *See, e.g.,* letters from ACCO, AFL–CIO, ICGN, NASAA, O'Reilly, and Public Citizen.

[294] *See, e.g.,* letters from ICGN and NASAA.

Commenters also expressed the view that the proposed disclosures would improve investor confidence by indicating that such awards are appropriately tied to long-term performance targets [295] and, similarly, giving insight into practices that could appear similar to insider trading, which would undermine the perceived fairness and integrity of the markets.[296]

A number of commenters, however, did not support this proposal.[297] Many of these commenters contended that the proposed disclosure requirements were unnecessary because the information is already available to the public through current executive compensation disclosure requirements and Section 16 reports, such as Form 4.[298] Several commenters contended that the proposed disclosures could be misleading as they could suggest a causal link between these awards and the release of material nonpublic information where none exists.[299]

In particular, many commenters were opposed to the proposed tabular disclosure of each option award granted within 14-calendar days before or after a triggering event.[300] Several commenters contended that the proposed disclosure would capture a large number of ordinary-course equity award grants and would not help investors distinguish spring-loaded or bullet-dodging grants from routine option grants.[301] Some of these commenters asserted that the timing of equity award grants is typically based on a meeting schedule for directors that is established several months in advance without consideration of disclosure of material information.[302]

A few commenters that opposed the tabular disclosure suggested modifying the requirements if adopted, to better ensure that the disclosure does not unduly encompass routine awards. A few commenters suggested shortening the disclosure window from 14 days,[303] to a shorter period, such as to three or five days.[304] Other commenters recommended that the Commission narrow the triggering events for this disclosure. Some of these commenters suggested that the Commission remove the Form 8–K disclosure trigger or limit it to Forms 8–K reporting an event under Item 1.01 [305] or Item 2.02 [306] of the form rather than using a materiality standard.[307] These commenters argued, among other things, that these reports are more likely to impact the price or trading in an issuer's securities [308] and that a more bright-line approach would benefit investors by providing them with more consistent and material information while removing the potential burden on issuers that making a materiality assessment for each Form 8–K may impose.[309] One of these commenters also urged the Commission to remove the share repurchase trigger or change it to trigger disclosure upon the adoption or announcement of a new share repurchase program, rather than any share repurchase transaction.[310] This commenter asserted that the proposed requirement could pose a substantial burden on issuers without any potential benefit to investors as many issuers engage in share repurchases activity regularly and, in some instances, daily.

In addition, another commenter asserted that the proposed narrative disclosure sufficiently addressed the Commission's concerns regarding spring-loading and bullet-dodging.[311] This commenter expressed the view that disclosure regarding the compensation committee's consideration of whether the issuer has material nonpublic information at the time of the grant and how the compensation committee considers the impact of timing and nature of corporate disclosures, share buyback announcements, and similar events would sufficiently address the concerns.

Finally, a few commenters contended that these rules are unnecessary because the staff guidance of Staff Accounting Bulletin 120 [312] mitigates disclosure concerns regarding spring-loaded options.[313]

3. Final Amendments

Having considered the comments received, we are adopting Item 402(x) as proposed with respect to the narrative disclosure and with several modifications to the tabular disclosure.

With respect to the narrative disclosure, as proposed, the final rule will require registrants to discuss the registrant's policies and practices on the timing of awards of stock options, SARs and/or similar option-like instruments in relation to the disclosure of material nonpublic information by the registrant, including how the board determines when to grant such awards (for example, whether such awards are granted on a predetermined schedule); whether, and if so, how, the board or compensation committee takes material nonpublic information into account when determining the timing and terms of an award, and whether the registrant has timed the disclosure of material nonpublic information for the purpose of affecting the value of executive compensation.[314]

We disagree with commenters who suggested this narrative disclosure would not provide useful information to investors. While it is true that investors can with some effort identify the timing both of awards and earnings announcements, this information would not reveal the extent to which a board considered the effects of such timing on its executive compensation practices, and may have modified other aspects of the executive's total compensation to reflect any impact that the timing of the award may have had. For similar reasons, we do not agree that the staff guidance in SAB 120 sufficiently mitigates disclosure concerns regarding

[295] *See* letter from ICGN.

[296] *See* letter from NASAA.

[297] *See, e.g.,* letters from ABA, Chevron, Cleary, Cravath, Davis Polk, DLA, Dow, Home Depot, FedEx, Fenwick, Jones Day, MD Bar, NAM, Paul Weiss, Quest, SCG, Shearman, Sullivan, and Wilson Sonsini.

[298] *See, e.g.,* letters from Cleary, Cravath, Dow, Fenwick, Home Depot, SCG, Shearman, and Wilson Sonsini.

[299] *See, e.g.,* letters from Dow, FedEx, Home Depot, PNC.

[300] *See, e.g.,* letters from ABA, Davis Polk Cleary, Cravath, Dow, Fenwick, Home Depot, SCG, and Shearman.

[301] *See, e.g.,* letters from Cleary, Cravath, Dow, Fenwick, Home Depot, SCG, Shearman, and Wilson Sonsini.

[302] *See, e.g.,* letters from Cleary, Cravath, Dow, FedEx, Home Depot, and SCG.

[303] *See, e.g.,* letters from Cravath and Davis Polk.

[304] *See* letter from Cravath.

[305] Item 1.01 requires disclosure of the entry into a material definitive agreement by the registrant.

[306] Item 2.02 requires disclosure of, among other things, a public announcement or release (including any update of an earlier announcement or release) disclosing material nonpublic information regarding the registrant's results of operations or financial condition for a completed quarterly or annual fiscal period.

[307] *See, e.g.,* letters from Fenwick and Sullivan.

[308] *See* letter from Fenwick.

[309] *See* letter from Sullivan.

[310] *Id.*

[311] *See* letter from Dow.

[312] *See Staff Accounting Bulletin No. 120,* Release No. SAB 120 (Nov. 24, 2021) [86 FR 68111 (Dec. 1, 2021)] (''SAB 120''). In SAB 120, among other topics, the staff provided interpretative guidance for public companies to consider regarding the accounting treatment of option awards made when the company possessed material nonpublic information. All staff statements, including SAB 120 and any other staff statement cited in this release, represent the views of the staff. They are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved their content. These staff statements, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person.

[313] *See, e.g.,* letters from SCG, Cravath, and Jones Day.

[314] Item 402(x)(1) does not require a registrant to adopt policies and practices on the timing of awards of stock options, SARs and/or similar option-like instruments if it has not already done so, or to modify any such existing policies.

the timing of options and similar awards as contended by some commenters. To the contrary, the narrative disclosures required by the final rule will increase the mix of information available to investors and better inform them of the appropriateness of any adjustments made by the board.

In addition, we are adopting the tabular disclosure requirement with several modifications in light of comments received. To address concerns that this disclosure may be misleading or otherwise overly broad, we have narrowed the disclosure window, with the result that disclosure would be required for awards made in the four business days before the filing of a periodic report or the filing or furnishing of a current report on Form 8–K that discloses material nonpublic information (including earnings information) and ending one business day after a triggering event. We have also removed the share repurchase disclosure trigger. In addition, the final rule provides that a Form 8–K reporting only the grant of a material new option award under Item 5.02(e) does not trigger this disclosure. We also combined the last two columns of the proposed table that would have required disclosure of the market value of the securities underlying the award one trading day before and one trading day after disclosure of material nonpublic information into a single column that discloses the percentage change in the market value of the securities underlying the award between those dates.

The final rules provide that, if, during the last completed fiscal year, stock options, SARs, and/or similar option-like instruments were awarded to an NEO within a period starting four business days before the filing of a periodic report on Form 10–Q or Form 10–K, or the filing or furnishing of a current report on Form 8–K that discloses material nonpublic information (including earnings information), other than a current report on Form 8–K disclosing a material new option award grant under Item 5.02(e), and ending one business day after a triggering event, the issuer must provide the following information concerning each such award for the NEO on an aggregated basis in the tabular format set forth in the rule:

- The name of the NEO;
- The grant date of the award;
- The number of securities underlying the award;
- The per-share exercise price;
- The grant date fair value of each award computed using the same methodology as used for the registrant's financial statements under generally accepted accounting principles; and
- The percentage change in the market price of the underlying securities between the closing market price of the security one trading day prior to and one trading day following the disclosure of material nonpublic information.

The purpose of the new table is to highlight for investors options award grants that may be more likely than most to have been made at a time that the board of directors was aware of material nonpublic information affecting the value of the award.

In a modification from the proposing release, we are requiring that the table include only option awards granted in the period beginning four business days preceding a triggering event and ending one business day after a triggering event. We agree with commenters that the proposed 14-day disclosure window may result in disclosure of many routine awards that are less likely to have been affected by material nonpublic information. To address these concerns, similar to the recommendation of one of those commenters to shorten the timeframe to three or five days,[315] we selected a four-business day period preceding a triggering event because a registrant must generally file a Form 8–K within that period of time upon becoming aware of a triggering event. It therefore is less likely that the registrant would be able to grant an award based upon the board's awareness of a triggering event more than four business days before the filing of a corresponding Form 8–K. We are adopting the same time period for awards preceding disclosures on Forms 10–Q and 10–K to make such disclosures readily comparable to those triggered by an 8–K filing. In addition, we are requiring disclosure of options awards in the one-business day period after the filing or furnishing of Forms 8–K, 10–Q, or 10–K because in some circumstances the issuer's share price will not fully reflect the information disclosed immediately after disclosure.[316] Including post-filing option awards beyond that period might reduce the value of the information in the table by including awards that may be less likely to be affected by material nonpublic information.

In addition, to further ensure that this disclosure covers the types of grants that we are concerned with, we have removed the share repurchase triggering event and provided a limited exception from the tabular disclosure of option awards based on the filing or furnishing of a Form 8–K. We are persuaded by commenters that including awards close in time to any issuer share repurchases could result in disclosure of virtually every award, greatly reducing the information value of the table. With respect to the Form 8–K trigger, we have created an exception for Item 5.02(e) Forms 8–K that only disclose a material new option award grant because we believe including this particular information in the new table would be redundant and not informative to investors. We disagree, however, with the commenters that recommended removing the Form 8–K trigger or limiting it to Item 1.01 or Item 2.02 Forms 8–K because a broad range of Forms 8–K could disclose material information that raises spring-loading concerns, not just these types of Forms 8–K. For example, the disclosure of an event under Item 8.01 of Form 8–K, such as the status of a patent application, may constitute material information that could affect the value of an option award.

Lastly, we combined the final two columns of the proposed table into a single column that requires disclosure of the percentage change in the market value of the securities underlying the award between the closing market price of the securities one trading prior to the disclosure of material nonpublic information and one trading day following the disclosure of material nonpublic information. This change is intended to make it easier for investors to understand the impact that spring-loading may have on the potential value realizable by the NEO.

D. Structured Data Requirements

1. Proposed Amendments

The Commission proposed to require registrants to tag the information specified by proposed Items 408 and 402(x) of Regulation S–K, and Item 16J of Form 20–F in Inline XBRL in accordance with Rule 405 of Regulation S–T and the EDGAR Filer Manual.[317] The proposed requirements would include block text tagging of narrative disclosures, as well as detail tagging of quantitative amounts disclosed within

[315] *See* letter from Cravath.

[316] *See infra* Section V.D.

[317] This tagging requirement would be implemented by including cross-references to Rule 405 in proposed Item 408(a)(3), Item 408(b)(3) and Item 402(x), and Item 16J of Form 20–F, and by revising Rule 405(b) to include the Item 408(a), 408(b)(1), and Item 402(x) disclosure. In conjunction with the EDGAR Filer Manual, Regulation S–T governs the electronic submission of documents filed with the Commission. Rule 405 specifically governs the scope and manner of disclosure tagging requirements for operating companies and investment companies, including the requirement in Rule 405(a)(3) to use Inline XBRL as the specific structured data language for tagging the disclosures.

the narrative disclosures. Inline XBRL is both machine-readable and human-readable, which improves the quality and usability of XBRL data for investors.[318]

2. Comments on the Proposed Amendments

Most of the commenters who addressed this proposal supported requiring the tagging of the disclosures.[319] One commenter, however, opposed this proposal and urged the Commission not to adopt it.[320] This commenter asserted that XBRL tagging was not well adapted to the disclosure of trading policies and procedures that would be required under proposed Item 408 and proposed Item 16J of Form 20–F, and that the full impact of this requirement would depend on what tagging would be required, which was not included with the Proposing Release.

3. Final Amendments

After considering these comments, we are adopting the amendments as proposed. The final amendments will require registrants to tag the information specified by new Items 402(x), 408(a), and 408(b)(1) of Regulation S–K, and new Item 16J(a) of Form 20–F, in Inline XBRL in accordance with Rule 405 and the EDGAR Filer Manual. We do not agree with a commenter's contention that XBRL tagging is not well adapted to these disclosures.[321] Rather, XBRL tagging is well adapted to narrative disclosures such as those specified by new Items 408(a), 408(b)(1), and 402(x)(1) of Regulation S–K and new Item 16J(a) of Form 20–F. In that regard, we note that the Commission has required XBRL tagging for narrative disclosures, such as descriptions of significant accounting policies in footnotes to financial statements since the initial implementation of XBRL requirements in 2009.[322] Requiring Inline XBRL tagging of these disclosures will benefit investors by making the disclosures more readily available and easily accessible to investors, market participants, and others for aggregation, comparison, filtering, and other analysis, as compared to requiring a non-machine readable data language such as HTML. Registrants must comply with the Inline XBRL tagging requirements in Forms 10–Q, 10–K and 20–F, and any proxy or information statements that are required to include the Item 408 and/or Item 402(x) disclosures, beginning with the first such filing that covers the first full fiscal period beginning on or after April 1, 2023, for companies other than SRCs. SRCs will be required to provide and tag the disclosures after an additional six-month transition period. This compliance date is intended to provide sufficient time for filers, filing agents, and software vendors to transition to the new requirements, as well as to provide time for any necessary taxonomy or EDGAR changes.

This Inline XBRL tagging will enable automated extraction and analysis of the granular data required by the final rules, allowing investors and other market participants to more efficiently perform large-scale analysis and comparison of this information across registrants and time periods. For example, an Inline XBRL requirement will allow investors to extract and search for disclosures about the use of Rule 10b5–1 plans by directors and officers reported in a registrant's periodic reports rather than having to manually run searches for these disclosures through entire documents. The Inline XBRL requirement would also enable automatic comparison of tagged disclosures against prior periods. At the same time, we do not expect the incremental compliance burden associated with tagging the information specified by new Items 402(x), 408(a), 408(b)(1), or new Item 16J(a) will be unduly burdensome because registrants subject to the tagging requirements are for the most part subject to similar Inline XBRL requirements in other Commission filings.

E. Reporting of Gifts on Form 4

1. Proposed Amendments

Currently, Section 16 reporting persons may report any ''bona fide gift'' [323] of equity securities registered under Exchange Act Section 12 on Form 5. Exchange Act Rule 16a–3(f) permits officers, directors and ten percent holders to report on Form 5 within 45 days after the issuer's fiscal year end certain transactions during the most recent fiscal year that were exempt from Section 16(b).[324] As transactions that are exempted from Section 16(b) by Rule 16b–5,[325] both the acquisition and disposition of bona fide gifts are eligible for delayed reporting on Form 5 pursuant to Rule 16a–3(f)(1). This filing schedule, under the current rules, can permit Section 16 reporting persons to report ''bona fide'' gifts more than one year after the date of the gift.[326]

In the Proposing Release, the Commission noted that the delayed reporting of gifts on Form 5 may allow Section 16 reporting persons to engage in problematic practices involving gifts of equity securities, such as making stock gifts while in possession of material nonpublic information,[327] or backdating stock gifts in order to maximize the tax benefits associated with such gifts.[328] To address these concerns, the Commission proposed to amend Exchange Act Rule 16a–3 to require the reporting of dispositions by bona fide gifts of equity securities on Form 4. Under the proposal, an officer, director, or a beneficial owner of more than 10 percent of the issuer's registered equity securities who makes a gift of equity securities would be required to report the gift on Form 4, which has a deadline of the end of the second business day following the date of execution of the transaction. This deadline would be significantly earlier than what is required under Form 5. The earlier reporting deadline is intended to help investors, other market participants, and the Commission better evaluate the actions of these Section 16 reporting persons and the context in which equity securities gifts are being made.

2. Comments on the Proposed Amendments

Several commenters generally supported the proposal to require Section 16 reporting persons to report dispositions of equity securities by bona

[318] *See Inline XBRL Filing of Tagged Data,* Securities Act Release No. 10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]. Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. Inline XBRL is both human-readable and machine-readable for purposes of validation, aggregation, and analysis. *Id.* at 40851.

[319] *See, e.g.,* letters from CII, AFL–CIO, ICGN, and XBRL US, Inc. (''XBRL–US'').

[320] *See* letter from Cleary.

[321] *Id.*

[322] *See* 17 CFR 232.405(d).

[323] A bona fide gift is a gift that is not required or inspired by any legal duty or that is in any sense a payment to settle a debt or other obligation, and is not made with the thought of reward for past services or hope for future consideration. *See Ownership Reports and Trading by Officers, Directors and Principal Stockholders,* Release No. 34–26333 (Dec. 2, 1988) [53 FR 49997 (Dec. 13, 1988)].

[324] 17 CFR 240.16a–3(f).

[325] 17 CFR 240.16b–5.

[326] Reports on Form 5 are due within 45 days after the issuer's fiscal year end, which potentially allows a delay of up to 410 days between a reportable transaction and the filing of the Form 5.

[327] *See* Daisy Maxey, *Improper 'Insider Charitable Giving' Is Widespread, Study Says,* Wall St. J. (July 5, 2021) (retrieved from Factiva database).

[328] *See* S. Burcu Avci et al., *Insider Giving,* 71 Duke L.J. 619–700 (2021) (finding that insiders' charitable gifts of securities are unusually well timed suggesting that such results are likely due to the possession of material nonpublic information and from the backdating of the stock gift). *See also* David Yermack, *Deductio ad Absurdum: CEOs Donating Their Own Stock to Their Family Foundations,* 94 J. Fin. Econ. 107 (2009).

fide gifts on Form 4.[329] One of these commenters agreed with the reasons cited in the Proposing Release that the earlier reporting deadline would help investors, other market participants, and the Commission better evaluate the actions of these Section 16 reporting persons and the context in which these gifts are made.[330]

A number of commenters, however, expressed concern over the reporting of dispositions by bona fide gifts of equity securities on Form 4, and in particular expressed concern about the proposed reporting two-day deadline, including the resulting compliance and administrative burdens.[331] Some of these commenters contended that certain estate planning transactions involving gifts of equity securities are complex and that Section 16 reporting persons will spend substantial time analyzing these transactions to ensure proper reporting under Section 16.[332] One commenter contended that the proposed amendment could discourage Section 16 reporting persons from making gifts of equity securities and, as a result, urged the Commission to not adopt this proposal, or, at a minimum, limit it to bona fide gifts of securities made to charities affiliated with the insider and to extend the reporting deadline for bona fide gifts of securities, such as to 45 days.[333] Another commenter suggested that a donor should be able to avoid insider trading liability by obtaining a commitment from the charitable donee not to sell the donated stock until after any material nonpublic information known by the donor at the time of the donation has become public or stale.[334] This commenter also argued that the proposed amendment was overbroad in that it applied to some gifts, such as in case of transfers to a trust controlled by the donor, that the commenter asserted were not ''problematic.'' [335]

Finally, this same commenter also expressed concern that language in the proposing release purporting to illustrate the application of Section 10(b) to gifts of securities appeared to represent an extension or modification of insider trading law.[336] In footnote 55 of the Proposing Release, the Commission stated that ''a donor of securities violates Section 10(b) if the donor gifts a security of an issuer in fraudulent breach of a duty of trust and confidence when the donor was aware of material nonpublic information about the security or issuer, and knew or was reckless in not knowing that the donee would sell the securities prior to the disclosure of such information.'' [337] This commenter noted that shareholders often make charitable donations of stock at the end of the year to obtain an income-tax deduction for the current year, and that the charitable organization that receives the stock often sells the securities upon receipt. This commenter asserted the Commission should clearly explain the basis for its conclusion and provide guidance as to how a Section 16 reporting person could make a charitable donation of securities without running afoul of Section 10(b) and Rule 10b–5. The commenter expressed concern that the Commission's position would criminalize this type of gifting.

3. Final Amendments

After considering the comments, we are adopting the amendments to Rule 16a–3 as proposed. Under the final amendments, Section 16 reporting persons will be required to report dispositions of bona fide gifts of equity securities on Form 4 (rather than Form 5) in accordance with Form 4's filing deadline (that is, before the end of the second business day following the date of execution of the transaction). To address our concerns that the lengthy reporting deadline may allow Section 16 reporting persons to engage in the problematic practices noted above, we intend for this reporting deadline to help investors, other market participants, and the Commission better evaluate the actions of Section 16 filers and the context in which they make gifts of equity securities. In that regard, we agree with the academic authors, cited in the Proposing Release,[338] who observe that a gift followed closely by a sale, under conditions where the value at the time of donation and sale affects the tax or other benefits obtained by the donor, may raise the same policy concerns as more common forms of insider trading.[339] As these academic authors have found, because the donor is in a position to benefit from the asset's value at the time of donation and sale, the donor may be motivated to give at a time when donor is aware of material nonpublic information and may expect the donee to sell prior to the disclosure of such information.[340] Investors cognizant of this dynamic may be more reluctant to trade. We also agree with the academic authors that a gift made with the knowledge that the donee will soon sell can be seen as in effect a sale for cash followed by gift of the cash.[341]

We are clarifying here, however, that the affirmative defense of Rule 10b5–1(c)(1) is available for any bona fide gift of securities, including a gift that might otherwise cause the donor to be subject to liability under Section 10(b), because when making the gift the donor was aware of material nonpublic information about the security or issuer and knew or was reckless in not knowing that the donee would sell the securities prior to the disclosure of such information.[342] In our view, the terms ''trade'' and ''sale'' in Rule 10b5–1(c)(1) include bona fide gifts of securities.[343] For example, a covered individual may enter into a binding arrangement instructing their attorney or tax advisor to gift shares to a charitable organization, with the amount of shares gifted determined according to a traditional algorithm or formula, or instead according to some tax objective, such as the amount of shares that would maximize the

[329] *See, e.g.,* letters from AFL–CIO, Cravath, and ICGN.

[330] *See* letter from ICGN.

[331] *See, e.g.,* letters from HRPA, Davis Polk, and NAM.

[332] *See, e.g.,* letters from HRPA and Davis Polk.

[333] *See* letter from HRPA; *see also* letter from NAM (expressing concern that the ''tight timeframe'' in the proposal will be ''functionally unworkable'' and urging that the Commission consider a reporting deadline longer than two days).

[334] *See* letter from Davis Polk.

[335] *See id; see also* letter from HRPA (asserting that the proposed amendment could ''unnecessarily complicate estate planning activities that have a very low likelihood of abuse'').

[336] *See* letter from Davis Polk (citing footnote 55 of the Proposing Release).

[337] *See* Proposing Release at 8695.

[338] *See* Section II.D. of the Proposing Release.

[339] *See supra* note 328.

[340] We disagree with the commenter who argued that donors are not motivated by financial advantage and that tax considerations do not warrant treating gifts ''as if they were market transactions.'' *See* letter from HRPA. Although we agree that many gifts are likely driven by other than pecuniary motives, the tax treatment of any particular gift can substantially affect the net cost of that donation. Extensive academic literature documents that such differences affect the amount and timing of gifts. *See, e.g.,* James A. Andreoni & A. Abigail Payne, *Charitable Giving,* in 5 Handbook of Public Economics 1 (Alan J. Auerbach et al. eds., 2013). To be clear, we understand that in the common case of charitable donations of stock to a public charity, the value of the donor's tax benefit is (subject to some limitations) the value of the asset on the date of donation, not the value obtained by the recipient upon sale. *See* 26 U.S.C. 170(e); 26 CFR 1.170A–1(c)(1). But, when a sale occurs close in time to the time of donation, these two may be the same. In addition, we note that non-pecuniary motives can also lead donors to consider the value a donee realizes upon sale, as in the case where the donor wishes to maximize the amount of cash available to the gift recipient.

[341] *See* Avci et al *supra* note 328, at 650–52.

[342] We are aware that some covered individuals currently make bona fide gifts under a Rule 10b5–1 plan. *See* letter from Sullivan. In clarifying that the affirmative defense of Rule 10b5–1(c)(1) is available for bona fide gifts of securities, we do not intend to suggest that this defense was previously unavailable for such transactions.

[343] *See supra* note 257.

individual's annual charitable contribution deduction.

We are not persuaded by the concerns of commenters who suggested that we not adopt this proposal, or that we adopt a separate reporting deadline for bona fide gifts of securities that is much longer than the existing Form 4 deadline. As noted in Section V below, we recognize that this amendment may increase compliance costs and may do so to a greater extent for estate planning transactions given their complexity.[344] Any such increases, however, should be limited as the majority of insiders already report these gifts on Form 4. Further, while we acknowledge that the amendment may make year-end tax planning incrementally more difficult as filers must delegate analysis of or anticipate their year-end tax needs three or four months earlier, our clarification that bona fide gifts are eligible for the Rule 10b5–1(c)(1) affirmative defense should mitigate any adverse consequences that commenters suggested, such as discouraging bona fide gifts. We also are not convinced that a shorter reporting period will substantially affect estate planning transactions, which generally are carefully planned and analyzed in advance and adopted under the advice of tax counsel who may assist in any needed analysis.

Further, we disagree with the commenter who suggested that we narrow the scope of the gift limitations, such as by applying it only to gifts made to charities affiliated with the Section 16 reporting person or exempting donors who obtain a commitment from the charitable donee not to sell the donated stock until after any material nonpublic information known by the donor at the time of the donation has become public or stale.[345] While, in some cases, a close affiliation between the donor and donee can make an abusive transaction easier to carry out, none of the potential concerns we have identified are limited to transfers to entities controlled by or affiliated with the donor. In addition, the commenter argued that donated stock would not implicate any insider trading concerns if the donor obtained commitments that the stock would not be sold until any material nonpublic information became public or stale. We doubt any such approach would be effective in maintaining investor confidence because it may be difficult or impossible to verify whether the donor had obtained a binding commitment to refrain from such a sale. Moreover, this commenter appears to urge us to adopt an exception for gifts to estate planning vehicles controlled by the donor, because the commenter believes that such transfers would not permit the practices described in the Proposing Release. There may be circumstances, however, under which it would be advantageous for the donor if the donee entity obtains a high sales price shortly after the donation, such as where the entity allows the donor to take advantage of tax-favorable diversification opportunities. As we see no practical way to identify which gifts pose this risk and which do not, we are not adopting such an exception.[346]

III. Transition Matters

A number of commenters recommended that the Commission provide transition guidance or a phase-in period, such as a 12-month phase-in, for the proposed disclosure amendments. In response, we are providing the following compliance dates for the final amendments:

- Section 16 reporting persons will be required to comply with the amendments to Forms 4 and 5 for beneficial ownership reports filed on or after April 1, 2023; and
- Issuers that are SRCs will be required to comply with the new disclosure and tagging requirements in Exchange Act periodic reports on Forms 10–Q, 10–K and 20–F and in any proxy or information statements that are required to include the Item 408, Item 402(x), and/or Item 16J disclosures in the first filing that covers the first full fiscal period that begins on or after October 1, 2023.
- All other issuers will be required to comply with the new disclosure and tagging requirements in Exchange Act periodic reports on Forms 10–Q, 10–K and 20–F and in any proxy or information statements that are required to include the Item 408, Item 402(x), and/or Item 16J disclosures in the first filing that covers the first full fiscal period that begins on or after April 1, 2023.

While we acknowledge that several commenters requested a longer phase-in period for these amendments, we believe that these compliance dates strike an appropriate balance between affording issuers and Section 16 reporting persons time to prepare to comply with the new rules and ensuring that this information becomes available to investors in a timely manner. For example, Section 16 reporting persons should have the information needed to comply with the amendments to Forms 4 and 5 readily available.

In addition, some commenters requested that we clarify the application of the amendments to Rule 10b5–1(c)(1) to existing Rule 10b5–1 plans and/or provide transitional relief for existing plans.[347] The amendments to Rule 10b5–1(c)(1) would not affect the affirmative defense available under an existing Rule 10b5–1 plan that was entered into prior to the revised rule's effective date, except to the extent that such a plan is modified or changed in the manner described in Rule 10b5–1(c)(iv)[348] after the effective date of the final rules. In that case, the modification or change would be equivalent to adopting a new trading arrangement, and, thus, amended Rule 10b5–1(c)(1) would be the applicable regulatory affirmative defense that would be available for that modified arrangement.

IV. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[349] the Office of Information and Regulatory Affairs has designated these rules a ''major rule,'' as defined by 5 U.S.C. 804(2).

V. Economic Analysis

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Under Section 2(b) of the Securities Act,[350] Section 3(f) of the Exchange Act,[351] and Section 2(c) of the Investment Company Act,[352] whenever the Commission is engaged in rulemaking and required to consider or determine whether an action is necessary or appropriate in (or, with

[344] *See infra* Sections V.E.1. and V.E.3.

[345] *See* letter from Davis Polk.

[346] With respect to estate planning vehicles controlled by the donor, we further note that transactions that ''effect only a change in the form of beneficial interest without changing a person's pecuniary interest in the subject equity securities'' are exempt from Section 16 reporting. *See* Rule 16a–13a [17 CFR 240.16a–13].

[347] *See* letters from BioNJ, Chevron, Cleary, Cravath, Davis Polk, Jones Day, SIFMA 2 and 3, Sullivan, and Wilson Sonsini.

[348] *See* Rule 10b5–1(c)(iv) (''Any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a contract, instruction, or written plan as described in paragraph (c)(1)(i)(A) of this section is a termination of such contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan'').

[349] 5 U.S.C. 801 *et seq.*

[350] 15 U.S.C. 77b(b).

[351] 15 U.S.C. 78c(f).

[352] 15 U.S.C. 80a–2(c).

respect to the Investment Company Act, consistent with) the public interest, it shall also 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 to consider the impact on competition of any rules the Commission adopts under the Exchange Act 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.[353]

We have considered the economic effects of the amendments, including their effects on competition, efficiency, and capital formation. Many of the effects discussed below cannot be quantified. Consequently, while we have, wherever possible, attempted to quantify the economic effects expected from the amendments, much of the discussion remains qualitative in nature. Where we are unable to quantify the economic effects of the amendments, we provide a qualitative assessment of the potential benefits, costs, and impacts of the amendments on efficiency, competition, and capital formation.

A. Broad Economic Considerations

The amendments are expected to provide greater transparency to investors (*i.e.,* decrease information asymmetries between insiders and outside investors) about issuer and insider trading arrangements and restrictions, as well as insider compensation and incentives, enabling more informed investment and voting decisions. The amendments are also expected to limit the opportunity for insider trading based on material nonpublic information (''MNPI'') [354] by adding new conditions to the Rule 10b5–1(c) affirmative defense, resulting in benefits to investors and improvement in insiders' incentives.

Insider trading enables certain investors who have access to inside information or who have the ability to influence the timing or substance of corporate disclosures to profit at the expense of other investors. Due to their access to MNPI, insiders can obtain illegitimate profits through the strategic timing of trades in the issuer's securities. These profits essentially unlawfully transfer wealth from other investors to the insider.[355] In addition, insider trading can distort the incentives of corporate insiders, which results in a loss of shareholder value and erodes investor confidence in the markets. Insider trading can also lead to reputational costs for companies.

1. Insider Trading Harms Investors, Distorts Insiders' Incentives, and Imposes Economic Costs on Investors and Capital Markets

The amendments are expected to decrease the incidence of unlawful insider trading.[356] Insider trading represents a breach of fiduciary or other similar obligation of trust and confidence.[357] Congress, the Courts, and the Commission have concluded that such insider trading is illegal.[358] Before analyzing each aspect of the final rule, in the interest of completeness, the Commission first reviews the economic literature on the insider trading prohibition.[359]

Insiders have information advantages that place them in a unique position to improperly obtain profits for themselves through strategic timing of trades. When an insider profits by trading on MNPI, those profits are obtained at other investors' expense.[360] Thus, reducing the incidence of insider trading is expected to benefit investors.[361]

When investors anticipate that they are dealing with better informed insiders that can profit at the investors' expense (*i.e.,* they anticipate the adverse selection problem due to the insiders' ability to trade on MNPI), investors can become reluctant to trade the issuer's shares. For this same reason, insider trading is likely to adversely affect price efficiency (*i.e.,* the extent to which stock prices reflect an issuer's fundamental value) [362] and liquidity.[363]

[353] 15 U.S.C. 78w(a)(2).

[354] *See supra* note 3.

[355] *See, e.g.,* Michael D. Guttentag, *Avoiding Wasteful Competition: Why Trading on Inside Information Should Be Illegal,* 86 Brook. L. Rev. 895 (2021).

[356] The discussion of broad economic considerations generally focuses on insider trading in stock except where specified otherwise. To the extent that insiders benefit from the timing of option awards and gifts of stock around MNPI, some of the economic effects associated with insider trading also may be manifested in those contexts. For a detailed discussion of the economic considerations applicable to option award timing and insider gift timing, *see infra* Sections V.D and V.E.

[357] *See infra* note 490.

[358] *See supra* Section I.

[359] *See, generally,* Alexandre Padilla & Brian Gardiner, *Insider Trading: Is There an Economist in the Room?,* 24 J. Private Enterprise 113, 123 (2009) (noting ''economists have progressively reached the same conclusion: that insider trading is harmful to investors, corporations, and stock exchanges, and, therefore, ought to be prohibited'').

[360] *See* Michael Manove, *The Harm from Insider Trading and Informed Speculation,* 104 Q. J. Econ. 823 (1989); William K.S. Wang, *Trading on Material Non-Public Information on Impersonal Stock Markets: Who Is Harmed and Who Can Sue Whom Under SEC Rule 10b–5?* 54 S. Cal. L. Rev. 1217 (1981).

[361] Misappropriation of information may have many economic effects, including but not limited to, revealing information to the market in a manner suboptimal to the issuer (and thus discouraging investment in information and increasing costs of keeping information private). Further, increased trading by insiders reduces incentives for liquidity provision through adverse selection, imposing economic costs on investors broadly. Finally, misappropriation has associated agency costs as it represents an undisclosed form of compensation and may lead to further divergence of interests between the manager and the shareholders. *See* Frank H. Easterbrook, *Insider Trading, Secret Agents, Evidentiary Privileges, and the Production of Information,* 1981 Sup. Ct. Rev. 309, 315, 323, 331 (1981); *In re Melvin,* SEC Release No. 3682, 2015 WL 5172974, at *4 & n.31 (Sept. 4, 2015).

[362] A number of studies demonstrate adverse effects of insider trading on market efficiency. *See, e.g.,* Michael J. Fishman & Kathleen M. Hagerty, *Insider Trading and the Efficiency of Stock Prices,* 23 RAND J. Econ. 106 (1992) (showing that ''under certain circumstances, insider trading leads to less efficient stock prices. This is because insider trading has two adverse effects on the competitiveness of the market: it deters other traders from acquiring information and trading, and it skews the distribution of information held by traders toward one trader.''); Zhihong Chen et al., *The Real Effect of the Initial Enforcement of Insider Trading Laws,* 45 J. Corp. Fin. 687 (2017) (finding evidence that the initial enforcement of insider trading laws ''improves capital allocation efficiency by increasing price informativeness and reducing market frictions''); Robert M. Bushman et al., *Insider Trading Restrictions and Analysts' Incentives to Follow Firms,* 60 J. Fin. 35 (2005) (arguing that ''insider trading crowds out private information acquisition by outsiders'' and showing that ''analyst following increases after initial enforcement of insider trading laws'' in a cross-country sample); Nuno Fernandes & Miguel A. Ferreira, *Insider Trading Laws and Stock Price Informativeness,* 22 Rev. Fin. Stud. 1845 (2009) (finding that price informativeness increases with the enforcement of insider trading laws, but only in countries with a strong ''efficiency of the judicial system, investor protection, and financial reporting''); *see also* Alexander P. Robbins, *The Rule 10b5–1 Loophole: An Empirical Study,* 34 Rev. Quant. Fin. Acct. 199 (2010) (finding, in a sample of 10b5–1 plans of 81 NASDAQ-listed companies from 2004 to 2006 that ''10b5–1 plans have a significant negative effect on the liquidity of a firm's shares, and therefore the firm's cost of capital''). Some studies argue that insider trading improves price efficiency. *See, e.g.,* Hayne E. Leland, *Insider Trading: Should It Be Prohibited?,* 100 J. Pol. Econ. 859 (1992) (showing in a model that ''stock prices better reflect information'' when insider trading is permitted.); Utpal Bhattacharya et al., *When an Event Is Not an Event: The Curious Case of An Emerging Market,* 55 J. Fin. Econ. 69 (2000) (suggesting ''that unrestricted insider trading causes prices to fully incorporate the information before its public release''). *See generally Henry G. Manne, Insider Trading and the Stock Market* (1966). A reduction in insider trading can have nuanced effects on market efficiency. For example, the conclusions about the effect of insider trading on market efficiency may depend on whether the framework is static or dynamic. *See* David Easley et al., *Is Information Risk a Determinant of Asset Returns?,* 57 J. Fin. 2185 (2002).

[363] Various studies show that insider trading negatively impacts liquidity. S*ee, e.g.,* Raymond P.H. Fishe & Michel A. Robe, *The Impact of Illegal Insider Trading in Dealer and Specialist Markets: Evidence From a Natural Experiment,* 71 J. Fin. Econ. 461 (2004); Louis Cheng et al., *The Effects of Insider Trading on Liquidity,* 14 Pacific-Basin Fin.

Insider trading also imposes a cost on the investors in the company by distorting managerial incentives, as discussed below, which results in a loss of shareholder value. Thus, whether insiders are strategically timing stock sales and purchases based on MNPI can provide information to investors about insider incentives. In particular, the ability of officers and directors (who are either involved in making corporate decisions or play a crucial role in the oversight of such decisions) to profit from MNPI exacerbates conflicts of interest between officers/directors and other shareholders, resulting in inefficient, value-decreasing corporate decisions. For example, by protecting the insider from the brunt of the effects of poor corporate performance on the value of the insider's equity position through the ability to sell ahead of negative news, insider trading weakens incentive alignment and exacerbates agency conflicts (and, in turn, increases the cost of monitoring insiders).

One incentive distortion is that an insider may steer the company towards projects that require less effort or that yield higher private benefits even if such projects have a negative net present value (NPV) and thus decrease shareholder value.[364] To mitigate agency conflicts and better align insider incentives with those of shareholders, insiders are often compensated with equity. Because of insiders' ability to sell shares in advance of negative news, as described above, insiders may be less motivated to avoid negative NPV projects. Downside protection also incentivizes the insider to choose riskier negative-NPV projects due to the possibility of profiting on the upside.[365] Relatedly, if short-term investment projects yield more profitable MNPI (due, in part, to the reality that MNPI about long-term projects arrives less frequently or is less definitive), an insider may exhibit short-termism in making decisions at the company level at the expense of shareholder value.[366]

Being able to profit from MNPI also can distort insider incentives with respect to other corporate decisions that can affect the share price. For example, officers and directors engaged in insider trading may be disincentivized from sharing information efficiently within the firm if they can profit from withholding it and personally trading on it, which leads to inefficient corporate decisions and thus decreased shareholder value.[367]

Another economic cost of insider trading is that it may incentivize insiders to adjust the timing or content of corporate disclosure (*e.g.,* delaying the release, or increasing the frequency, of disclosing MNPI).[368] Manipulation of corporate disclosure causes price distortions and impairs the ability of investors to make informed investment decisions. Less informed investment decisions result in less efficient allocation of capital in investor portfolios, compared to a setting with more timely disclosures. To the extent that investors anticipate such disclosure gaming, they may commensurately increase their information gathering effort, resulting in higher information gathering costs for investors. Investors, however, have a limited ability to obtain timely and accurate information elsewhere.

Investor recognition of the potential incentive distortions and the risk of lower-quality corporate disclosures resulting from insider trading, as well as the risk of buying shares from or selling shares to a better informed insider, is likely to decrease investor confidence in the issuer and make investors less willing to buy or hold the issuer's

J. 467 (2006); Leland, *supra* note 362 (showing in a model that ''markets are less liquid'' and ''outside investors and liquidity traders will be hurt'' when insider trading is permitted); Laura N. Beny, *Do Insider Trading Laws Matter? Some Preliminary Comparative Evidence,* 7 Am. L. & Econ. Rev. 144 (2005) (finding that ''countries with more prohibitive insider trading laws have more diffuse equity ownership, more accurate stock prices, and more liquid stock markets''); Lawrence R. Glosten, *Insider Trading, Liquidity, and the Role of the Monopolist Specialist,* 62 J. Bus. 211 (1989) (showing in a model that insider trading reduces liquidity). *But cf.* Charles Cao et al., *Does Insider Trading Impair Market Liquidity? Evidence from IPO Lockup Expirations,* 39 J. Fin. Quant. Anal. 25 (2004) (not finding a negative effect of insider trading on liquidity).

[364] *See, e.g.,* Antonio E. Bernardo, *Contractual Restrictions on Insider Trading: A Welfare Analysis,* 18 Econ. Theory 7 (2001) (showing in a model that ''[f]or many reasonable parameter values, however . . . that managers may be too willing to take risky projects. In fact, managers will often choose the risky investment project when it has a lower expected return than the riskless investment project.''). In some circumstances, insider trading may remedy a manager's excess conservatism due to under-diversification. *See* Lucian A. Bebchuk & Chaim Fershtman, *Insider Trading and the Managerial Choice Among Risky Projects,* 29 J. Fin. Quant. Analysis 1 (1994). However, Bebchuk & Fershtman (1994) similarly acknowledge that ''[t]he desire to increase trading profits might lead the managers to prefer a very risky project even if it offers a lower expected return than a safer alternative.''

[365] *See, e.g.,* Easterbrook, *supra* note 361 (stating that ''[t]he opportunity to gain from insider trading also may induce managers to increase the volatility of the firm's stock prices. . . They may select riskier projects than the shareholders would prefer, because if the risk pays off they can capture a portion of the gains in insider trading and, if the project flops, the shareholders bear the loss.''). *But see* Robbins, *supra* note 362 (finding, in a sample of 10b5–1 plans of 81 NASDAQ-listed companies from 2004 to 2006 that ''insiders do not appear to increase the volatility of their own firms' shares in order to profit by trading on the basis of material nonpublic information under the protection of the 10b5–1 affirmative defense'').

[366] *See* M. Todd Henderson, *Insider Trading and Executive Compensation: What We Can Learn from the Experience with Rule 10b5–1,* Res. Handbook on Exec. Pay 299 (2012) (stating that short-termism is a cost of insider trading and that ''[e]xecutives looking to maximize the value of their shares may engage in conduct that increases the stock price in the short run at the expense of the long term so that they can profit from trading in firm stock''). Such managerial short-termism/myopia reduces shareholder value. *See, generally,* John R. Graham et al., *The Economic Implications of Corporate Financial Reporting,* 40 J. Acct. Econ. 3 (2005); Alex Edmans, *Blockholder Trading, Market Efficiency, and Managerial Myopia,* 64 J. Fin. 2481 (2009).

[367] *See, e.g.,* Robert J. Haft, *The Effect of Insider Trading Rules on the Internal Efficiency of the Large Corporation,* 80 Mich. L. Rev. 1051, (1982).

[368] *See, e.g.,* Ranga Narayanan, *Insider Trading and the Voluntary Disclosure of Information by Firms,* 24 J. Banking Fin. 395 (2000) (stating that ''[s]tringent enforcement of insider trading regulations induces more disclosure by firms''); Qiang Cheng & Kin Lo, *Insider Trading and Voluntary Disclosures,* 44 J. Acct. Rsch. 815 (2006) (finding that when ''managers plan to purchase shares, they increase the number of bad news forecasts to reduce the purchase price . . . insiders do exploit voluntary disclosure opportunities for personal gain, but only selectively, when litigation risk is sufficiently low''); Easterbrook, *supra* note 361 (stating that ''[t]he prospect of insiders' gains may lead the firm to delay the release of information''). Some studies also note that an opposite effect is possible—managers concerned about litigation may provide higher-quality disclosure before selling shares. *See, e.g.,* Jonathan L. Rogers, *Disclosure Quality and Management Trading Incentives,* 46 J. Acct. Rsch. 1265 (2008) (finding that ''[c]onsistent with a desire to reduce the probability of litigation . . . managers provide *higher quality* disclosures before selling shares than they provide in the absence of trading'' but also finding that ''[c]onsistent with a desire to maintain their information advantage, . . . some, albeit weaker, evidence that managers provide *lower quality* disclosures prior to purchasing shares than they provide in the absence of trading.''). In the context of Rule 10b5–1 plans, *see, e.g.,* Stanley Veliotis, *Rule 10b5–1 Trading Plans and Insiders' Incentive to Misrepresent,* 47 Am. Bus. L. J. 313, 330 & nn. 77–78 (2010) (stating that ''Rule 10b5–1 plans give insiders an incentive to accelerate the release of good news ahead of planned stock sales and to delay the release of bad news until after the sales are completed . . . As a practical matter, manipulation of the announcement's timing would be extremely difficult to prove because insiders are not required to disclose their 10b5–1 plans and firms seldom disclose a schedule for corporate announcements in advance . . .''); Karl T. Muth, *With Avarice Aforethought: Insider Trading and 10b5–1 Plans,* 10 U.C. Davis Bus. Law J. 65, 71 & nn. 32–33 (2009) (stating that ''executives can participate in the timing of news . . . about the company. Withholding or 'timing' news allows the executive to (imperfectly) time market response to news . . .''); John Shon & Stanley Veliotis, *Meeting or Beating Earnings Expectations,* 59 Mgmt. Sci. 1988 (2013) (finding that ''firms with insider sales executed under Rule 10b5–1 plans exhibit a higher likelihood of meeting or beating analysts' earnings expectations (MBE) . . . [that] this relation between MBE and plan sales is more pronounced for the plan sales of chief executive officers (CEOs) and chief financial officers (CFOs) and is nonexistent for other key insiders,'' and concluding that ''[o]ne interpretation of [their] results is that CEOs and CFOs who sell under these plans may be more likely to engage in strategic behavior to meet or beat expectations in an effort to maximize their proceeds from plan sales'').

shares.[369] The resulting reluctance to invest could have negative effects on capital formation and the ability to fund investments due to challenges in raising the required amount of capital.

2. Certain Rule 10b5–1 Plan Trading Practices May Raise Concerns About Potential Insider Trading

Over the years, various parties have raised concerns that certain persons have engaged in securities trading based on MNPI while availing themselves of the Rule 10b5–1(c)(1) affirmative defense.[370] Examples of practices that have raised such concerns include the strategic cancellation of previously adopted plans or individual trades on the basis of MNPI,[371] as well as the initiation or resumption of trading close in time to plan adoption or modification.[372]

As discussed in detail in Section II above, the Commission is adopting several amendments to address these practices, including modifications to the conditions of the affirmative defense under Rule 10b5–1(c)(1), additional disclosure requirements under new Item 408 of Regulation S–K, and additional disclosure of Rule 10b5–1 plan use in beneficial ownership forms. The new disclosure requirements are expected to affect the behavior of insiders by drawing scrutiny of investors and other market participants to trading practices of insiders.[373]

Combined, the amendments are expected to reduce the potential for insider trading through both Rule 10b5–1 plans and certain other trading arrangements not reliant on Rule 10b5–1. Deterring insider trading is expected to result in benefits for investor protection, capital formation, and orderly and efficient markets. By deterring insider trading, the amendments are expected to disincentivize insider behavior that is likely to harm the securities markets and the issuer, and undermine investor confidence.

3. Current Levels of Disclosure About Insider Trading Plans Limit the Ability of Investors To Identify the Risk of Insider Trading and To Consider the Associated Incentive Conflicts and Information Asymmetries in Their Investment Decisions

Existing gaps in the disclosure framework limit the information currently available to investors and other market participants regarding the use of insider trading plans and the extent to which trading based on MNPI potentially distorts insider incentives with respect to corporate decisions (and thus shareholder value). These gaps therefore limit the ability of investors to correctly value the issuer's shares, and thus make informed investment decisions.

The disclosure amendments will provide greater transparency to investors and decrease information asymmetries between insiders and outside investors about insider trading arrangements and insider trading policies and procedures, enabling more informed decisions about whether to invest in the issuer's shares and at what valuation. This added transparency may result in more efficient capital allocation and more informationally efficient pricing. The additional disclosure requirements may also indirectly yield potential capital formation benefits if they increase investor confidence in the issuer's governance.

4. The Economic Effects of the Amendments Are Uncertain or Difficult To Generalize

An important factor contributing to the uncertainty about the magnitude of the benefits of the amendments to Rule 10b5–1 is the potential for substitution of Rule 10b5–1 plans by other trading arrangements. The use of the Rule 10b5–1(c)(1) affirmative defense is voluntary. Insiders and companies may elect not to rely on the Rule 10b5–1(c)(1) affirmative defense if they perceive the costs of doing so to be too high. For example, insiders may instead adopt trading arrangements that do not rely on the amended Rule 10b5–1(c)(1) affirmative defense or trade without trading plans. However, doing so may entail its own costs and limitations for insiders.[374] The application of the disclosure requirements of new Item 408(a) of Regulation S–K to all officer and director Rule 10b5–1 and non-Rule 10b5–1 trading arrangements is expected to partly mitigate concerns that trading under non-Rule 10b5–1

[369] *See, e.g.,* Lawrence M. Ausubel, *Insider Trading in a Rational Expectations Economy,* 80 Am. Econ. Rev., 1022 (1990) (showing in a rational expectations model that ''[i]f 'outsiders' expect 'insiders' to take advantage of them in trading, outsiders will reduce their investment. The insiders' loss from this diminished investor confidence may more than offset their trading gains. Consequently, a prohibition on insider trading may effect a Pareto improvement.''). Further, informed trading by insiders can reduce the incentive for outside investors to acquire information. *See, e.g.,* Fishman & Hagerty, *supra* note 362.

[370] *See* IAC Recommendations, *supra* note 22; letter from David Larcker et al. (Mar. 10, 2021), *available at https://www.sec.gov/comments/s7-24-20/s72420-8488827-229970.pdf;* letter from CII (Apr. 22, 2021), *available at https://www.sec.gov/comments/s7-14-20/s71420-8709408-236962.pdf;* letter from CII (Mar. 18, 2021), *available at https://www.sec.gov/comments/s7-24-20/s72420-8519687-230183.pdf;* letter from CII (Sept. 25, 2020), *available at https://www.sec.gov/comments/s7-06-20/s70620-7843308-223819.pdf;* letter from CII (Dec. 13, 2018), *available at https://www.sec.gov/comments/s7-20-18/s72018-4766666-176839.pdf;* letter from CII (July 11, 2018), *available at https://www.cii.org/files/July%2011%202018%20SEC%20Reg%20Flex%20Letter%20Final.pdf;* letter from CII (Feb. 12, 2018, *available at https://www.sec.gov/comments/s7-07-17/s70717-3025708-161898.pdf;* letter from CII to Former Chairman Jay Clayton (January 18, 2018), *available at http://www.cii.org/files/issues_and_advocacy/correspondence/2018/January%2018%202018%20Rule%2010b5-1%20(finalI).pdf;* letter from CII (July 8, 2016), *available at https://www.sec.gov/comments/s7-06-16/s70616-49.pdf;* letter from CII to Former Chair Mary Jo White (May 9, 2013), *available at http://www.cii.org/files/issues_and_advocacy/correspondence/2013/05_09_13_cii_letter_to_sec_rule_10b5-1_trading_plans.pdf;* CII Rulemaking Petition.

[371] *See, e.g., Insider Trading and Stock Option Grants: An Examination of Corporate Integrity in the Covid-19 Pandemic* Before the H. Subcomm. On Investor Protection, Entrepreneurship, and Capital Markets, H. Comm. on Fin. Servs., 116th Cong. 5 (2020) (statement of Jill E. Fisch), available at *https://docs.house.gov/meetings/BA/BA16/20200917/111013/HHRG-116-BA16-Wstate-FischJ-20200917.pdf,;* Jagolinzer, *supra* note 19 (finding ''for a sample of 54 firms for which there is public disclosure of early sales plan terminations'' that ''early sales plan terminations are associated with pending positive performance shifts, reducing the likelihood that insiders' sales execute at low prices'' and noting that the sample size is small because there is no requirement to disclose sales plan terminations); Veliotis, *supra* note 368, at 328–30 (discussing concerns related to selective cancellations); Mavruk & Seyhun, *supra* note 19 (discussing selective cancellation concerns, providing indirect evidence, and concluding that its findings are ''consistent with the hypothesis that insiders intervene in their planned transactions to increase profitability''); *see also* Stephen L. Lenkey, *Cancellable Insider Trading Plans: An Analysis of SEC Rule 10b5–1,* 32 Rev. Fin. Stud. 4947 (2019) (concluding, in a theoretical framework, that ''[b]ecause the conditions under which the insider elects to adopt a plan often coincide with the conditions under which the termination option reduces welfare, an alternative regulatory framework wherein the insider could adopt a non-cancellable plan (and, thereby, credibly commit to execute his planned trade) would improve the investors' welfare under a wide set of circumstances.'').

[372] For a discussion of the evidence of returns following insider trades occurring close to plan adoption, s*ee infra* notes 387 through 397 and accompanying and preceding text. *But see infra* notes 398 through 406 and accompanying and following text. Existing disclosure requirements do not allow investors to obtain systematic or comprehensive data on plan cancellations or plan modifications (including cancellations of planned trades).

[373] Studies have found evidence that changes in mandatory disclosure affect behavior. *See, e.g.,* Elizabeth C. Chuk, *Economic Consequences of Mandated Accounting Disclosures: Evidence from Pension Accounting Standards,* 88 Acct. Rev. 395 (2013); Alice Adams Bonaimé, *Mandatory Disclosure and Firm Behavior: Evidence from Share Repurchases,* 90 Acct. Rev. 1333 (2015).

[374] *See infra* notes 439 through 440 and preceding and accompanying text.

trading arrangements may adversely impact investors.

The considerations presented above are generally applicable to all of the amendments discussed in this release. In the sections that follow, we provide a more detailed discussion of economic effects of the individual amendments, including the expected costs and benefits relative to the market baseline as well as reasonable alternatives. We separately discuss economic considerations related to the timing of option grants and insider gifts of stock in Sections V.D and V.E, respectively.

As discussed in Section III above, in response to commenters' concerns,[375] we are providing a six-month transition period for SRCs for compliance with the disclosure amendments. The transition period is expected to defer the costs and benefits of the amendments. By giving insiders and companies time to adjust their trading plans and recordkeeping processes, this transition period is expected to partially mitigate some of the SRCs' initial costs of preparing to comply with the amendments. In addition, it will enable these smaller companies to benefit from observing the compliance and disclosure practices of larger companies.

B. Amendments to Rule 10b5–1(c)(1)

The Commission is adopting additional conditions that must be satisfied for a trading arrangement to be eligible for the Rule 10b5–1(c)(1) affirmative defense. These amendments are intended to protect investors by decreasing the likelihood of, and the opportunities to, profit from MNPI through such trading arrangements.

The amendments narrow the conditions under which the Rule 10b5–1(c)(1) affirmative defense is available. First, the amendments establish mandatory cooling-off periods before any trading can commence under a Rule 10b5–1 trading arrangement after the adoption of a new or modified trading arrangement by persons other than the issuer. Second, the amendments impose a certification requirement as a condition of the Rule 10b5–1(c)(1) affirmative defense for trading arrangements of officers and directors. Third, the amendments restrict the availability of the affirmative defense for multiple overlapping trading arrangements involving open-market transactions under some conditions, as well as limit open-market single-trade trading arrangements to one such arrangement in any twelve-month period. Finally, the amendments expand the existing requirement that a Rule 10b5–1 trading arrangement must be ''given or entered into'' in good faith to add the condition that the trader ''act in good faith'' with respect to the trading arrangement. In a change from the proposal, we are not, at present time, adopting cooling-off periods or restrictions on multiple overlapping Rule 10b5–1 trading arrangements or single-trade trading arrangements with respect to the issuer. In response to public comments, we are making several changes from the proposal, including providing for a cooling-off period for officers and directors that is tied to both a specific number of days and to the date of disclosure of fiscal period results; imposing a shorter (30-day) cooling-off period for persons other than the issuer that are not officers or directors; clarifying the treatment of plan modifications; requiring the proposed officer and director certifications to be included in the plan itself and eliminating the requirement to maintain the certification for ten years; and making certain changes to the restrictions on multiple plans and single-trade plans.

1. Baseline and Affected Parties

We consider the economic effects of the amendments in the context of the regulatory and market baseline. A lack of comprehensive disclosure of Rule 10b5–1 trading arrangements makes it more difficult to provide complete data on existing Rule 10b5–1 practices and affected plan participants. Our estimates are limited by the voluntary nature of the Rule 10b5–1 disclosure in beneficial ownership filings, where insider trades are reported, as well as the limited scope of Rule 10b5–1 trades for which Form 144 reporting is required.[376] Based on beneficial ownership filings (Forms 3, 4, and 5) during calendar year 2021, we estimate that approximately 5,900 natural persons at approximately 1,700 companies reported trades under Rule 10b5–1 trading arrangements. This figure includes approximately 5,800 officers and directors at 1,600 companies; narrowing the sample to officers yields an estimate of approximately 4,700 officers at approximately 1,500 companies.[377] Due to the data limitations mentioned above, the actual number of affected parties likely is significantly larger.

Below, we discuss the available evidence on Rule 10b5–1 plans of officers, directors, and other natural persons. A recent academic study analyzed Form 144 data on insider trades under Rule 10b5–1 plans from January 2016 through May 2020.[378] The study documented that ''[t]he mean (median) cooling-off period is 117.9 (76)

[375] *See, e.g.,* letters from Cleary, Cravath, BioNJ, SIFMA 2, and Sullivan.

[376] Form 144 must be filed with the Commission by an affiliate as a notice of the proposed sale of restricted securities when the amount to be sold under Rule 144 during any three-month period exceeds 5,000 shares or units or has an aggregate sales price in excess of $50,000. *See* Rule 144(h) [17 CFR 230.144(h)]. Thus, Rule 10b5–1 plan trades below that threshold are not required to be reported on Form 144 and thus may not be in our data. Further, because the vast majority of Form 144 filings were made in paper form during the considered period, we rely on information from such paper filings extracted and processed by the vendor for the Thomson Reuters/Refinitiv insiders dataset (version retrieved June 27, 2022).

[377] The estimate is based on the data from filings on Forms 3, 4, and 5 for trades during calendar year 2021 that reported Rule 10b5–1 plan use (obtained from Thomson Reuters/Refinitiv insiders dataset (version retrieved June 27, 2022)). The estimate only captures natural persons with Rule 10b5–1 plans that have Section 16 reporting obligations, and thus represents a lower bound on the number of affected plan participants (for instance, it excludes employees that are not Rule 16a–1(f) officers as well as any other persons with a Rule 10b5–1 trading plan that do not have a Section 16 reporting obligation). Officers and directors are identified based on the role code (beneficial owners and affiliates are not included in the count). Combining data from Form 144 filings with planned sale dates in calendar year 2021 that reported Rule 10b5–1 plan use (also obtained from Thomson Reuters/Refinitiv insiders dataset (version retrieved June 27, 2022)) and the data from filings on Forms 3, 4, and 5 cited above, we estimate that approximately 7,000 natural persons at approximately 1,800 companies (which includes approximately 6,000 officers and directors at approximately 1,700 companies; or when limited to officers only, approximately 4,900 officers at approximately 1,500 companies) reported trades under Rule 10b5–1. Due to gaps in the reporting regime, we cannot be certain whether the higher prevalence of plans reported for officers is due to their higher prevalence in general or due to greater disclosure of such plans.

[378] *See* Gaming the System, *supra* note 20. The study presents data ''on all sales of restricted stock filed on Form 144 between January 2016 and May 2020 and the adoption date of any corresponding 10b5–1 plans . . . In total, we have data on 20,595 plans, which covers the trading activity by 10,123 executives at 2,140 unique firms. These plans are responsible for a total of 55,287 sales transactions totaling $105.3 billion during our sample period. Average (median) trade size is $1.9 million ($0.4 million) . . . .'' The analysis based on Form 144 data has the advantage of not being subject to voluntary reporting bias. However, as a caveat, planned resales reported on Form 144 represent a subset of all trades and may not be representative of all Rule 10b5–1 trades by insiders (*e.g.,* of purchases, or of sales of unrestricted stock). By comparison, Mavruk & Seyhun examine a larger sample of plan trades identified by a voluntary Rule 10b5–1 checkbox on beneficial ownership forms. They examine transactions for ''an average of 14,211 insiders in 3875 firms for each year between 2003 and 2013.'' *See* Mavruk & Seyhun, *supra* note 19. Relatedly, Hugon & Lee (2016) utilize a sample of ''voluntary disclosures of 10b5–1 plan participation in SEC Form 4 filed between October 2000 and December 2010.'' *See supra* note 19. *See also, e.g.,* Lee (2020), *supra* note 35; *See* Rik Sen, *Are Insider Sales Under 10b5–1 Plans Strategically Timed*?, 2008 N. Y. U. (Working Paper) (2008); Eliezer M. Fich et al., *When and How Are Rule 10b5–1 Plans Used for Insider Stock Sales*?, 2021 Drexel U., U.T. Austin & C.U.L. (Working Paper) (2021) (also utilizing Form 4 data). Data on Rule 10b5–1 trades by issuers is not available.

days,'' ''[a]pproximately 14 percent of plans commence trading within the first 30 days, and 39 percent within the first 60 days,'' and ''[a]pproximately 82 percent of plans commence trading within 6 months.'' [379] A set of subsequent analyses by the Wall Street Journal (collectively, the ''WSJ Analysis'') examined Washington Service [380] data on ''169,000 forms from company insiders submitted from 2016 through 2021'' and found that ''about a fifth of the [prearranged stock sales] occurred within 60 trading days of a plan's adoption.'' [381] As a caveat, this data did not indicate whether the trading time frames were due to an issuer's policies, the insider's own timing or scheduling, or execution of trades under a plan (*i.e.,* whether there is a ''cooling-off period'' is not known—only the time between plan adoption and the first trade is calculated).

Using Form 144 data provided by the Washington Service for a more recent period (January 2, 2018–September 13, 2022), we find that the mean (median) Rule 10b5–1 plan has the first trade 102 (71) days after adoption, with 13.2 percent of first trades pursuant to a plan occurring within thirty days of the plan date and 41.5 percent occurring within 60 days of the plan date.[382] A shorter period of time between plan adoption and the first trade under the plan is also associated with a larger trade size: trades occurring within 90 days of plan adoption have a median size of $748,000 compared with a median size of $403,000 for those trades occurring more than six months after plan adoption. Further, single-trade plans constitute approximately 44 percent of plans during the time period examined.[383]

A 2016 industry survey of public companies also examined their Rule 10b5–1 plan practices.[384] The survey found, among other things, that: (i) 77 percent of the respondents had a mandatory cooling-off period of 60 days or fewer and a cooling-off period of 30 days was the most common cooling-off period among respondents (41 percent); (ii) 98 percent of the respondents reviewed and approved their insiders' Rule 10b5–1 plans to some degree; (iii) 55 percent of the respondents allowed early termination of plans, and 40 percent of the respondents allowed modification of plans (the survey does not report the extent of overlap between these two subsets of respondents); and (iv) 18 percent of respondents allowed insiders to maintain multiple overlapping plans while 82 percent disallowed multiple overlapping plans.[385] A 2021 industry survey of public companies (cited by one commenter) provided more recent information about Rule 10b5–1 plan practices.[386] The survey found, among other things, that: (i) at 39 percent of respondents the aggregate number of 10b5–1 plans by their C Suite had increased over the prior two years, and at 74 percent of respondents at least one insider adopted a Rule 10b5–1 plan in the prior fiscal year; (ii) 13 percent of respondents required the C Suite to use Rule 10b5–1 plans, 6 percent required directors to use Rule 10b5–1 plans, and three percent required other insiders to use Rule 10b5–1 plans, with companies with higher market capitalization being more likely to require insiders to sell through Rule 10b5–1 plans; (iii) a significant majority of respondents reported reviewing and approving the Rule 10b5–1 plans entered into by their C Suite and directors; (iv) the most common cooling-off period was 30 days—9 percent of respondents reported not imposing a cooling-off period, 10 percent—a cooling-off period of less than 30 days, 51 percent—30 days, 13 percent—longer than 30 days, and 8 percent—a cooling-off period until the opening of trading window in the next quarter (with ''other'' cooling-off periods comprising the remainder); (v) the majority of respondents allowed insiders to terminate or modify their Rule 10b5–1 plans (with many of those imposing restrictions in conjunction with terminations or modifications) and permitted insiders with an existing Rule 10b5–1 plan to sell shares outside of the plan; (vi) 48 percent of respondents allowed while 52 percent of respondents prohibited multiple, overlapping Rule 10b5–1 plans; and (vii) 23 percent of respondents required disclosures of Rule 10b5–1 plan adoptions by the C Suite.

Various studies have sought to examine the potential use of MNPI for trading under Rule 10b5–1 by looking at the returns around trades under such plans (with the caveats about data availability). The WSJ Analysis concluded that, on average, Rule 10b5–1 sales occurring closer in time to plan adoptions were more likely to precede declines in share prices than sales conducted later after plan adoptions.[387] For insiders that sold shares within 0–30 days, 31–60 days, and 61–90 days following plan adoptions, average two-month post-sale excess returns (calculated net of sector returns) were negative: –1.7 percent, –1.4 percent, and –0.7 percent, respectively. For insiders that sold shares within 91–120, 121–150, 151–180, and 181+ days following plan adoptions, average two-month post-sale excess returns were positive: 0.3 percent, 1.5 percent, 1.4 percent, and 0.6 percent, respectively.[388] The Gaming the System study documented abnormal trends and returns following some insider sales under Rule 10b5–1 (as compared to both standard open-market trades and different kinds of Rule 10b5–1 trades), which suggests potential insider trading under such plans. For example, the study shows abnormal industry-adjusted returns over a six-month period following the first sale to be –2.5 percent for plans with the first trade occurring less than 30 days after plan adoption and –1.5 percent for plans with the first trade occurring between 30 and 60 days after plan adoption, but no evidence of such

[379] Gaming the System, *supra* note 20.

[380] The Washington Service is a research firm that provides data about trades by insiders.

[381] *See* McGinty & Maremont, *supra* note 32; *see also* Tom McGinty, *Methodology: How the Journal Analyzed the Data on Insider Stock Sales,* Wall St. J. (June 29, 2022 (retrieved from Factiva database).

[382] We estimate that 13.2 percent of trades occur within 0–30 days. 28.3 percent of trades occur within 31–60 days, and 22.3 percent within 61–90 days. In total, 63.8 percent of trades occur within 90 days of the date of plan adoption and 86.9 percent of plans commence trading within six months.

[383] As a caveat, the data does not show the dates of all scheduled trades, only the dates of executed trades. Thus, some ''single-trade'' plans may be multi-trade plans in progress, or multi-trade plans with all but one trade cancelled.

[384] *See* Morgan Stanley & Shearman & Sterling LLP, Defining the Fine Line: Mitigating Risk with 10b5–1 Plans (2016), *available at https://advisor.morganstanley.com/capitol-wealth-management-group/documents/field/c/ca/capitol-wealth-management-group/Defining_the_Fine_LineLocked_Version.pdf.* The survey included public company members of the Society of Corporate Secretaries & Governance Professionals. The respondents and their practices related to Rule 10b5–1 plans are not necessarily representative of all issuers subject to the amendments and their Rule 10b5–1 plan policies and practices. Separately, the survey stated that that 51 percent of S&P 500 companies had Rule 10b5–1 plans in 2015.

[385] *Id.*

[386] *See* letter from SCG; Soc'y for Corp. Governance et al., 10b5–1 Plan Practices 2021 Survey (2021), *available at https://higherlogicdownload.s3.amazonaws.com/GOVERNANCEPROFESSIONALS/a8892c7c-6297-4149-b9fc-378577d0b150/UploadedImages/Final_10b5-1_Plan_Report_CS_Survey_2021_V6_-10-19-21_W_o_Comments.pdf* (''SCG 2021 Survey''). The survey included 145 respondents (with fewer respondents providing answers to some questions) among public company members of the Society for Corporate Governance (which need not be the same respondents as the respondents to the 2015 survey). The respondents and their practices related to Rule 10b5–1 plans are not necessarily representative of all issuers subject to the amendments and their Rule 10b5–1 plan policies and practices. For example, 92 percent of respondents to the 2021 survey had their IPO more than five years ago and 58 percent had market capitalization of at least $10 billion, which may indicate a greater representation of larger, more established companies.

[387] *See* McGinty & Maremont, *supra* note 381.

[388] *Id.*

abnormal returns after the insider sale when the first trade occurs more than 60 days after plan adoption. However, the study also finds that the trades of single-trade plans (which comprise 49 percent of the 10b5–1 plans in the study) are consistently loss-avoiding regardless of cooling-off period, with single-trade plans with short cooling-off periods exhibiting the highest average loss avoidance (avoiding an industry-adjusted price decline of –4 percent).[389] In contrast, the study finds that the trades under multiple-trade plans are only loss-avoiding within 30 days of plan adoption (industry-adjusted price decline of –1 percent). The study also finds abnormal returns of between –2 percent and –3 percent for plans that execute sales in the window between when the plans are adopted and quarterly earnings announcements, but no price drop is found following sales after the earnings announcements.

Negative abnormal returns after insider sales under Rule 10b5–1 plans indicate potential insider trading ahead of negative news. A lack of such negative returns after insider sales under plans with more time between plan adoption and first trade could be indicative of inside information becoming stale with the passage of time. Similarly, a lack of negative returns when insider sales occur after the quarter's earnings announcement may suggest less potential for informed selling once the earnings information has been made public. As a caveat, the tests of statistical significance of the differences are not shown in the study, so we cannot assess whether the economic differences discussed above have statistical significance.

Several other studies document abnormal returns following trading by insiders who use Rule 10b5–1 plans. For example, a 2009 study of the use of Rule 10b5–1 plans finds that ''insiders' sales systematically follow positive and precede negative firm performance, generating abnormal forward-looking returns larger than those earned by nonparticipating colleagues,'' that ''a substantive proportion of randomly drawn plan initiations are associated with pending adverse news disclosures,'' and that ''early sales plan terminations are associated with pending positive performance shifts.'' [390] A 2016 study examined insider sales at financial institutions prior to the 2008 financial crisis and found that ''net insider sales in the 2001Q2–2007Q2 pre-financial crisis quarters predict not-yet-reported non-performing securitized loans and securitization income for those quarters, and that net insider sales during 2006Q4 predict write-downs of securitization-related assets during the 2007Q3–2008Q4 crisis period'' and, crucially for this analysis, that ''insiders avoid larger stock price losses through 10b5–1 plan sales than through non-plan sales.'' [391] A different 2016 study presented evidence of ''insiders selling shares prior to imminent bad earnings news through their Rule 10b5–1 trading plans.'' [392] A 2020 study presents evidence consistent with insiders using 10b5–1 plans to sell stock in advance of disappointing earnings results.[393] The study further finds that some of the more aggressive insider trading on earnings information shifted into Rule 10b5–1 plans after adoption of the rule.[394] The study also found that these insiders make the following types of trades: infrequent, irregularly timed, close to the plan initiation date, and executed during traditional blackout periods.[395] Finally, a different 2020 study found that ''public companies disproportionately disclose positive news on days when corporate executives sell shares under predetermined Rule 10b5–1 plans,'' with such disclosure of good news on Rule 10b5–1 selling days being most prevalent ''in the health care sector and among mid-cap firms.'' [396] The study further observed that ''stock prices reverse after high levels of Rule 10b5–1 selling on positive news days, and that the price reversal increases with the share volume of Rule 10b5–1 selling.'' [397]

However, a 2008 study found ''no significant difference in stock price performance following plan sales and non-plan sales.'' [398] The study also reports that ''price contingent orders (*e.g.,* limit orders), a common feature in trading plans, give rise to empirical patterns that have been taken as evidence of strategic timing of sales.'' [399] Insiders may incorporate limit orders into trading plans because such plans may involve trading over months and even years and therefore expose the insider to potentially significant market fluctuations. The limitations of the data about insiders' trades prevent us from estimating the prevalence of limit orders in such plans and comparing it to trades outside such plans, or assessing the magnitude of the potential bias in the profitability of trades executed under Rule 10b5–1 plans due to limit order use.[400] Nevertheless, some evidence suggests that limit orders cannot account for the entirety of the abnormal returns documented in other studies.[401] Thus, we remain concerned about abnormally profitable insider trading under Rule 10b5–1.

Two other studies find evidence that insiders can profit when trading under 10b5–1 plans, although these profits may be the same as or smaller than trades that do not qualify for the

[389] *See supra* note 383 and *infra* notes 400 and 435.

[390] *See, e.g.,* Jagolinzer, *supra* note 19, at 224.

[391] *See* Stephen G. Ryan, et al., *Securitization and Insider Trading,* 91 Acct. Rev. 649 (2016).

[392] *See* Jonathan A. Milian, *Insider Sales Based on Short-Term Earnings Information,* 47 Rev. Quant. Fin. Acct. 109 (2016) (examining data on insider sales under Rule 10b5–1 based on beneficial ownership filings from August 2004 through May 2010). As a caveat, the study specifies that the plan identification may be imprecise: it ''use[s] the timing of insiders' Rule 10b5–1 trades relative to each other in order to infer a sales plan,'' ''[g]iven the lack of disclosure requirements in SEC Rule 10b5–1 and the nature of the data.''

[393] *See* Lee (2020), *supra* note 35.

[394] *Id.*

[395] *Id.*

[396] *See* Joshua Mitts, *Insider Trading and Strategic Disclosure,* 2020 Colum. U. (Working Paper) (2020).

[397] *Id.*

[398] *See* Rik Sen, *Are Insider Sales Under 10b5–1 Plans Strategically Timed?*, 2008 N.Y.U. (Working Paper) (2008). The study uses Form 4 data from January 2003–June 2006. As an important caveat, reporting of 10b5–1 trades on Form 4 is voluntary. Thus, trades classified as ''non-10b5–1'' trades in the study may include 10b5–1 plan trades.

[399] *Id; see also* letter from Anonymous.

[400] Data biases due to the potential use of limit orders may potentially interact with data biases due to incomplete identification of Rule 10b5–1 trades in existing data based on beneficial ownership reporting requirements. Thus, the true magnitude of the abnormal profits from insider trading in Rule 10b5–1 plans may differ from those observed in the data from available reporting.

[401] *See, e.g.,* Jagolinzer, *supra* note 19 (comparing Rule 10b5–1 plan and non-Rule 10b5–1 trading arrangement subsamples with a similar one-month price run-up and concluding that ''predictable'' mean reversion following sustained price increases that may have triggered limit sell orders is unlikely to explain the abnormal returns following 10b5–1 sales); *see also* Shon & Veliotis, *supra* note 368 (advising ''caution in making inferences, because the potential presence of limit order transactions makes it difficult to unambiguously determine the direction of causality'' but also performing several tests to attempt to rule out the effects of limit orders—including, for instance, the finding that, with the caveat that such disclosure is voluntary, only approximately 1.07 percent of the 10b5–1 sample included keywords related to limit orders in the footnotes to Form 4; the finding that either controlling for the indicator for disclosed limit order use or excluding such observations from the analysis does not change any of the results; the finding that excluding the categories of firms found more likely to be associated with disclosed limit order use does not affect the results; and the finding that abnormal returns are driven by CEOs and CFOs, who are more likely to have discretion over meeting or beating earnings expectations). Further, ''[t]here is evidence, however, that a substantive proportion of randomly drawn plan initiations are associated with pending adverse news disclosures. There is also evidence that early sales plan terminations are associated with pending positive performance shifts, reducing the likelihood that insiders' sales execute at low prices.'' *See* Jagolinzer, *supra* note 19.

affirmative defense. A 2016 study finds negative abnormal returns after insider sales under Rule 10b5–1 as well as positive abnormal returns after insider purchases under Rule 10b5–1 (over a one-month holding period).[402] However, the study does not find significant differences between the abnormal returns following insider trades under Rule 10b5–1 and other insider trades.[403] A 2021 study finds that ''non-plan sales are, on average, preceded by a larger price run-up (3.0 percent versus 1.4 percent) and followed by a larger price decline (−1.6 percent versus −1.0 percent) than plan sales . . . consistent with greater opportunistic behavior by CEOs who trade outside of Rule 10b5–1 plans.'' [404] Further, focusing on ''the 25 percent of sales with the largest ratio of transaction value to the CEO's most recent total annual compensation,'' this study found that ''the average cumulative abnormal return (''CAR'') during the 40 trading days before the sale is 3.68 percent for non-plan sales and 1.77 percent for plan sales'' and ''the average CAR for the 40 trading days after the sale is –2.24 percent for non-plan sales and –2.41 percent for plan sales.'' [405] The study concludes that ''the overall level of opportunistic behavior is smaller for sales within Rule 10b5–1 plans than for sales outside of such plans'' but that ''CEOs who have a lot of money at stake are able to trade opportunistically even if the transaction is executed under a Rule 10b5–1 plan.'' [406] The findings of these studies differ, in part, due to differences in the samples used for analysis (*i.e.,* the sample periods and data source, which were beneficial ownership forms or Form 144 filings) and their methodologies (including, among other assumptions, whether insider trading under Rule 10b5–1 is examined in isolation or in comparison with other insider sales and purchases). As noted above, the lack of data on Rule 10b5–1 plans can make it difficult to extrapolate from the available evidence to all trading under Rule 10b5–1. However, overall, the evidence on the use of Rule 10b5–1 plans in the above studies raises concerns about insider trading.

Data on companies' use of Rule 10b5–1 plans are very limited. Most of the commenters discussing issuer Rule 10b5–1 plans referred to issuer repurchases.[407] However, one commenter expressed concern that the Proposing Release underestimated the number of issuers that conduct repurchases under Rule 10b5–1.[408] Some companies voluntarily disclose their use of Rule 10b5–1 plans to carry out stock repurchases on Form 8–K or in periodic reports. Such voluntary reporting is likely to underestimate the number of affected companies. Nevertheless, in the current disclosure regime, it is the main direct source of information on the prevalence of Rule 10b5–1 repurchases. One study examining different repurchase methods identified ''at least 200 announcements of repurchases using Rule 10b5–1 per year from 2011 to 2014'' and found that ''[In 2014] 29% [of repurchase announcements] included a 10b5–1 plan.'' [409] Based on a textual search of calendar year 2021 filings, we estimate that approximately 210 companies disclosed share repurchase programs executed under a Rule 10b5–1 plan.[410] Another, indirect approach to estimating the number of affected issuers involves extrapolating the number of companies conducting repurchases under Rule 10b5–1 in a given year from a combination of the incidence of Rule 10b5–1 plan use among voluntarily announced repurchases (estimated at 29 percent as previously noted [411]) and the overall number of companies conducting repurchases based on their financial statements.[412] Based on data from Compustat and EDGAR filings for fiscal years ending between January 1, 2021 and December 31, 2021, we estimate that approximately 3,600 operating companies conducted repurchases, yielding an estimate of approximately 1,000 companies affected by the Rule 10b5–1 amendments.[413] Due to a lack of an issuer trade reporting requirement similar to that for officers and directors, we are not aware of data or studies specific to companies' actual trading under Rule 10b5–1 plans.

2. Benefits

The main benefit of the amendments to Rule 10b5–1(c)(1) is the anticipated reduction in insider trading based on MNPI through such plans (the benefits of which are discussed in greater detail in Section V.A above). Below, we discuss how each of the amendments to Rule 10b5–1(c)(1) individually is expected to reduce such insider trading. In addition, we expect the provisions to work in tandem to substantially reduce insider trading through Rule 10b5–1 plans. In particular, for officers and directors, the certification requirement is expected to complement the effects of the cooling-off period. Cooling-off periods are expected to work together with the restrictions on the use of multiple overlapping plans under Rule 10b5–1(c)(1) to possibly prevent a portion of potentially opportunistic plan cancellations based on MNPI. Thus, while we separately discuss below the benefits of each individual provision for reducing insider trading through such plans, the combined application of the various amendments discussed here may also generate synergies.

As discussed in Section V.A above, because the Rule 10b5–1(c)(1) affirmative defense is voluntary, if insiders find the conditions of this defense to be overly burdensome, they

[402] *See* Mavruk & Seyhun, *supra* note 19.

[403] *Id.* As noted above, due to voluntary reporting of the Rule 10b5–1 flag on beneficial ownership forms, trades classified as ''non-10b5–1'' trades in the study may include Rule 10b5–1 plan trades.

[404] *See* Eliezer M. Fich et al., *supra* note 378. This study examined ''11,250 stock sales by 1,514 CEOs at 1,312 different public firms during the 2013 to 2018 period'' and found that, ''[o]f these stock sales, 6,953 are identified in SEC Form 4 filings as executed through Rule 10b5–1 plans.'' As noted above, due to voluntary reporting of the Rule 10b5–1 flag on beneficial ownership forms, trades classified as ''non-10b5–1'' trades in the study may include Rule 10b5–1 plan trades.

[405] *Id.* Cumulative abnormal returns are returns in excess of returns that would be expected given the security's systematic risk over the period of time in question.

[406] *Id.*

[407] *See supra* note 71.

[408] *See* letter from Cravath.

[409] *See* Alice Bonaimé et al., *Payout Policy Trade-Offs and the Rise of 10b5–1 Preset Repurchase Plans,* 66 Mgmt. Sci. 2762 (2020). The study does not provide evidence of issuers' use of such plans for insider trading through issuer repurchases. It focuses on such plans being less flexible and representing a stronger pre-commitment than open market repurchases. The study finds that, ''[c]onsistent with [such] plans signaling commitment, Rule 10b5–1 repurchase announcements are associated with greater and faster completion rates, with more positive market reactions, and with more dividend substitution than open market repurchases.''

[410] The estimate is based on a textual search of calendar year 2021 filings of Forms 10–K, 10–Q, 8–K, as well as amendments and exhibits thereto in Intelligize. The estimate is based on a textual search using keywords ''10b5–1 repurchases'' or a combination of keywords ''repurchase plan'' and ''10b5–1'' (the approach used in the Proposing Release estimate). Due to a lack of standardized presentation and the unstructured (*i.e.,* non-machine-readable) nature of the disclosure, these estimates are approximate and may be over- or under-inclusive.

[411] *See supra* note 409.

[412] Using the number of issuers that announce repurchases in a given year would underestimate the number significantly because issuers may continue to implement a previously announced repurchase program over multiple years.

[413] As a caveat, a complete estimate of the number of affected filers is limited by data coverage. A source of data commonly used in existing studies, Standard & Poor's Compustat, has limited coverage of small and unlisted registrants and foreign private issuers. Therefore, we supplemented Standard & Poor's Compustat Fundamentals Annual data (version retrieved June 27, 2022) with structured data from financial statement disclosures in EDGAR filings (retrieved June 27, 2022), with the caveat that variation in filer use of tags to characterize their repurchases may result in some data noise. 29 percent × 3,600 = 1,044 ~ 1,000.

may elect not to rely on it.[414] If migration of trading outside of Rule 10b5–1 plans results, in some instances, in an increase or no change in the incidence of insider trading, the benefits of the amendments may be attenuated or offset.[415] Whether any shift to trading outside of Rule 10b5–1 plans results in a change to the amount of insider trading will depend on the extent to which other mechanisms (such as legal liability, enforcement actions, listing standards, reputational concerns, and corporate governance mechanisms) and any changes that companies implement to their insider trading policies after the amendments deter insider trading incentives.

In the subsections below we discuss the individual benefits of these amendments to Rule 10b5–1(c)(1).

i. Cooling-Off Periods

With respect to Rule 10b5–1 plans of officers and directors, the final rules add, as a condition to the availability of the affirmative defense under Rule 10b5–1(c)(1) a cooling-off period before any purchases or sales under the trading arrangement may commence. In a change from the 120-day cooling-off period proposed for officers and directors, the cooling-off period for officers and directors in the final rules is the later of (1) 90 days following plan adoption or modification or (2) two business days following disclosure of the financial results for the reporting period in which the plan was adopted (which need not exceed 120 days following plan adoption or modification). The cooling-off period for officers and directors is expected to reduce incentives to enter or modify plans based on MNPI by ensuring that trades under the plan are executed at prices that fully reflect the material information that was previously non-public. This is expected to substantially weaken officers' and directors' incentives to enter or modify Rule 10b5–1 plans based on MNPI, in line with the suggestions of commenters.[416] The length of the cooling-off period will largely prevent officers and directors from profiting on unreleased earnings results for the quarter in which the Rule 10b5–1 plan was adopted as well as other types of MNPI (such as a potential merger or regulatory action).[417] It also is consistent with several recommendations regarding cooling-off periods for officers and directors.[418] To the extent that MNPI may be time-sensitive, we expect the cooling-off period to effectively discourage officers and directors from adopting new or modified plans on the basis of MNPI.[419]

Some evidence of the extent to which requiring a longer period of time between Rule 10b5–1 plan adoption and the first trade under the plan could prevent insider trading is presented in the WSJ analysis. It shows that shorter periods between plan adoption and the first sale were associated with more negative stock returns after the sale, which implies that more insider trading occurs in cases of trading commencing closer to plan adoption.[420]

The cooling-off period for officer and director Rule 10b5–1 trading arrangements will also help deter trades under a newly adopted or modified plan before the disclosure of that quarter's earnings. Trades under a Rule 10b5–1 trading arrangement prior to an earnings announcement appear to be more likely to involve insider trading. For example, the Gaming the System study found that ''38 percent of plans adopted in a given quarter also execute trades before that quarter's earnings announcement (*i.e.,* in the 1 to 90 days prior to earnings [sic]),'' that ''[s]ales occurring between the adoption date and earnings announcement are about 25 percent larger than sales occurring more than six months after the earnings announcement,'' and that ''plans that execute a trade in the window between when the plan is adopted and that quarter's earnings announcement anticipate large losses and foreshadow considerable stock price declines.'' [421]

With respect to persons other than the issuer that are not officers or directors, in a change from the proposal, in line with the suggestions of several commenters,[422] the final amendments impose a shorter (30-day) cooling-off period (discussed in greater detail in Section II.A.1.c above). Similar to the cooling-off period for officers and directors, the cooling-off period for persons other than officers, directors, or the issuer is expected to benefit investors by reducing the potential for the use of Rule 10b5–1 plans for insider trading based on MNPI. Although persons other than officers, directors, or the issuer may be less likely to have MNPI about company-wide financial results or influence key corporate decisions, such persons may nevertheless come into possession of MNPI. For example, large shareholders other than officers and directors may exert control rights or have informational advantages enabling

[414] *But see infra* note 441.

[415] *But see infra* notes 439 through 440 and preceding and accompanying text.

[416] *See supra* notes 47 through 51 and accompanying text; *see also supra* Section II.A.1.c for a discussion of the rationale for the cooling-off period we are adopting.

[417] *See, e.g.,* Gaming the System, *supra* note 20; *see also supra* note 393 and accompanying text.

[418] *See, e.g.,* letters from AFL–CIO, CII, CO PERA, ICGN, Public Citizen O'Reilly, NASAA; *see also* Council of Institutional Investors, Request for rulemaking concerning amending Rule 10b5–1 or further interpretive guidance regarding the circumstances under which Rule 10b5–1 trading plans may be adopted, modified, or cancelled, Dec. 28, 2012, at p. 3, *available at https://www.sec.gov/rules/petitions/2013/petn4-658.pdf* (recommending a minimum three-month waiting period); Yafit Cohn & Karen Hsu Kelley, *Simpson Thacher Discusses Combating Securities Fraud Allegations with 10b5–1 Trading Plans* (Aug. 10, 2017), *available at https://clsbluesky.law.columbia.edu/2017/08/10/simpson-thatcher-discusses-combatting-securities-fraud-allegations-with10b5-1-trading-plans/* (recommending that ''insiders wait 30 to 90 days before selling stock under the trading plan for the first time''); David B.H. Martin et al., *Rule 10b5–1 Trading Plans: Avoiding the Heat, Bloomberg BNA Securities Regulation & Law Report,* 45 SRLR 438, 2013 (referring to the three-month cooling-off period recommended by the Council of Institutional Investors and stating that ''[w]aiting periods of this duration, or those which restrict trading until after issuance of the next regular earnings release, may assist insiders in demonstrating good faith and that trades under a Rule 10b5–1 plan were not designed to take advantage of material nonpublic information.''); IAC Recommendations, *supra* note 22 (recommending a cooling-off period of at least four months).

[419] The cooling-off period condition for officers and directors that involves the disclosure of financial results references the disclosure on Form 10–K or 10–Q (or for a foreign private issuer, on Form 20–F or 6–K). Earnings results are typically announced prior to the periodic report filing. This provision is expected to benefit investors by ensuring that officers and directors trading under a Rule 10b5–1 plan cannot profit from MNPI contained in a periodic report that was not incorporated in a current report or press release. Form 10–Q and 10–K filings are associated with an announcement return, consistent with such disclosures conveying new information to the market. *See* Paul A. Griffin, *Got Information? Investor Response to Form 10–K and Form 10–Q EDGAR Filings,* 8 Rev. Acc. Stud. 433 (2003). Periodic reports have been shown to have incremental information content compared to earnings releases. *See, e.g.,* Yifan Li, Alexander Nekrasov, & Siew Hong Teoh, *Opportunity Knocks But Once: Delayed Disclosure of Financial Items in Earnings Announcements and Neglect of Earnings News,* 25 Rev. Acc. Stud. 159 (2020); Angela K. Davis & Isho Tama-Sweet, *Managers' Use of Language Across Alternative Disclosure Outlets: Earnings Press Releases versus MD&A,* 29 Contemp. Acc. Res. 804 (2012); Steven Huddart, Bin Ke, & Charles Shi, *Jeopardy, Non-public Information, and Insider Trading around SEC 10–K and 10–Q Filings,* 43 J. Acc. Econ. 3 (2007).

[420] *See supra* note 381; *see also Gaming the System, supra* note 20 (similarly finding that shorter periods between plan adoption and first sale are associated with more negative returns following the sale, and also noting that approximately 14 percent of insider Rule 10b5–1 plans have the first trade within 30 days of plan adoption, 39 percent within the first 60 days, and 82 percent within six months). More negative returns following an insider sale indicate greater loss avoidance by the selling insider. As Gaming the System notes, such plans ''avoid significant losses and foreshadow considerable stock price declines that are well in excess of industry peers.''

[421] *Id.,* at pp. 2–3.

[422] *See* letters from Better Markets, NASAA, and Senator Warren et al.

access to MNPI before it is released. As another example, non-executive employees may obtain MNPI in the course of their employment.[423] To the extent that persons other than officers and directors are less likely to rely on Rule 10b5–1 for their trading, the discussed benefits would be attenuated.[424]

The application of the shorter cooling-off period to Rule 10b5–1 trading plans of persons other than officers and directors is intended to tailor the application of the most restrictive of the additional conditions of the affirmative defense in a way that balances the additional costs to insiders with the investor protection benefits. Directors and Rule 16a–1(f) officers, who will be subject to the longer cooling-off periods under the final amendments, are generally more likely than other insiders (1) to be involved in making or overseeing corporate decisions about whether and when to disclose information; and (2) to be aware of MNPI.[425] In addition to these risk considerations, the shorter cooling-off period for non-officer-and-director insiders recognizes that a longer cooling-off period might impose disproportionate costs on those insiders, who may be less highly compensated or face greater liquidity needs.

ii. Officer and Director Certifications

The amendments require that, as a condition of the amended Rule 10b5–1(c)(1) affirmative defense, officers and directors include certain representations in their trading plan. In a change from the proposal, to eliminate any additional burden that separate documentation may create,[426] the final amendments require the certification to be included in the plan documents as a representation. This approach would continue to reinforce directors' and officers' cognizance of their obligations with regard to MNPI.

The certification requirement is expected to incrementally benefit investors by reinforcing officers' and directors' cognizance of their legal obligation not to trade or adopt a trading plan while aware of material nonpublic information about the issuer or its securities. As a result, we expect the certification will reinforce investors' confidence that the officers and directors who make such certifications are not trading on the basis of information derived from their position, and also generally improve investor confidence in the securities markets.[427] This requirement, on the margin, is expected to act as an additional deterrent to officer and director trading based on MNPI through Rule 10b5–1 plans. Because the application of cooling-off periods to officer and director Rule 10b5–1 plans increases the likelihood that any MNPI becomes stale by the time trading commences, the benefits of the certification provision are expected to be greatest in instances where officers and directors have MNPI with a longer time horizon than the cooling-off period (for example, MNPI related to future corporate transactions or longer-term earnings forecasts). The benefits of this provision may be smaller if officers and directors already abstain from adopting Rule 10b5–1 plans while aware of MNPI (for example, as a result of robust insider trading policies and procedures or strong internal corporate governance controls). The incremental benefits of this provision may also be smaller in cases where officers and directors already make similar representations to broker-dealers that administer Rule 10b5–1 plans as part of existing industry practices.[428] Nevertheless, because such practices may not be universal, and the requirement may differ among the various broker-dealers that do require such representations, requiring these representations in the Rule 10b5–1 plan documents will likely have incremental benefits for investor confidence that the officer or director in fact is not aware of MNPI at the time of the representations.

iii. Restricting Multiple Overlapping and Single-Trade Rule 10b5–1 Trading Arrangements

A new condition to the affirmative defense will restrict the use of multiple overlapping Rule 10b5–1 plans for the open-market trades of persons other than the issuer. The restriction on multiple overlapping plans, which was supported by several commenters,[429] is expected to reduce the likelihood that insiders enter into multiple, overlapping plans and selectively cancel some of the plans at a later time based on MNPI, while availing themselves of Rule 10b5–1(c)(1)'s affirmative defense.[430] The effects of this provision may be modest to the extent that companies may already prohibit multiple Rule 10b5–1 plans,[431] or to the extent that companies may allow a trading plan not reliant on Rule 10b5–1(c)(1) to exist in conjunction with a trading plan reliant on Rule 10b5–1(c)(1).[432]

The restriction on the availability of the affirmative defense for multiple

[423] *See, e.g.,* letter from NASAA (stating that ''other corporate insiders and lower-level employees can also have access to such [material nonpublic] information''). Separately, prior research provides some evidence of information advantages of rank-and-file employees. *See, e.g.,* Ilona Babenko & Rik Sen, *Do Nonexecutive Employees Have Valuable Information? Evidence from Employee Stock Purchase Plans,* 62 Mgmt. Sci. 1843 (2016); Steven Huddart & Mark Lang, *Information Distribution within Firms: Evidence from Stock Option Exercises,* 34 J. Acc. Econ. 3 (2003); Kenneth Ahern, *Information Networks: Evidence from Illegal Insider Trading Tips,* 125 J. Fin. Econ. 26, Table 4 (noting insider trading by some lower-level employees). As an important caveat, these studies focus on data outside of Rule 10b5–1 plans. *See also infra* note 424.

[424] The current reporting regime impairs our ability to obtain comprehensive data on the use of Rule 10b5–1 plans by other insiders, including non-executive employees. According to a 2021 industry survey, only three percent of respondents required the use of Rule 10b5–1 plans for ''other insiders'' (insiders besides the C Suite and the board of directors) while an additional seven percent strongly encouraged it and 85 percent of respondents permitted it. By comparison, 13 percent of respondents required Rule 10b5–1 use and 28 percent strongly encouraged it for trading by the C Suite while six percent required Rule 10b5–1 plan use and 23 percent strongly encouraged it for trading by the board of directors. The survey also found that 77 percent of respondents that allowed other insiders to enter Rule 10b5–1 plans did not impose limitations on the ability of ''other insiders'' to enter Rule 10b5–1 plans, while the remainder imposed some limitations (*e.g.,* allowing only employees at a certain level or from certain departments to enter such plans or imposing another limitation). The survey also found that at close to a third of respondents, the usage of Rule 10b5–1 plans by ''other insiders'' had increased in the prior two years. *See* SCG 2021 Survey. As a caveat, the survey contained a relatively small number of responses and had a high representation of large, more established public companies and thus the survey findings discussed above need not be representative of Rule 10b5–1 plan practices at all affected companies.

[425] *See, e.g.,* Mavruk & Seyhun, *supra* note 19, at 179; *see also* letters from CII and Cravath.

[426] *See supra* note 132.

[427] *See United States* v. *O'Hagan,* 521 U.S. 642, 658–59, 117 S. Ct. 2199, 2210, 138 L. Ed. 2d 724 (1997).

[428] *See supra* note 132.

[429] *See supra* notes 153 and 154 and accompanying text. *But see supra* note 166.

[430] As a result, the benefit of strategically canceling an existing plan based on MNPI will be significantly reduced for many insiders. An insider that cancels a plan will be subject to disclosure obligations. This provision is expected to work in tandem with cooling-off periods, which will apply to any new plan and a modified plan that falls within the meaning of new Rule 10b5–1(c)(1)(iv), making a strategically planned cancellation significantly less attractive for insiders that plan to continue trading. Therefore, insiders will not be able to effectively shorten or circumvent the applicable cooling-off period by setting up multiple plans covering a similar period.

[431] A 2016 industry survey found that 82 percent of respondents do not allow multiple, overlapping Rule 10b5–1 plans. *See* Morgan Stanley & Shearman & Sterling LLP, *supra note* 384. A 2021 industry survey found that 52 percent of respondents do not allow multiple, overlapping Rule 10b5–1 plans. *See* SCG 2021 Survey. The data is based on the responses of the surveyed public company members of the Society of Corporate Secretaries and Governance Professionals in the respective survey years and may not be representative of other companies.

[432] *But see infra* note 441 and accompanying text. Also, trading under a plan not reliant on Rule 10b5–1 could entail additional legal costs and limitations.

overlapping trading arrangements will not apply to plans not involving open-market transactions, such as, for example, employee benefit plans, ESOPs, or DRIPs. This is expected to preserve the benefits of flexibility for participants in such plans, which may be less likely to be associated with MNPI-based trading but impractical or costly to consolidate with an open-market Rule 10b5–1 plan.

In a modification from the proposal, trades in different classes of securities will not be excepted from the restriction on multiple overlapping Rule 10b5–1 plans. While different classes of securities may differ in the specific voting and cash flow rights they confer to the insider, as noted by a commenter,[433] MNPI is likely to have the same directional effects on potential insider trading profits. Therefore, applying the multiple overlapping plan restriction across all classes of securities is expected to result in greater investor protection benefits.

In a modification from the proposal, the restriction on multiple overlapping plans will not apply in certain circumstances involving plans with more than one broker dealer or other agent, as discussed in Section II.A.3.c above. This change is expected to preserve flexibility for insiders to rely on multiple financial intermediaries, with whom they may have previously established relationships or from whom they may obtain better financial terms. The final amendments also contain a modification to the multiple-plan restriction that permits an insider to maintain two separate Rule 10b5–1 plans at the same time so long as trading under the later-commencing plan is not authorized to begin until after all trades under the earlier-commencing plan are completed or expire without execution. This provision will preserve the ability of insiders to set up two successive plans for open-market trading, which may better address their trading needs compared to the proposal. This provision would not be available for the later-commencing plan, however, if the first trade under the later-commencing plan is scheduled to begin during the ''effective cooling-off period'', which is expected to strengthen investor protection. Finally, in a modification from the proposal, the restriction on multiple overlapping plans will not apply to sell-to-cover transactions, which will preserve the flexibility for insiders to meet tax withholding obligations related to the vesting of equity compensation.

The amendments limit the availability of the affirmative defense in the case of single-trade Rule 10b5–1 trading arrangements to one such trading arrangement in the prior twelve-month period, which was generally supported by several commenters.[434] The limitation on single-trade Rule 10b5–1 trading arrangements is expected to reduce the likelihood that plan participants would be able to repeatedly profit from ''one-off,'' ad hoc trading arrangements based on previously undisclosed MNPI while availing themselves of the protections of the Rule 10b5–1(c)(1) affirmative defense.[435] The incremental benefit of this limitation may be somewhat attenuated if insiders relying on single-trade plans are largely driven by one-time liquidity needs, or if they are effectively deterred from using MNPI by other provisions also being adopted. Nevertheless, there could be a benefit to limiting the frequency of single-trade arrangements to the extent that some MNPI may remain undisclosed for periods longer than the cooling-off period. In a modification from the proposal, the limitation on single-trade Rule 10b5–1 trading arrangements will only apply to plans involving open-market transactions. Similar to the application of the restriction on multiple overlapping trading arrangements to plans involving open-market transactions, this provision is expected to preserve the benefits of flexibility for participants in such plans, which may be less likely to be associated with MNPI-based trading. In a further modification from the proposal, the limitation on single-trade Rule 10b5–1 trading arrangements will not apply to sell-to-cover transactions, which will preserve the flexibility for insiders to meet tax withholding obligations related to the vesting of equity compensation.

iv. The Amended Good Faith Condition

The amendments expand the good faith provision to specify that all traders must act in good faith with respect to a Rule 10b5–1 plan (and not just enter into such plans in good faith), as a condition to the availability of the affirmative defense. The expansion of the good faith condition was generally supported by various commenters and is expected to further deter potential insider trading as part of such plans.[436] As discussed in Section V.A above, a decrease in insider trading is expected to alleviate associated incentive distortions and generate benefits for investors. By making clear that insiders must act in good faith with respect to the plan, including with respect to any trading under the plan, the amendments may discourage insiders from attempting to evade the prohibitions of the rule by, for example, using their influence to affect the timing of a corporate disclosure to occur before or after a planned trade under a trading arrangement (one of the economic costs of insider incentive distortions due to insider trading discussed in Section V.A above).[437] The amendments are expected to strengthen investor protection by helping deter fraudulent and manipulative conduct throughout the duration of the trading arrangement.

3. Costs

The amendments will impose additional conditions on the use of the Rule 10b5–1(c)(1) affirmative defense. All else being equal, the conditions on the use of Rule 10b5–1 plans will make it more complicated for insiders to sell or buy shares under such plans. The conditions that impose additional barriers to sales of company stock under Rule 10b5–1(c)(1) are expected to result in decreased liquidity of the insider's holdings, including reduced ability to meet unanticipated liquidity needs (such as emergency or unplanned expenses), as well as potential constraints on portfolio rebalancing and achieving optimal portfolio diversification and tax treatment. Greater difficulty of selling shares under Rule 10b5–1 plans will impose illiquidity costs on insiders and may reduce the value of their

[433] *See* letter from NASAA. *See also* Roger M. White, *Insider Trading: What Really Protects U.S. Investors*? 55 J. Fin. Quant. Anal. 1305 (2020).

[434] *See supra* notes 152 and 155 and accompanying text; *see also supra* note 156.

[435] For instance, some suggestive evidence is presented in Gaming the System, *supra* note 20 (finding that, for single-trade plans, share prices decreased following insider sales under Rule 10b5–1). As a caveat, the data does not show the dates of all scheduled trades, only the dates of executed trades. Thus, some ''single-trade'' plans may be multi-trade plans in progress, or multi-trade plans with all but one trade cancelled. *See also* Milian (2016), *supra* note 392 (finding that sales under Rule 10b5–1 plans with few trades are associated with more negative subsequent returns than sales under plans with more trades). As a caveat, Milian (2016) does not specifically compare single-trade to multi-trade plans. Further, the number of trades in the plan is highly correlated with the duration of the plan in the study, which can make it difficult to isolate the effect of the number of trades in the plan. *But see supra* note 399 and accompanying text (citing letter from Anonymous, which asserts that some of the observed profitability of single-trade plans may be due to the greater reliance on limit orders). However, *see, generally, supra* note 401 (indicating that abnormal insider trading profits may still be present after consideration of the effect of limit orders on the data).

[436] *See supra* note 191.

[437] *See supra* note 368 and accompanying and following text.

compensation.[438] The final amendments may have relatively greater impacts on some insiders, for example, those with a lower net worth and limited means, who may suffer greater adverse effects from the trading restrictions in the event of liquidity needs. The tailored nature of the final amendments (including the application of shorter cooling-off periods to Rule 10b5–1 trading plans of persons other than officers, directors, or the issuer; the limitation of certification requirements to officers and directors; and the exceptions to the multiple-plan and single-trade plan restrictions) is expected to mitigate some of these costs. Shortening the cooling-off period for officers and directors relative to the proposal is expected to decrease some of the costs of the rule for officers and directors.

In general, the economic costs of the amendments to Rule 10b5–1(c)(1) may be partly mitigated by the voluntary nature of the Rule 10b5–1(c)(1) affirmative defense. Insiders who find the amended conditions to be too restrictive may elect not to rely on Rule 10b5–1(c)(1). For example, some insiders may elect to make more discretionary trades during open trading windows when they presumably do not possess MNPI, while others may adopt trading arrangements not reliant on amended Rule 10b5–1(c)(1). However, insiders that elect not to rely on Rule 10b5–1(c)(1) may incur additional costs, such as a potential increase in liability risk or cost of counsel to evaluate whether trades conducted pursuant to a plan not reliant on Rule 10b5–1(c)(1) or conducted without a trading plan are compliant with securities laws and regulations[439] and a potential decrease in flexibility to execute trades during pension blackout periods and any ''closed window'' periods that issuers may choose to impose.[440] As an important caveat, although the use of Rule 10b5–1(c)(1) is voluntary under Commission regulations, some companies' insider trading policies may require insiders to rely on Rule 10b5–1(c)(1).[441]

Faced with the additional conditions on the use of Rule 10b5–1 plans, some insiders may seek to reduce their holdings of company shares in general, such as by buying fewer shares (including potentially greater reluctance to take advantage of DRIPs), selling shares more quickly when eligible, and negotiating for cash pay in lieu of equity pay, to the extent feasible given companies' share ownership guidelines and compensation policies.[442] The amendments also will make it more difficult for insiders to purchase company shares if they wish to do so under a Rule 10b5–1 plan.[443] Reduced insider equity ownership may in turn affect incentive alignment between insiders and shareholders (to the extent such incentive alignment existed in the first place and was not undermined by existing agency conflicts discussed in greater detail in Section V.A above). In some cases, if insiders have sufficient bargaining power, insiders facing illiquidity risk may seek higher total pay to compensate for the trading restrictions.[444] Existing shareholders are expected to bear any costs incurred by issuers due to potential shifts in executive compensation in response to the new conditions of Rule 10b5–1(c)(1) (whether in the form of additional compensation for insiders, or changes in compensation structure that weaken insider incentives).

In the subsections below we discuss the individual costs these conditions could impose on affected plan participants. However, we also recognize that these provisions may interact with each other and further reduce the attractiveness of Rule 10b5–1 plans to prospective traders.

i. Cooling-Off Periods

We recognize that the cooling-off period condition for officers and directors will restrict their ability to purchase or sell shares pursuant to a Rule 10b5–1 plan for the duration of the cooling-off-period, imposing potentially significant costs on officers and directors who seek to utilize the Rule 10b5–1(c)(1) affirmative defense, as indicated by various commenters.[445] As a result, some insiders may choose not to rely on a Rule 10b5–1 plan for future trading.[446] A long cooling-off period may discourage insiders from adopting Rule 10b5–1 plans and therefore result in larger, more concentrated volumes of insider-directed trades taking place during open-window periods rather than being spread out over the duration of the Rule 10b5–1 plan, which could lead to increased market volatility, as

[438] *See* Lisa Meulbroek, *The Efficiency of Equity-Linked Compensation: Understanding the Full Cost of Awarding Executive Stock Options,* 30 Fin. L. Mgmt. 5 (2001); *see also infra* note 442 and accompanying and following discussion.

[439] In addition, Form 4 must be filed before the end of the second business day following the day on which the transaction was executed. Rule 16a–3(g)(2)(i) indicates that for transactions that satisfy Rule 10b5–1(c), the date of execution is deemed to be the date on which the executing broker notifies the reporting person of the execution of the transaction.

[440] For example, trading under a Rule 10b5–1 plan is one of the exceptions from the blackout periods imposed in Section 306 of SOX. Section 306(a)(1) of SOX makes it unlawful for a director or officer of an issuer of any equity security, directly or indirectly, to purchase, sell or otherwise acquire or transfer any equity security of the issuer during a pension plan blackout period with respect to the equity security, if the director or executive officer ''acquires such equity security in connection with his or her service or employment as a director or executive officer.'' Section 306(a)(2) permits an issuer, or a security holder of the issuer on its behalf, to bring an action to recover any profits realized by a director or executive from a transaction made in violation of Section 306(a)(1). Rule 101(c)(2) of Regulation BTR [17 CFR 245.101(c)(2)] provides an exemption from Section 306(a)(1) for transactions made pursuant to a trading arrangement that satisfies the affirmative defense conditions of Rule 10b5–1(c). Officers and directors trading other than under a Rule 10b5–1 plan would not get this benefit.

[441] As noted above, a 2016 industry survey found that 17 percent of surveyed companies required the use of Rule 10b5–1 plans for trading. *See* Morgan Stanley & Shearman & Sterling LLP, *supra* note 384. A 2021 industry survey found that 13 percent of respondents required the C Suite, while six percent required directors to use Rule 10b5–1 plans for trading. *See* SCG 2021 Survey. We recognize that the number of companies with such policies in place may decrease after the rules become effective.

[442] Compensation committees may continue to award incentive pay even if insiders may prefer to reduce exposure to the issuer's equity. *See, e.g.,* Darren T. Roulstone, *The Relation Between Insider-Trading Restrictions and Executive Compensation,* 41 J. Acct. Rsch. 525 (2003) (showing that firms restricting insider trading ''use more incentive-based compensation and their insiders hold larger equity incentives relative to firms that do not restrict insider trading''). Companies may also impose share ownership guidelines and holding requirements. *See, e.g.,* Bradley W. Benson et al., *Stock Ownership Guidelines for CEOs: Do They (Not) Meet Expectations*?, 69 J. Banking Fin. 52 (2016); *see also Executive Stock Ownership Guidelines,* Equilar (Mar. 9, 2016), *available at https://www.equilar.com/reports/34-executive-stock-ownership-guidelines.html* (finding that the percentage of Fortune 100 companies that disclose ownership guidelines or holding requirements in any form was 87.6 percent in 2014); John R. Sinkular & Don Kokoskie, *Stock Ownership Guideline Administration,* 2020 Harv. L. School Forum Corp. Gov. (June 11, 2020), *available at https://corpgov.law.harvard.edu/2020/06/11/stock-ownership-guideline-administration/;* NASPP, 5 Trends in Stock Ownership Guidelines, (Dec. 15, 2020), *available at https://www.naspp.com/blog/5-Trends-in-Stock-Ownership-Guidelines* (finding that ''[e]ighty-five percent of respondents to the 2020 survey currently impose ownership guidelines on executives'').

[443] However, the likelihood of choosing a Rule 10b5–1 plan for a purchase is much lower than the likelihood of electing to use Rule 10b5–1(c)(1) for a sale (with the caveats about data availability). One study noted that approximately 2.3 percent of purchases versus 22.4 percent of sales were reported to be undertaken using Rule 10b5–1 plans. *See* Mavruk & Seyhun, *supra* note 19.

[444] *See* Darren T. Roulstone, *The Relation Between Insider-Trading Restrictions and Executive Compensation,* 41 J. Acct. Rsch. 525 (2003) (finding that ''firms that restrict insider trading pay a premium in total compensation relative to firms not restricting insider trading, after controlling for economic determinants of pay.''); *see also* M. Todd Henderson, *Insider Trading and CEO Pay,* 64 Vand. L. Rev. 503 (2011) (finding that ''executives whose trading freedom increased using Rule 10b5–1 trading plans experienced reductions in other forms of pay to offset the potential gains from trading'').

[445] *See supra* note 52.

[446] *But see supra* note 441.

indicated by various commenters.[447] Insiders who sell shares without relying on a Rule 10b5–1 plan are likely to incur additional costs and limitations. The economic costs of decreased liquidity due to Rule 10b5–1 plan restrictions were discussed in detail in Section V.B.3 above.

In a change from the proposal, the cooling-off period for the Rule 10b5–1 plans of officers and directors was revised from 120 days to the later of (1) 90 days after the adoption of the Rule 10b5–1 trading plan or (2) two business days following the disclosure of the issuer's financial results for the completed fiscal period in which the plan was adopted (which need not exceed 120 days after adoption or modification of the plan). However, because trading during the three months following adoption of a Rule 10b5–1 plan, or around earnings announcements, is common based on available data summarized in Section V.B.1 above, the amendments are likely to reduce officers' and directors' ability to trade under Rule 10b5–1 plans compared to their trading today, resulting in potential costs to insiders.[448]

In another change from the proposal, in response to suggestions of several commenters,[449] the final amendments include 30-day cooling-off period as a condition of the affirmative defense for persons other than the issuer that are not officers or directors. We recognize that this change will result in additional costs for the affected persons, particularly those rank-and-file employees and other individuals that have a lower net worth and undiversified stockholdings and lack the resources and access to alternative liquidity sources to absorb unanticipated liquidity needs in the presence of the trading restrictions in the final amendments. Such costs are expected to be mitigated to a considerable extent by the shorter duration of the cooling-off period for persons other than officers, directors, or the issuer. Further, the costs relative to the baseline are expected to be potentially more modest to the extent that the 30-day duration of the cooling-off period is generally aligned with existing industry practices.[450] In the aggregate, such costs may be further alleviated to the extent that persons other than officers, directors, or the issuer may hold less stock or may be less likely to trade under Rule 10b5–1 plans.[451]

The final amendments are also adding new paragraph (c)(1)(iv) that states that a modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a Rule 10b5–1 plan is treated as a termination of the plan and the adoption of a new plan, and to the extent that insiders seek to continue to rely on the affirmative defense, they would incur the costs associated with a new cooling-off period. Other types of changes to Rule 10b5–1 plans would not be treated as the adoption of a new plan and would not result in those potential costs generally in line with the comments received.[452]

ii. Officer and Director Certifications

The amendments introduce as a condition to the Rule 10b5–1(c)(1) affirmative defense a new requirement that directors and officers provide representation in the plan documents that, at the time of adopting a new or modified Rule 10b5–1 plan: (1) they are not aware of material nonpublic information about the issuer or its securities; and (2) they are adopting the contract, instruction, or plan in good faith and not as part of a plan or scheme to evade the prohibitions of Section 10(b) and Rule 10b–5. In a change from the proposal to eliminate any additional burden that separate documentation may create,[453] officers and directors will be required to include the certification in the plan documents as representations, rather than provide a separate certification to the issuer. The final rules also do not provide that officers and directors should retain the certification for ten years, as was originally proposed. These changes are expected to incrementally decrease the costs of compliance with the amendments and avoid any potential costs that issuers might have chosen to incur to develop systems or procedures to accept officer and director certifications.

The incremental costs of this provision may be small to the extent that officers and directors already avoid adopting Rule 10b5–1 plans while aware of MNPI (for example, due to robust policies and procedures related to officer and director trading or robust corporate governance controls). Further, insiders may already make representations to that effect to broker-dealers that administer the plans, as part of existing industry practices.[454] Nevertheless, we recognize that such representations to broker-dealers may not be universal in practice or uniform in substance today. We further recognize, consistent with the concerns of commenters, that the certification condition may result in increased costs for officers and directors, such as the cost of consulting with legal counsel to help them analyze whether they have MNPI and to comply with the certification requirement, which may in some instances deter officers and directors from relying on Rule 10b5–1(c)(1).[455] To the extent that officers and directors forgo Rule 10b5–1 plans due to the certification requirement, they may incur additional costs of trading outside of such plans (see V.B.3 above for a more detailed discussion). The associated costs could also lead officers and directors to potentially seek other compensation terms with less equity exposure, which may result in additional costs to the company and its shareholders.[456]

iii. Restricting Multiple Overlapping and Single-Trade Rule 10b5–1 Trading Arrangements

We are adopting the restriction on multiple overlapping Rule 10b5–1 trading arrangements for open-market

[447] *See supra* note 54.

[448] *See* Gaming the System, *supra* note 20; *see also supra* notes 379 through 381 and accompanying text. A 2016 industry survey examining Rule 10b5–1 plan practices at public companies found that 30 days was the most popular cooling-off period among their respondents (41 percent) and that for 77 percent of the respondents, the cooling-off period was 60 days or less. *See supra* note 384. A 2021 industry survey examining Rule 10b5–1 plan practices found that 51 percent of survey respondents had a cooling-off period of 30 days and 67 percent of respondents reported cooling-offs of 60 days or less. *See* SCG 2021 survey. Separately, because many issuers release financial results prior to the filing of a Form 10–Q or 10–K, the use of the filing of Form 10–Q or 10–K for purposes of identifying the date of the disclosure of a domestic issuer's financial results is expected to result in a longer minimum cooling-off period for the officers and directors of the typical issuer, compared to using the date of the issuance of a press release announcing earnings results, resulting in less flexibility for the affected officers and directors.

[449] *See supra* note 422.

[450] A 2016 industry survey found that 41 percent of respondents had a 30-day cooling-off period and an additional eight percent reported a cooling-off period exceeding 30 days. *See supra* note 384. A 2021 industry survey found that 51 percent of respondents had a 30-day cooling-off period and an additional 13 percent reported a cooling-off period exceeding 30 days. *See* SCG 2021 Survey. As a caveat, neither survey specifies whether the cooling-off periods varied depending on the type of insider. As a further caveat, survey respondents need not be representative of all affected companies. Several commenters identified 30 days as a common duration of the cooling-off period (similarly not noting whether prevailing industry practices with regard to cooling-off periods vary depending on the type of insider). *See supra* note 57 and accompanying text.

[451] *But see supra* note 424.

[452] *See supra* note 80.

[453] *See supra* note 132.

[454] *See supra* note 132.

[455] *See supra* note 131.

[456] *See supra* note 442 and accompanying and following text.

trades, with certain modifications. This restriction is expected to limit the affected plan participants' flexibility to use Rule 10b5–1 plans to purchase or sell their shares. In a change from the proposal, we are adopting modifications to this condition that address the use of multiple brokers in a Rule 10b5–1 plan and that permit an insider to maintain two Rule 10b5–1 plans at the same time in certain circumstances. These changes should decrease the incremental costs of the amendments by preserving some flexibility for insiders that plan to use a successive Rule 10b5–1 plan after the current Rule 10b5–1 plan expires but wish to set it up before the first plan concludes as well as for insiders that have established relationships with, or otherwise prefer to utilize, multiple brokers. In another change from the proposal which should further reduce the incremental costs for affected insiders, the restriction will not apply to sell-to-cover transactions. The effects of the multiple-plan restriction will be smaller for insiders that can anticipate and consolidate most upcoming open-market purchases and sales of securities into a single plan (*e.g.,* utilizing an algorithm-based strategy). As proposed, the restriction on multiple overlapping plans will apply only to plans involving open-market trades, which will enable insiders with purchases and sales planned, for example, as part of employee benefit plans, ESOPs, or DRIPs, and not involving open-market purchases or sales to avoid the cost of the requirement. In a modification from the proposal, trades in different classes of securities will not be excepted from the restriction on multiple overlapping Rule 10b5–1 plans, consistent with a commenter's suggestion.[457] Compared to the proposal, this modification is expected to limit flexibility for those plan participants that seek to implement independent purchase or disposition strategies for different share classes through separate, overlapping plans.

We recognize that the multiple-plan restriction will impose costs on affected insiders, as suggested by various commenters.[458] While some insiders may be able to meet different trading needs involving open-market purchases or sales with a single plan, or through the exceptions provided above for one successive plan, a plan executed by multiple brokers, and sell-to-cover transactions, other insiders will incur costs due to this restriction.[459] For example, insiders may have immediate liquidity or other trading needs involving open-market transactions at different points in time that are difficult to incorporate into a single plan, resulting in greater costs. Modifying a single existing plan based on updated trading needs will initiate a new cooling-off period, imposing costs on insiders in such cases. Nevertheless, the incremental costs of the multiple-plan restriction are expected to be limited for the affected insiders of companies that already disallow such plans today.[460] The incremental costs of the multiple-plan restriction are also expected to be smaller for the affected insiders of companies that allow trading arrangements that do not rely on Rule 10b5–1(c)(1) and do not require the use of Rule 10b5–1 for insider trades.[461] Nevertheless, as noted above, insiders that maintain trading arrangements not reliant on Rule 10b5–1(c)(1) may incur other costs.

The final amendments limit the number of single-trade Rule 10b5–1 trading arrangements to one such arrangement in any twelve-month period. As noted by several commenters, this limitation is expected to impose costs on the affected insiders.[462] This limitation will make it costlier for insiders with repeated sporadic or ad hoc liquidity needs to divest issuer equity holdings.[463] At the same time, the approach of limiting the number of single-trade Rule 10b5–1 plans in a 12-month period, rather than restricting them entirely, alleviates costs for insiders with occasional unexpected liquidity needs that seek to avail themselves of the affirmative defense for such a single-trade plan. This approach has the benefit of protecting investors from trades that run a higher risk of being opportunistically driven by MNPI, while still accommodating the liquidity needs of certain insiders. While it is possible that the same insider would experience multiple instances of repeated, ad hoc liquidity needs in a 12-month period that can only be met through a new single-trade Rule 10b5–1 plan and such an insider would lose flexibility under the final amendments, the likelihood of such successive unanticipated liquidity needs occurring within the same 12-month period is lower than that of a single occurrence of an ad hoc liquidity need, for which the final rule provides an exception. In a modification from the proposal, the limitation on single-trade Rule 10b5–1 trading arrangements will only apply to plans involving open-market transactions. Similar to the focus of the multiple-plan restriction on plans for open-market trades, tailoring the limitation on single-trade Rule 10b5–1 trading arrangements in this manner is expected to eliminate the cost of the requirement for insiders with plans not involving open-market purchases or sales. In a further modification from the proposal, the limitation on single-trade Rule 10b5–1 trading arrangements will not apply to sell-to-cover transactions, which will also help to mitigate costs of this provision by allowing insiders to sell shares to cover tax withholding obligations related to the vesting of equity compensation.

iv. The Amended Good Faith Condition

The amendments specify that a trader must act in good faith with respect to the plan as a condition to the continued availability of the affirmative defense. Consistent with the views of various commenters, this provision is expected to result in additional legal costs (such as the cost of legal counsel to aid in compliance with the requirement), ambiguity,[464] and risks for plan participants (namely, the risk of loss of the Rule 10b5–1(c)(1) affirmative defense if a trader is found not to have acted in good faith).[465] Some commenters also expressed the concern that the amended good faith provision may create an ''unintended incentive for directors or officers to consider their Rule 10b5–1 plans in connection with corporate actions long after establishing their plans.'' [466] If plan participants perceive the amended good faith provision as increasing the legal cost and risk associated with the use of Rule 10b5–1 plans, they may reduce their reliance on Rule 10b5–1 plans.[467]

[457] *See* letter from NASAA. *See also* Roger M. White, *Insider Trading: What Really Protects U.S. Investors*? 55 J. Fin. Quant. Anal. 1305 (2020).

[458] *See supra* note 167.

[459] *See* letter from SIFMA 3.

[460] *See, e.g., supra* note 431 and accompanying text (discussing restrictions on multiple overlapping plans). According to a 2016 industry survey, more than 80 percent of respondents do not allow multiple, overlapping Rule 10b5–1 plans. According to a 2021 industry survey, 52 percent of respondents do not allow such plans. *See* SCG 2021 Survey.

[461] *See supra* note 432 and accompanying text.

[462] *See supra* notes 157 through 162 and accompanying text.

[463] Single-trade plans appear to be common. Based on Washington Service data from Jan. 2016 through May 2020, *Gaming the System, supra* note 20, note that 49 percent of the 10b5–1 plans in their sample cover only a single trade. Using Washington Service data for a more recent period (Jan. 2, 2018 through Sept. 13, 2022), we estimate that single-trade plans constitute approximately 44 percent of plans during the time period examined. *See supra* Section V.B.1. The caveat about classification of plans as ''single-trade'' plans in the available data applies. *See supra* note 435.

[464] *See supra* note 196 and accompanying text.

[465] *See supra* notes 195 and 198.

[466] *See* letter from Chamber of Commerce 2; *see also* letter from Wilson Sonsini.

[467] *See supra* note 198.

4. Effects on Efficiency, Competition, and Capital Formation

We expect the amendments to reduce the improper use of Rule 10b5–1 plans by insiders with MNPI. This decrease in insider trading should also limit insiders' incentives to engage in inefficient corporate decisions associated with insider trading, which were discussed in Section V.A above. The effects of the rule on the efficiency of corporate investment and other decisions are not fully certain because the rule may induce insiders to adjust their holdings in response to the reduced liquidity and potentially lead companies to adjust incentive and compensation structure or other policies and practices in response to the rule.

Further, limiting insiders' ability to trade on MNPI would decrease the insiders' incentives to influence the timing and content of corporate disclosures. Timelier and higher-quality corporate disclosures would provide more information to investors, resulting in more informationally efficient share prices in the secondary market and more efficient allocation of investor capital across investment opportunities in their portfolio.

A reduction in insider trading may also benefit market efficiency.[468] For example, a lower risk of trading against an informed insider is expected to increase investor confidence and the willingness of market participants to buy, and trade in, the issuer's shares. This effect would indirectly make it easier for the company to raise capital from investors.

Finally, the amendments may affect competition. Decreasing the ability of insiders to trade on MNPI should weaken their competitive edge in trading, promoting competition among other investors in the market for the issuer's shares. A lower risk of an insider with a significant private information advantage trading the issuer's shares may strengthen the incentive of other market participants to trade the issuer's shares and compete in gathering and processing information about the company.

All of the effects described above would be weaker to the extent that some insiders may trade under non–Rule 10b5–1 trading arrangements or may trade without a plan. Whether the amendments prompt a large increase in insider trading under non-Rule 10b5–1 trading arrangements would depend, in part, on how burdensome insiders find the amendments and how company policies constrain insider use of MNPI in non-Rule 10b5–1 trading arrangements (including in response to the Item 408 disclosure requirements).

It is not clear if the amendments will result in meaningful competitive effects on the labor market. We are not exempting any categories of public companies from the amendments, which should reduce potential effects on competition for talent among public companies. We do not anticipate significant effects of the amendments on the competition for talent between public and private companies. While Rule 10b5–1(c)(1) amendments may make insider holdings of public company stock less liquid (as discussed in greater detail in Section V.B.3 above), holdings of public company shares will remain significantly more liquid than holdings of private company stock.

5. Reasonable Alternatives

The certification requirements will apply to officers and directors only, as proposed. Cooling-off periods (with the duration dependent on the type of insider) and restrictions on multiple overlapping plans and single-trade plans will apply to persons other than the issuer. The expanded good faith provision will apply to all persons who seek to rely on the Rule 10b5–1(c)(1) affirmative defense.

As an alternative, we could limit each of the provisions to officers only.[469] Compared to the amendments, this alternative would eliminate the costs of the rule (discussed in greater detail in Section V.B.3 above) for the exempted plan participants but increase the risk of insider trading by such plan participants. The latter effects may be smaller to the extent the exempted persons are less involved in making and overseeing corporate decisions or are less likely to be aware of MNPI, but that likely is not the case for directors. As another alternative, we could extend all of the Rule 10b5–1(c)(1) amendments, including the certification requirements and the longer cooling-off periods applicable to officers and directors, to all persons other than the issuer. Compared to the amendments, this alternative would subject additional persons other than the issuer, including employees, to the costs of all of the provisions of the rule (discussed in greater detail in Section V.B.3 above) but also decrease the risk of insider trading by such plan participants. The latter benefits may be smaller to the extent that persons other than the issuer that are not officers or directors are less involved in making and overseeing corporate decisions, may lack control or knowledge about the timing and substance of the issuer's disclosures, or are less likely to be aware of MNPI. The aggregate effects of all of the discussed alternatives, compared to the amendments, may also be smaller to the extent that Rule 10b5–1 plans may be most prevalent among officers (with the caveat about data availability).

Alternatively, rather than adding new conditions to the affirmative defense, we could rescind the Rule 10b5–1(c)(1) affirmative defense altogether.[470] Rescinding Rule 10b5–1(c)(1) would increase the costs for existing Rule 10b5–1 plan participants (such as the additional costs of legal counsel to determine whether trading arrangements, or trades not reliant on a trading arrangement, are compliant with the Exchange Act in the absence of the Rule 10b5–1(c)(1) affirmative defense). Rescinding the Rule 10b5–1(c)(1) affirmative defense would also increase the liability risk for insiders that continue to trade due to greater uncertainty about whether they have complied with Rule 10b–5 and subject insiders to additional limitations on trading (such as restrictions on trading during blackout periods). The associated costs of divesting stock in the absence of the affirmative defense would make insiders' holdings of stock less liquid and could further induce insiders to negotiate non-stock-based compensation.[471] Further, while rescinding Rule 10b5–1(c)(1) would eliminate Rule 10b5–1 plans, it would not affect the use of other trading arrangements by officers, directors, and companies. The potential for trading under non-Rule 10b5–1 trading arrangements or outside of plans may lead to an increase in insider trading, compared to the amendments. It also may increase investor effort to perform due diligence on non-Rule 10b5–1 trading arrangements and trades outside of plans to assess the risk of trading against an informed insider. Moreover, rescinding Rule 10b5–1(c)(1) may hinder issuers' efforts to develop and implement corporate governance practices for trading arrangements that comply with securities laws and regulations. We expect that the new Item 408 disclosure requirements, discussed in detail in Section V.C below, will partly mitigate incentives to engage in insider trading under all trading arrangements, including trading

[468] *See supra* note 362.

[469] With the caveat about data availability, where Rule 10b5–1(c)(1) use is reported, officers are far more likely to report trading under Rule 10b5–1 plans than directors.

[470] *See, e.g.,* letter from Better Markets.

[471] *See supra* note 442 and accompanying and following text.

arrangements that are not reliant on Rule 10b5–1(c)(1) under this alternative.

As another alternative, we could impose some, but not all, of the new conditions to the affirmative defense. This alternative would lower the aggregate costs of the rule and preserve greater flexibility than the amendments, decreasing the costs discussed in the case of each of the specific provisions. However, due in part to their expected synergy, this alternative would make the combined set of amendments less effective at curbing insider trading behavior under Rule 10b5–1.[472]

With respect to the cooling-off period for officers and directors, the Commission could adopt a shorter or longer cooling-off period.[473] A shorter cooling-off period for officers and directors (such as the 30-day minimum cooling-off period that the final amendments apply to persons other than the issuer that are not officers or directors) could reduce some of the costs of a cooling-off period and preserve greater flexibility for officers and directors, compared to the amendments, but it would increase the risk of officers' and directors' trading based on MNPI. Conversely, a longer cooling-off period for officers and directors (such as the 120-day minimum cooling-off period proposed for officers and directors) could increase costs to officers and directors and limit flexibility, compared to the amendments, but it may further decrease the risk of officers' and directors' trading based on MNPI. As another alternative, we could specify a minimum cooling-off period for officers and directors that extends one trading day past the filing or furnishing of the issuer's next earnings announcement covering at least one fiscal quarter (and not include a minimum 90-day cooling-off period for officers and directors).[474] Such a variable-length cooling-off period would, in most cases, be shorter than the cooling-off period for officers and directors under the final amendments. This alternative also would introduce much greater variability in the permissible duration of the minimum cooling-off period for officers and directors, which may require incrementally greater effort from investors seeking to evaluate the timing of officer and director trades. Compared to the final amendments, it would also not be as effective as the adopted approach in discouraging trading on MNPI that is not tied to quarterly results.[475] A more detailed discussion of the costs and benefits of a cooling-off period that would be magnified or reduced, respectively, under these alternatives is included in Sections V.B.2.i and V.B.3.i. The discussed effects of the alternatives would also depend on whether they differ from existing, voluntary cooling-off period practices of issuers.[476]

The final amendments include a 30-day cooling-off period for persons other than the issuer that are not officers or directors. As an alternative, the Commission could lengthen the cooling-off period or shorten the cooling-off period applicable to such persons. As another alternative, the Commission could eliminate the cooling-off period for persons other than the issuer that are not officers or directors (for instance, only applying cooling-off periods to officers and directors, as proposed). Including a longer cooling-off period for persons other than the issuer that are not officers or directors (such as the longer cooling-off period applicable to officers and directors) would increase the costs to the affected plan participants and limit their flexibility (as discussed in greater detail in Section V.B.3.i above), compared to the amendments, but it may further decrease the risk of the affected plan participants' trading based on MNPI. Conversely, shortening or eliminating the cooling-off period applicable to persons other than the issuer that are not officers or directors could reduce costs (discussed in greater detail in Section V.B.3.i above) and preserve greater flexibility for the affected plan participants, compared to the amendments, but it would increase the risk of the affected plan participants' trading based on MNPI. The effects of this alternative would be smaller than discussed to the extent that persons other than officers and directors may be less likely to trade under Rule 10b5–1.[477]

As an alternative to including the certifications of officers and directors in Rule 10b5–1 plan documents, we could provide for the certification to be made to the issuer in a separate document and retained for ten years, as proposed. Compared to the amendments, this alternative could result in incrementally greater costs for officers and directors, to the extent that they do not presently make representations separately to the issuer. This alternative also could result in additional costs for issuers to the extent that they decide to establish new processes and systems to accept officer and director certifications. In turn, due to the employer relationship between the issuer and its officers and the fiduciary relationship between the issuer and its directors, a condition that would require officers and directors to make a certification to the issuer under this alternative could be marginally more effective in reminding them of their existing obligations with respect to MNPI, compared to the amendments. The potential benefit of the alternative compared to the amendments would be decreased if officers and directors already comply with their MNPI obligations under the existing rule and market practices.

The amendments restrict the availability of the affirmative defense for multiple overlapping Rule 10b5–1 trading arrangements for open-market trades. As an alternative, we could allow multiple overlapping plans but limit their number (*e.g.,* to two or three), limit the provisions to no more than one plan pertaining to purchases and one plan pertaining to sales, or provide other exceptions. These alternatives could preserve greater flexibility, compared to the amendments, and lower costs for plan participants that have multiple accounts or trading arrangements through which they trade in the company stock. However, these alternatives could introduce greater complexity in companies' oversight of insiders' multiple overlapping plans and potentially present a greater risk of insider trading, compared to the amendments (to the extent not mitigated by the other provisions that we are

[472] As discussed in Section V.B.2 above, in particular, for officers and directors, the certification condition is expected to complement the effects of the cooling-off period, which, in turn, is expected to work in tandem with the exclusion of multiple overlapping plans from Rule 10b5–1(c)(1) to possibly prevent a portion of potentially opportunistic plan cancellations based on MNPI.

[473] *See supra* note 418 (discussing suggestions for three-month and four- to six-month cooling-off periods); *see also supra* note 384 and following text (noting that at over three-quarters of surveyed respondents, the cooling-off period was 60 days or less); *supra* note 56 (suggesting a 30-day cooling-off period); letter from Cravath (suggesting a cooling-off period of the later of (1) 45-days after the adoption of the Rule 10b5–1 trading plan and (2) the second trading day following the next publication of the issuer's financial results for a completed fiscal period); *supra* note 58 (suggesting a cooling-off period not exceeding 90 days); *supra* note 48 (supporting the proposed 120-day cooling-off period); letter from CII (recommending a cooling-off period of four to six months).

[474] *See* letter from Davis Polk.

[475] For example, one study finds that ''specific disclosures are associated with subsequent negative news events that may not be impounded in short-term earnings . . . approximately 25% of the specific-disclosure sample exhibits a single news event, not related to earnings, for which the three-day market-adjusted return falls between 10% and 75%, within an average 140 calendar days of disclosure. These news events include exchange-imposed stock trade suspension, drug trial failure, and announcement of the intent to acquire another firm.'' *See* M. Todd Henderson et al., *supra* note 19.

[476] *See supra* notes 379 through 384 and accompanying and preceding text.

[477] *But see supra* note 424.

adopting, including certifications, the amended good faith condition, cooling-off periods, and the disclosure requirements). In particular, the option to maintain multiple, overlapping plans concurrently facilitates the ability to selectively cancel one of the plans based on MNPI, without being subject to a cooling-off period with respect to the remaining plans' trades. The economic effects of this alternative may be less significant to the extent that companies already may disallow the use of multiple overlapping plans,[478] or allow these insiders to maintain both trading arrangements not reliant on Rule 10b5–1(c)(1) and Rule 105b–1 trading arrangements.

The amendments limit the availability of the affirmative defense in the case of single-trade Rule 10b5–1 plans of persons other than the issuer to one such trading arrangement in any twelve-month period. As an alternative, we could disallow single-trade trading arrangements under Rule 10b5–1(c)(1) altogether. Compared to the final rule, this alternative could marginally reduce the likelihood that plan participants would be able to profit from a ''one-off,'' ad hoc trade based on previously undisclosed MNPI while availing themselves of the protections of the Rule 10b5–1(c)(1) affirmative defense. However, the incremental benefit of this alternative, compared to the final rule, may be attenuated if insiders relying on single-trade plans once in a twelve-month period are largely driven by a one-time liquidity need or financial hardship, or if they are effectively deterred from using MNPI by other Rule 10b5–1 provisions. In turn, this alternative would also significantly limit the flexibility and impose additional costs on insiders with a legitimate one-time, ad hoc liquidity need, compared to the final rule.

C. Disclosure of Trading Arrangements and Policies and Procedures in New Item 408 of Regulation S–K and Mandatory Rule 10b5–1 Checkbox in Amended Forms 4 and 5

The new Item 408(a) of Regulation S–K will require quarterly disclosures, in Form 10–Q and Form 10–K, of the adoption or termination,[479] and the material terms of Rule 10b5–1 and non-Rule 10b5–1 trading arrangements by directors and Rule 16a-1(f) officers. In a change from the proposal, price terms are excluded from the scope of material terms required to be disclosed under Item 408(a). New Item 408(b) will require an issuer to file its insider trading policies and procedures as an exhibit to its annual report on Form 10–K, which will be linked in the exhibit index (as discussed in greater detail in Section II.B above). Similar requirements will apply to FPIs that file annual reports on Form 20–F via new Item 16J.[480] The new Item 408(a), 408(b)(1), and analogous Form 20–F disclosures are required to be tagged using a structured data language (specifically, Inline XBRL). As discussed in Section II.B.1.c above, in response to a recommendation by some commenters, at this time, we are not adopting the proposed rule to require corresponding disclosure regarding trading arrangements of the issuer.

In addition, we are amending Forms 4 and 5 to add a checkbox to indicate that a reported transaction was intended to satisfy the affirmative defense conditions of Rule 10b5–1(c)(1) and require disclosure of the date of adoption of the trading plan. In a change from the proposal, we are not adopting the optional checkbox for non-Rule 10b5–1 plans.

1. Baseline and Affected Parties

The new Item 408(a) disclosure requirements regarding the adoption, modification, termination, and material terms of officer and director trading arrangements apply to annual and quarterly reports on Forms 10–K and 10–Q. During calendar year 2021, based on the analysis of EDGAR filings, we estimate that there were approximately 7,200 filers with annual reports on Form 10–K and/or quarterly reports on Form 10–Q or amendments to them.[481] The new Item 408(b) disclosure requirements regarding insider trading policies and procedures will apply to annual reports on Forms 10–K and proxy and information statements on Schedules 14A and 14C. Disclosure requirements similar to Item 408(b) will also apply to FPIs that file Form 20–F. During calendar year 2021, based on the analysis of EDGAR filings, we estimate that there were approximately 6,300[482] filers of annual reports on Form 10–K, proxy or information statements, or amendments to them, and, in addition, approximately 800 filers of annual reports on Form 20–F (or amendments to them).[483]

Item 408(a) requirements will affect all issuers whose officers or directors have Rule 10b5–1 or non-Rule 10b5–1 trading arrangements as well as all officers and directors whose trading arrangements will now be subject to public disclosure by the issuer.[484]

Item 408(b) requirements will affect all issuers subject to the requirements, as well as issuers, directors, officers, and employees that engage in trading subject to the disclosed policies and procedures.

The Rule 10b5–1 checkbox requirement will apply to all filers of Forms 4 and 5 (including officers and directors as well as other filers). During calendar year 2021, we estimate that there were approximately 54,000 such filers.[485]

2. Benefits

New Item 408 and Item 16J will benefit investors by providing greater transparency about officer and director Rule 10b5–1 and non-Rule 10b5–1 trading arrangements, as well as governance practices with respect to insider trading.[486] This enhanced transparency may enable better informed voting and investment decisions and more efficient allocation of investor capital. The timing of trading arrangement adoptions and terminations by officers and directors, as well as a description of the material terms of the trading arrangements, is expected to enhance the value of existing trade disclosures, aiding investors in obtaining a more accurate valuation of the issuer's shares and making more informed voting and investment decisions, as supported by various commenters.[487] These informational benefits should be considered in the context of the existing baseline (which includes partial revelation of information contained in officer and director trades as part of Section 16

[478] *See supra* note 431 and accompanying text.

[479] New paragraph (c)(1)(iv) states that any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a Rule 10b5–1 plan is a termination of such plan and the adoption of a new plan.

[480] The discussion in this section referring to Item 408(b) also extends to the economic effects of related amendments to Form 20–F that apply similar requirements to Form 20–F filers.

[481] The estimate excludes registered investment companies and asset-backed securities issuers, which will not be subject to the Item 408 disclosures.

[482] The difference between this number of filers of annual reports on Form 10–K, proxy or information statements, or amendments to them, and the above number of filers of annual reports on Form 10–K and/or Form 10–Q, or amendments to them, is largely attributable to the fact that, given that calendar year 2021 was an active year for initial public offerings, a number of new reporting issuers may have filed a Form 10–Q during 2021 but not a Form 10–K as it was not due until 2022.

[483] *See supra* note 481.

[484] *See supra* Section V.B.1.

[485] The estimate is based on filings of Forms 4 and 5 during calendar year 2021 in Thomson Reuters/Refinitiv insiders dataset (version retrieved June 27, 2022).

[486] *See supra* Section V.A.

[487] *See supra* note 209.

reporting).[488] Further, informational benefits of the Item 408(a) disclosure may be low to the extent that plan trades are motivated by liquidity needs and similar considerations rather than by MNPI (especially after the amendments to Rule 10b5–1, such as the cooling-off period condition, aimed to reduce potential for MNPI-based trading under such trading arrangements). Finally, in a change from the proposal, price terms will be outside the scope of the required Item 408(a) disclosure of the terms of trading arrangements. This change will reduce the informational benefits of Item 408(a) to investors, compared to the proposed amendments.

The requirement that these data points be tagged in a structured data language (specifically, in Inline XBRL) is expected to facilitate access to, and analysis of, the disclosures by investors, potentially leading to more useful and timely insights, consistent with the suggestions of several commenters.[489] In particular, structuring the disclosures about trading arrangements under Item 408(a) will enable automated extraction of granular data on such trading arrangements, allowing investors to efficiently perform large-scale analyses and comparisons of trading arrangements across issuers and time periods. Structured data on trading arrangements may also be efficiently combined with other information that is available in a structured data language in corporate filings (*e.g.,* information on insider sales and purchases of securities) and with market data contained in external machine-readable databases (*e.g.,* information on daily share prices and trading volume). The use of a structured data language is also expected to enable considerably faster analysis of the disclosed data by investors. Structuring the narrative disclosure on insider trading policies and procedures required under Item 408(b)(1) of Regulation S–K in Inline XBRL is expected to make it easier for investors to extract information from the disclosures about insider trading policies and procedures, compare these disclosures against prior periods, and perform targeted artificial intelligence and machine learning assessments of specific narrative disclosures about insider trading policies and procedures.

We expect these benefits to result from disclosure of terminations, changes in material plan terms, and adoptions of trading arrangements. A termination or a change in material terms of a prior trading arrangement may similarly convey information about the views of the officers or directors regarding the issuer's future outlook and share price. Further, the timing of trading arrangement adoptions or terminations, relative to the issuance of other corporate disclosures, may provide investors with valuable insight into potential insider trading under such trading arrangements, and thus associated conflicts of interest that may erode firm value. We expect such benefits from the disclosure of both Rule 10b5–1 and non-Rule 10b5–1 trading arrangements. Moreover, by drawing market scrutiny to the adoption and termination of trading arrangements, enhanced disclosure is expected to deter insider abuses of trading arrangements based on MNPI. This scrutiny is expected to reduce insider trading, benefiting investors and decreasing the economic costs and inefficiencies associated with insider trading, as discussed in Section V.A above. The described benefits may be low or not realized in cases of trading arrangements initiated to meet officers' and directors' liquidity needs or for other reasons unrelated to MNPI.

The requirement to provide disclosure regarding insider trading policies and procedures is expected to provide investors with valuable information about governance practices with respect to insider trading of issuer stock. It will allow investors to better understand the policies and procedures, if any, that guide issuers in which they invest and the conduct of officers, directors, and employees of those issuers and the issuers themselves, including whether, and if so, how, issuers adopt standards that are reasonably necessary to promote (i) honest and ethical conduct, including the handling of conflicts of interest, (ii) full, fair, and accurate disclosure in periodic reports, including the potential mitigation of pricing distortions from insider trading, and (iii) compliance with applicable government rules and regulations, including the prohibition on insider trading. The absence or presence, and the nature of, such policies and procedures can inform investors about the likelihood of use of MNPI by these parties and, thus, the likelihood of incurring the economic costs of insider trading discussed in Section V.A above. It will help investors better understand how issuers protect their confidential information—which ''qualifies as property to which the company has a right of exclusive use''—as well as guard against the misappropriation of that information.[490] Disclosure regarding insider trading policies and procedures could also aid shareholders' voting and investment decisions. Moreover, requiring this disclosure would provide greater consistency in disclosures across issuers to the extent that they already disclose this type of information. In addition, the anticipation of market scrutiny following mandatory disclosure may incentivize issuers without specific insider trading policies to implement such policies and procedures (with some issuers possibly converging to a standardized insider trading policy). Such revisions to insider trading policies are, in turn, expected to reduce the likelihood of insider trading and the associated economic costs discussed in Section V.A above, particularly at issuers with weaker governance practices with respect to insider trading.

The amendments adding a Rule 10b5–1 plan checkbox to Forms 4 and 5 will benefit investors by providing transaction-specific disclosures of sales and purchases under Rule 10b5–1 trading arrangements. The checkbox disclosure will allow investors easier and timelier access to information about trades under Rule 10b5–1. This information will enable investors to more comprehensively identify insider trading pursuant to Rule 10b5–1 trading arrangements, as well as provide greater consistency in the disclosure of Rule 10b5–1 trades. Today, the disclosure of a purchase or sale under a Rule 10b5–1 trading arrangement in Forms 4 and 5 is voluntary, resulting in a lack of consistent and comprehensive information about such trades. Making this checkbox mandatory will allow investors to more readily interpret information in Forms 4 and 5.

The mandatory Rule 10b5–1 checkbox disclosures, in combination with the quarterly disclosure regarding adoptions and terminations of officers' and directors' Rule 10b5–1 trading arrangements, will provide greater transparency to investors regarding the use of Rule 10b5–1 trading arrangements for trading, in line with the suggestions of several

[488] *See, e.g.,* letters from Sullivan and Wilson Sonsini (indicating that the proposed disclosures would be duplicative of the disclosures that would be required under the proposed disclosure amendments to Forms 4 and 5); *see also* letters from Cravath and Shearman (indicating that details of non-Rule 10b5–1 trades already are disclosed on beneficial ownership forms). While beneficial ownership forms contain information about individual trades, some of which pertain to Rule 10b5–1 transactions, the information required in new Item 408(a) is significantly more detailed and comprehensive, which is expected to provide information benefits to investors above and beyond those that could be obtained today from the analysis of Section 16 reports.

[489] *See supra* note 319.

[490] *See United States* v. *O'Hagan,* 521 U.S. 642, 654 (1997) (recognizing that the undisclosed misappropriation of MNPI in breach of a duty of trust and confidence is ''fraud akin to embezzlement'').

commenters.[491] Such information will provide investors with valuable context for interpreting other corporate disclosures in valuing the companies' shares and making informed voting and investment decisions. Because Forms 4 and 5 would continue to use a structured data language, investors could extract and analyze comprehensive information about trades under Rule 10b5–1 trading arrangements across multiple time periods, individuals, and issuers.

3. Costs

First, we consider the direct (compliance-related) costs of the disclosure requirements for insiders and companies. Such costs include preparing the disclosure and gathering the information required to comply with the new disclosure requirements. Such costs are expected to be lower for companies that already disclose some information about Rule 10b5–1 trading arrangements and insider trading policies and procedures. Officers and directors are likely to have information about the adoption, modification, termination, duration, and number of securities to be sold through their trading arrangements readily available and/or accessible. However, issuers may not be systematically collecting such information from officers and directors today.[492] In those cases, issuers will incur additional cost to establish processes and systems to collect information about officers' and directors' trading arrangements required to comply with the new Item 408(a) disclosure requirement.[493] Officers and directors will incur an incremental cost to follow internal processes their companies establish, if any, to gather information about officer and director trading arrangements for the Item 408(a) disclosure. Issuers are likely to have information about their insider trading policies and procedures required to comply with Item 408(b) readily available. The tasks of identifying, and preparing a disclosure of, such policies and procedures (and, for issuers without such policies and procedures, the reasons for not having them) are expected to result in some additional direct costs;[494] however, such costs are likely to be relatively small.[495]

In a modification from the proposal, the final rules do not require disclosure of the issuer's policies and procedures in the body of the annual report, proxy statement, or information statement. Instead, they require registrants to disclose whether they have adopted insider trading policies and procedures governing the purchase, sale, and other dispositions of their securities by directors, officers, and non-executive employees or the registrant itself that are reasonably designed to promote compliance with insider trading laws, rules, and regulations, and any listing standards applicable to the registrant. If a registrant has not adopted such insider trading policies and procedures, it will be required to explain why it has not done so. These disclosures will be required in annual reports on Form 10–K and proxy and information statements on Schedules 14A and 14C. FPIs will be required to provide analogous disclosure in their annual reports on Form 20–F. Registrants will also be required to file a copy of their insider trading policies and procedures as an exhibit to their annual reports on Form 10–K or 20–F. If all of the registrant's insider trading policies and procedures are included in its code of ethics (as defined in Item 406(b)) and the code of ethics is filed as an exhibit pursuant to Item 406(c)(1), a hyperlink to that exhibit, accompanying the issuer's disclosure as to whether it has insider trading policies and procedures, would satisfy this component of the exhibit filing requirement. Requiring registrants to file their insider trading policies and procedures as an exhibit would facilitate investor access to the document as it would be available online through EDGAR and hyperlinked in the exhibit index. These modifications also may result in improved readability of the disclosure in the main body of the filing and incrementally facilitate compliance, compared to the proposed requirement to disclose the policies and procedures in the body of the filing.

The requirement to tag the new Item 408(a) and Item 408(b)(1) disclosures in Inline XBRL will impose incremental compliance costs on issuers. Such costs are expected to be modest, because issuers affected by the Inline XBRL requirements (including SRCs) are already required (or, in the case of certain business development companies, will be required no later than February 2023) to use Inline XBRL to comply with other disclosure obligations.[496] Moreover, the limited scope of the disclosure will likely require a relatively narrow-in-scope taxonomy of additional tags (compared to the significantly more extensive taxonomies used for financial statement disclosure tagging requirements), thus limiting the initial and ongoing costs of complying with the tagging requirement.

Next, we discuss the indirect costs of Item 408 and Item 16J. Indirect costs include potential reputational and investor relations costs associated with the disclosure. For example, issuers that have not implemented specific insider trading policies and procedures, as well as issuers at which the adoption, modification, or termination of officer and director Rule 10b5–1 and non-Rule 10b5–1 trading arrangements appears to correlate to the release of MNPI, may experience reputational and legal costs and a weakening of investor confidence in their corporate governance after public disclosure of this information. Relatedly, officers and directors that adopt, modify, or terminate a Rule 10b5–1 or non-Rule10b5–1 trading arrangement around the release of MNPI may also suffer reputational or legal costs from the public disclosure of this information. To the extent that the amendments to Rule 10b5–1(c)(1), such as the cooling-off period, eliminate or deter insider trading based on MNPI under Rule 10b5–1 trading arrangements, these legal and reputational costs of public disclosure may be minimal in cases of such trading arrangements.

The information in the domestic issuers' quarterly Item 408(a) disclosure of the material terms of officers' and directors' Rule 10b5–1 and non-Rule 10b5–1 trading arrangements, which may benefit investors and other market participants, may cause the affected officers and directors to incur costs to the extent that it reveals their future trading plans to other market participants—a concern expressed by various commenters.[497] The application of a cooling-off period may enable other market participants to obtain some

[491] *See, e.g.,* letters from ACCO, CII, Quinn, and Cravath.

[492] *See, e.g.,* letter from Sullivan (expressing concern that requiring disclosure of this information would impose a significant burden on issuers).

[493] *Id.*

[494] *See, e.g.,* letter from Dow (expressing concern about the administrative burden of the Item 408(b) disclosure requirement).

[495] The final amendments may impose higher additional costs on FPIs. Such additional costs would be relatively small to the extent an FPI already discloses similar information under its home country rules.

[496] *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846, 40847 (Aug. 16, 2018)]; *Securities Offering Reform for Closed-End Investment Companies,* Release No. 33–10771 (Apr. 8, 2020) at 33318 [85 FR 33290 (Jun. 1, 2020)].

[497] *See supra* note 216.

information[498] about the timing and terms of the officer's or director's Rule 10b5–1 trading arrangement before trading begins, potentially enabling other market participants to incorporate this information in their own trading strategy before the officer's or director's trading arrangement may be executed. For Rule 10b5–1 trading arrangements relying on a simple trading strategy (*e.g.,* equally-sized, equally-spaced periodic transactions), the combination of the Item 408(a) disclosure and the Rule 10b5–1 checkbox on Form 4 may enable investors to gauge some information about the officer's or director's trading strategy. This could lead to a potentially less favorable price than the officer or director might otherwise have obtained because other market participants are reacting to the officer's or director's trading strategy.[499] Officers and directors may continue to use limit orders to partly insure against an unfavorable price impact of the Item 408(a) disclosure, if any. For planned trades motivated by liquidity needs and other considerations that do not involve MNPI (especially after the amendments to Rule 10b5–1 aimed to reduce potential for MNPI-based trading under such plans), the costs to officers and directors from the revelation of Item 408(a) information to market participants will likely be low. Moreover, such costs of Item 408(a) should be considered in the context of the baseline, under which officers' and directors' Form 4 filings already reveal some information about their trades to the market. Importantly, in a change from the proposal, the amendments exclude price terms of the trading arrangement from the scope of Item 408(a), which should significantly alleviate the potential costs to officers and directors.[500]

Finally, some issuers may implement new insider trading policies and procedures or update existing insider trading policies and procedures in anticipation of the Item 408(b) disclosure requirement and the potential public scrutiny of their policies and procedures, if any. Additional restrictions on insider trading arrangements adopted in anticipation of the public disclosure could result in economic costs for insiders and, in some instances, changes in insider compensation and insider equity holdings that reduce their exposure to issuer stock (broadly in line with the discussion of the potential indirect costs of restrictions on insider use of trading arrangements in Section V.B.3 above). Costs incurred by issuers would be borne by their existing shareholders.

Insiders are likely to have information about which of their trades were executed pursuant to a Rule 10b5–1 trading arrangement readily available, likely resulting only in small direct costs of providing checkbox disclosure and the date of adoption of the trading arrangement on Forms 4 and 5. Systematic identification of trades under Rule 10b5–1 trading arrangements on Form 4 under the amendments, combined with existing time frames for Form 4 reporting (and for officers and directors, the new disclosures in Item 408(a)), may enable some market participants to infer the likely trading strategy employed by the insider under a Rule 10b5–1 trading arrangement. While this information may benefit investors and other market participants, it may result in the indirect cost of information spillovers to market participants, which may contribute to an unfavorable price movement prior to the execution of all trades under the plan.[501] Such indirect costs will be lowest for insiders other than officers and directors given that they are not subject to Item 408(a) and for insiders who use Rule 10b5–1 trading arrangements largely for liquidity rather than due to information considerations (especially in conjunction with the amendments to Rule 10b5–1(c)(1) that reduce the potential for MNPI-based trades). Insiders that already voluntarily disclose Rule 10b5–1 use in their filings of Forms 4 and 5 will not incur these direct and indirect costs.

4. Effects on Efficiency, Competition, and Capital Formation

We expect the amendments to reduce the information asymmetry between insiders and outside investors by providing more granular and timelier detail about officers' and directors' trading arrangements and issuers' insider trading policies and procedures. The reduction in information asymmetry as a result of the additional disclosure would result in more informationally efficient stock prices. Because disclosure of directors' and officers' trading arrangements and insider trading policies and procedures can inform investors about insider incentives and governance practices, which could affect shareholder value as discussed in Section V.A above, the additional disclosure about trading arrangements and insider trading policies and procedures could also better inform investment decisions (enabling more efficient allocation of capital in investor portfolios) and shareholder voting decisions.

Importantly, we expect the amendments to draw market scrutiny to officers' and directors' Rule 10b5–1 and non-Rule 10b5–1 trading arrangements, decreasing the ability of insiders to trade on MNPI through such trading arrangements. As discussed in Section V.B.4 above, this potential scrutiny should reduce insiders' incentive conflicts associated with insider trading. In particular, it would decrease incentives for inefficient corporate investment decisions and other corporate decisions. Further, it would decrease insiders' incentives to influence corporate disclosures, resulting in timelier and higher-quality disclosures that enable more informationally efficient share prices and more efficient allocation of capital in investor portfolios.

A lower risk of trading against an informed insider is expected to increase investor confidence and the willingness of market participants to buy and trade in the issuer's shares. These effects would indirectly make it easier for the issuer to raise capital from investors. Issuers that disclose robust insider trading policies and procedures in particular may elicit greater investor confidence, as well as interest from investors seeking issuers with stronger corporate governance practices,

[498] The Item 408(a) disclosure is limited to whether any director or officer adopted or terminated a Rule 10b5–1 plan or non-Rule 10b5–1 trading arrangement and a description of its material terms, including the name of the officer or director, the adoption or termination date, plan duration, and the number of shares to be traded. Price terms are not required to be disclosed.

[499] However, the described effects may be modest due to the generally small size of individual officer and director trades. Further, even the revelation of large predictable planned trades may not result in front-running. *See* Hendrik Bessembinder et al., *Liquidity, Resiliency and Market Quality Around Predictable Trades: Theory and Evidence,* 121 J. Fin. Econ. 142 (2016) (showing, in a setting with large and predictable exchange-traded fund trades, that ''traders supply liquidity to rather than exploit predictable trades in resilient markets'' and not finding ''evidence of the systematic use of predatory strategies'').

[500] *See supra* note 218 (noting that various commenters expressed concerns that disclosure of pricing information and other details of a Rule 10b5–1 trading arrangement could impose costs on issuers and their insiders). *But see* letter from Quest (stating that the final rule should not require disclosure of the number of shares covered by a trading arrangement and the duration of the arrangement) and letters from Fenwick and Shearman (recommending that the required disclosures should be limited to the person adopting the plan, the date of adoption or termination, and duration). While we recognize that the volume and duration information may potentially be informative to other market participants, we expect the potential costs to officers and directors from the disclosure of such information to be modest in the absence of pricing information.

[501] *But see supra* note 499.

resulting in capital formation benefits for such issuers.

Finally, in line with the discussion in Section V.B.4 above, the amendments may affect competition. Decreasing the ability of insiders and issuers to trade on MNPI will weaken their competitive edge in trading, promoting competition among other investors in the market for the issuer's shares. A lower risk of an insider with a significant private information advantage trading the issuer's shares will strengthen the incentive of other market participants to trade those shares and compete in gathering and processing information about the issuer. Disclosure of insider trading policies and procedures will also enable investors to access and compare insider trading policies and procedures across issuers, potentially enhancing issuers' incentives to compete in, and establish a reputation for, having strong governance practices in the area of insider trading.

To the extent that the disclosure requirements impose a fixed cost on issuers, they would have a negative competitive effect on smaller issuers subject to the amendments and issuers that do not already provide disclosure regarding insider trading policies and procedures as well as Rule 10b5–1 and non-Rule 10b5–1 trading arrangements of their officers and directors. The final amendments defer by six months the date of compliance with the additional disclosure requirements for SRCs, [502] potentially mitigating some of the adverse competitive effects of the amendments. The Item 408(a) disclosure requirements will not apply to FPIs, potentially placing them at a relative competitive advantage to domestic filers.[503] With that exception, because the disclosure amendments will apply broadly across domestic public companies, generally, we do not anticipate it to result in meaningful competitive disparities in the labor market for executive talent.[504]

All of the effects described above will be smaller to the extent that some issuers already provide disclosure regarding their insider trading policies and procedures and the trading arrangements of their officers and directors today.

5. Reasonable Alternatives

The amendments require quarterly disclosure related to trading arrangements of officers and directors and disclosure of issuers' insider trading policies and procedures, if any, as an exhibit to their annual reports, proxy statements, and information statements. As an alternative, we could modify the scope and granularity of the required disclosure of officer and director trading arrangements or insider trading policies and procedures. The alternatives of expanding (narrowing) the scope of the disclosures required by new Item 408 could potentially provide greater (lesser) detail to investors, enabling better (less) informed investment decisions and more (less) accurate assessment of the risk of the use of MNPI for informed trading through trading plans compared to the amendments. However, the alternative of expanding (narrowing) the scope of the disclosure could also increase (decrease) disclosure costs (discussed in greater detail in Section V.C.3 above) compared to the amendments. As another alternative, we could permit the Item 408(b) requirement to be satisfied by posting the insider trading policies and procedures on the issuer's website, as suggested by some commenters.[505] Compared to the proposal, this approach could marginally ease compliance for issuers that prefer to post the material on their website rather than file it as an exhibit. However, compared to the proposal, this alternative would marginally increase investor effort required to access this information as the disclosure (including historical versions of the policies and procedures) would no longer be available online through EDGAR, and investors would not be able to follow a hyperlink directly to the EDGAR filing exhibit.

As another alternative to the quarterly disclosure related to trading arrangements, we could require a different frequency of disclosure. Requiring more (less) frequent disclosure under Item 408(a) would provide timelier (less timely) information to investors about trading arrangements but also impose higher (lower) costs on issuers and insiders. A more detailed discussion of the benefits and costs of the Item 408(a) disclosure is included in Sections V.C.2 and V.C.3 above.

As another alternative to the quarterly disclosure requirement, we could narrow its scope to include only Rule 10b5–1 trading arrangements, consistent with the suggestions of some commenters.[506] Under this alternative, officers and directors with non-Rule 10b5–1 trading arrangements would not incur the costs of the amendments (discussed in detail in Section V.C.3 above). However, investors would receive less information about their non-Rule 10b5–1 trading arrangements compared to the amendments. This effect on investors would be more pronounced in cases where officers and directors forgo Rule 10b5–1 trading arrangements in favor of non-Rule 10b5–1 trading arrangements as a result of the potential increased costs and complexity of Rule 10b5–1 trading arrangements under the amendments.[507]

As another alternative to the quarterly disclosure requirement, we could narrow or expand the scope of information required to be disclosed about trading arrangements as suggested by some commenters.[508] For instance, we could only require the disclosure of the dates of adoption or termination of the trading arrangement (and not require disclosure of the plan duration or the number of shares to be traded under the plan) or only require disclosure of the date of trading arrangement adoption. Alternatively, we could expand the scope of information required to be disclosed to include price terms of the trading arrangement, in line with the proposal. Under the alternative of narrowing (expanding) the scope of the information required to be disclosed, issuers that prepare the Item 408(a) disclosure, as well as officers and directors with trading arrangements subject to Item 408(a), would also incur

[502] Based on staff review of EDGAR filings for calendar year 2021, approximately 3,900 of the filers subject to the Item 408(a) amendments and 3,200 of the filers subject to Item 408(b) amendments are SRCs and thus will be eligible for the extended compliance date under the amendments.

[503] FPIs that file annual reports on Form 20–F will be subject to requirements similar to Item 408(b). Further, FPIs listed on U.S. exchanges will remain subject to insider trading laws and exchange listing standards.

[504] We do not expect significant effects on the labor market competition for executive talent between public and private companies. While the new disclosures will increase costs for public companies and, indirectly, their officers and directors, these amendments are likely to have only a marginal effect on the overall tradeoff of being an officer or director at a public company (including the liability risk and costs of public scrutiny of the insider's holdings, trades, and other actions).

[505] *See supra* notes 246 and 247.

[506] *See supra* note 222.

[507] Some commenters indicated, however, that Item 408(a) disclosure of non-Rule 10b5–1 trading arrangements would not be informative to investors. *See, e.g.,* letters from Cleary, Cravath, Shearman, and Simpson. While we agree that trades under such plans are subject to Section 16 reporting, Item 408(a) would require information about key material terms of such plans that cannot be obtained from examining Section 16 reports alone. Further, although non-Rule 10b5–1 officer and director trading arrangements by definition do not meet the conditions of the Rule 10b5–1(c)(1) affirmative defense, Item 408(a) disclosure of such plans can provide valuable additional insight to investors about the future trading plans of officers and directors (which, similar to Rule 10b5–1 plans can also be informative about officers' and directors' outlook on the issuer) and potentially inform investment decisions.

[508] *See supra* notes 219 through 221.

lower (higher) costs (discussed in detail in Section V.C.3 above), compared to the amendments. Specifically, narrowing (expanding) the scope of the disclosure under Item 408(a) could decrease (increase) information spillovers to investors and other market participants and potentially decrease (increase) the likelihood of unfavorable price movement based on such disclosure prior to the officer's or director's own trades, compared to the amendments. In turn, narrowing (expanding) the scope of the Item 408(a) disclosure could decrease (increase) the information benefits of the disclosure to investors, compared to the amendments. The described effects may be attenuated if officers or director trades under the trading arrangements subject to the Item 408(a) disclosure are driven mainly by liquidity rather than information considerations.

Item 408(a) and Item 408(b)(1) disclosures will be required to be tagged using a structured data language (specifically, Inline XBRL). Alternatively, we could forgo the tagging requirement (consistent with the suggestion of one commenter [509]) or narrow its scope, such as to cover only quarterly Item 408(a) disclosures. This alternative would provide incremental compliance cost savings for issuers, who would not be required to select, apply, and review Inline XBRL tags for the disclosure of whether they have insider trading policies and procedures in annual reports and proxy and information statements. Such cost savings, however, would likely be low given the very limited number of Inline XBRL tags that are expected to be needed to tag the new disclosures. This alternative would also remove the informational benefits to investors that would accrue from facilitating retrieval of such disclosures across issuers and time periods, compared to the amendments.

Item 408(a) disclosure requirements will only apply to domestic filers. Disclosure requirements regarding insider trading policies and procedures, however, will apply to both domestic filers (through Item 408(b)) and FPIs that file Form 20–F.[510] As an alternative, we could exempt Form 20–F filers from this disclosure requirement, as suggested by some commenters.[511] Generally speaking, such an exemption would eliminate the direct and indirect costs of the rule (as described in detail in Section V.C.3 above) for FPIs. Exempting Form 20–F filers also would decrease the amount of information available to investors about the insider trading incentives and policies and procedures at such issuers, potentially limiting investors' ability to make informed decisions with respect to such issuers. This exemption also could lead to incrementally greater competitive disparities due to the higher compliance burden of domestic issuers with respect to this requirement.

As another alternative, we could extend requirements similar to Item 408(a) requirements to FPIs that file annual reports on Form 20–F. Because such FPIs do not have a quarterly reporting obligation equivalent to a Form 10–Q, the incremental benefit of this alternative could be relatively more modest due to the less timely disclosure of information on trading arrangements, if it were required to be disclosed in annual reports.

In addition, as another alternative, we could exempt SRCs from the Item 408(a) requirement, as suggested by one commenter, [512] rather than defer the compliance date for SRCs. Compared to the amendments, this alternative would reduce the costs for SRCs, which may be disproportionately affected by the fixed component of the compliance costs (assuming any of the officers or directors have a trading plan reportable under this Item). However, this alternative also could prevent investors in such issuers from being able to evaluate trading plans and their material terms and potentially result in less informed voting and investment decisions, compared to the amendments.

The amendments to Forms 4 and 5 add a mandatory Rule 10b5–1 checkbox and require the disclosure of the date of Rule 10b5–1 plan adoption. As an alternative, we also could require this type of disclosure on Forms 4 and 5 for trades made under non-Rule 10b5–1 trading arrangements. This alternative could provide investors with more comprehensive information and greater transparency about trades under a broader range of trading arrangements. However, to the extent that non-Rule 10b5–1 trading arrangements can take various forms, requiring trades under such trading arrangements to be identified on Forms 4 and 5 separately from trades conducted without a trading arrangement under this alternative may provide less meaningful information to investors.[513]

D. Additional Disclosure of the Timing of Option Grants and Related Company Policies and Practices

The Commission is adopting new Item 402(x) of Regulation S–K to enhance the accessibility of information and transparency regarding issuers' grants of stock options, SARs, or similar option-like instruments before or after the filing of a periodic report, or the filing or furnishing of a current report on Form 8–K that contains MNPI. As proposed, the amendments would have applied to grants made during a period beginning 14 calendar days before and ending 14 calendar days after the MNPI filing (to include periodic reports on Forms 10–K or 10–Q, issuer share repurchases, or current reports on Form 8–K that contain MNPI). We are adopting the narrative disclosure requirement as proposed and the tabular disclosure requirement with several modifications. In a change from the proposal, partly in response to commenter feedback, [514] the amendments sharpen the focus of the new table on the data that can help investors evaluate the potential presence of spring-loading as well as tailor the trigger requirements and shorten the coverage window. The new table will apply only to grants made within a period starting four business days before and ending one business day after a triggering event. Further, the final rules remove from the scope of triggering events the share repurchase triggering event and provide that Forms 8–K disclosing the grant of a material new option award under Item 5.02(e) do not trigger this disclosure.[515] These changes are consistent with the suggestions of commenters to shorten the reporting window for the tabular disclosure and remove share repurchase as a triggering event.[516]

We believe that the modified coverage window will make the tabular disclosure more useful to investors

[509] *See supra* note 320.

[510] FPIs will be required to provide analogous disclosure in their annual reports pursuant to new Item 16J to Form 20–F.

[511] *See supra* note 249.

[512] *See* letter from MD Bar. Based on staff analysis of EDGAR filings for calendar year 2021, we estimate there are approximately 3,900 unique filers with annual reports on Form 10–K and/or quarterly reports on Form 10–Q or amendments thereto (excluding asset-backed securities issuers and registered investment companies, which will not be subject to the amendments).

[513] *See* letters from Cravath and Cleary (noting that the non-Rule 10b5–1 trading arrangement checkbox would not be informative to investors).

[514] *See supra* note 297.

[515] In a change from the proposal, issuer share repurchases will not trigger this disclosure, consistent with the suggestion of one commenter. *See* letter from Sullivan (noting that many issuers engage in repurchase activity regularly and, in some instances, daily, and that this requirement could pose a substantial burden on issuers without any potential benefit to investors). This change is expected to decrease the costs of the amendments relative to the proposal.

[516] *See, e.g.,* letters from Davis Polk and Cravath.

compared to the proposal, as discussed in Section II.C.3 above. By eliminating almost all of the post-filing period from the coverage window included in the proposal, the final amendments significantly reduce the potential noise in the tabular disclosure due to awards made after the release of MNPI intended as an effort to avoid spring-loading, rather than a strategic attempt at bullet-dodging.[517] Nevertheless, by extending the coverage window to one business day after the filing date, the final amendments account for potential spring-loading in cases where it may take the market an additional trading day to incorporate information in the triggering filing into share prices (*e.g.,* in the presence of MNPI filings made after trading hours [518] or by companies with a less liquid market for their shares). The asymmetry in the modified coverage window is intended to balance the costs to companies against the different likelihood of a grant being strategic (as opposed to a result of a general attempt to avoid grants while in possession of MNPI) if a grant is made before versus after the MNPI release. Overall, the modified coverage window will give investors easier access to data about option grants in the days leading up to and immediately following the MNPI filing. While we recognize that it may capture some grants made on the date following the triggering filing in an attempt to avoid spring-loading, such grants should generally be discernible by investors from the provided disclosure [519] and, on balance, this coverage window is more appropriately tailored, relative to the proposal. Overall, tailoring the tabular disclosure requirement in these ways is expected to enhance the benefits of the resulting disclosure to investors by improving its usability and including fewer details that could offer little information value for investors. These changes also should decrease the costs of the disclosure for issuers and affected NEOs compared to the proposal.

Finally, we are combining the two columns that would have reported the market value of the underlying securities on the trading days before and after the MNPI filing, respectively, into a single column with the percentage change in the market value of the underlying securities between the trading day before and after the MNPI filing. Compared to the proposal, this column is expected to incrementally make it easier for investors to understand the impact that spring-loading may have on the value realized by the NEOs, and somewhat condense the size of the new tabular disclosure without a meaningful effect on the cost to companies as the percentage change can be readily calculated from the market values in dollar terms for the two days.

1. Baseline and Affected Parties

New Item 402(x) will apply to filers of annual reports on Form 10–K and proxy and information statements.[520] During calendar year 2021, we estimate that there were approximately 6,300 affected filers.

Existing Item 402 requires disclosure of option grant dates, thus potentially enabling investors today to compare the timing of grant dates and historical filings of a periodic report or another EDGAR filing that contains MNPI. The Commission provided interpretive guidance regarding option grants in the 2006 Executive Compensation Release.[521] In considering the timing of option grants close in time to the release of MNPI, the Commission explained in the release that, if the issuer has such a program, plan, or practice, the issuer should disclose that the board of directors or compensation committee may grant options at times when the board or committee is aware of MNPI.[522] To the extent that the existing disclosures of issuers that allow the timing of option grants around MNPI reflect such guidance, the incremental effects of a mandate to disclose policies and procedures related to option grants close in time to MNPI may be small.

Some studies have noted that the regulatory reforms of the early and mid-2000s have led to the decline, if not disappearance, of questionable option timing practices.[523] However, there is evidence that strategic option grant timing persists.[524] For example, one study, which examined 4,852 scheduled CEO stock option grants from 2007 through 2011, found that managers accelerate bad news before a grant and delay good news until after a grant, consistent with self-interested attempts at strategic option grant timing that maximizes their value to the CEO, and that ''market reactions to SEC Form 8–K filings (which report material corporate events) tend to be negative in the months immediately before a scheduled CEO option grant and positive in the months after the grant.'' [525] Executives also appear to move earnings from the pre-grant period to the post-grant period, such as by changing a firm's accounting choices (*e.g.,* accruals management) and perhaps even by timing investments (*e.g.,* real earnings management).[526] Another study concluded that spring-loading partly replaced the disappearing practice of option backdating.[527] A different study documented spring-loading around stock splits but does not

[517] *See infra* note 564.

[518] *See, e.g.,* Henk Berkman & Cameron Truong, *Event Day 0? After-Hours Earnings Announcements,* 2009 **J. ACC. RES.** 71.

[519] For example, an investor reviewing the disclosure is unlikely to be concerned about grants made immediately after the triggering filing representing bullet dodging if the information in the triggering filing was not negative in nature or was not followed by much stock price movement or was instead followed by a share price increase.

[520] Current filing requirements of Form 10–K permit filers to incorporate by reference executive compensation disclosures from a proxy or information statement involving the election of directors. *See supra* note 252. These estimates exclude registered investment companies and asset-backed securities issuers, which are not subject to the amendments.

[521] *See* 2006 Executive Compensation Release, *supra* note 277.

[522] *Id.*

[523] *See* Randall Heron & Erik Lie, *What Fraction of Stock Option Grants to Top Executives Have Been Backdated or Manipulated?,* 55 Mgmt. Sci. 513 (2009); M. P. Narayanan & H. Nejat Seyhun, *The Dating Game: Do Managers Designate Option Grant Dates to Increase Their Compensation?,* 21 Rev. Fin. Stud. 1907 (2008); Lucian Bebchuk et al., *Lucky CEOs & Lucky Directors,* 65 J. Fin. 2363 (2010); Linxiao Liu et al., *Stock Option Schedules and Managerial Opportunism,* 41 J. Bus. Fin. Acct 652 (2014); Rik Sen, *The Returns to Spring-Loading,* 2008 N.Y.U. (Working Paper) (2008).

[524] *See Insider Trading and Stock Option Grants: An Examination of Corporate Integrity in the Covid-19 Pandemic,* Memo from FSC Majority Staff to Members, Committee on Financial Services, Sept. 17, 2020, *available at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba16-20200917-sd002.pdf,* at pp. 2–5.

[525] *See* Robert M. Daines et al., *Right on Schedule:* CEO Option Grants and Opportunism, 53 J. Fin. Quant. Anal. 1025 (2018) (finding that: ''some CEOs have manipulated stock prices to increase option compensation, documenting negative abnormal returns before scheduled option grants and positive abnormal returns afterward;'' ''document[ing] several mechanisms used to lower stock price, including changing the substance and timing of disclosures;'' and further contend[ing] that such opportunism ''distorts stock prices, leading to capital misallocation, and may dissipate firm value if executives postpone valuable projects.'').

[526] *Id.; see also* David Aboody & Ron Kasznik, *CEO Stock Option Awards and the Timing of Corporate Voluntary Disclosures,* 29 **J. ACCT. ECON.** 73 (2000) (focusing on CEO option awards with fixed award schedules and showing that ''CEOs make opportunistic voluntary disclosure decisions that maximize their stock option compensation,'' based on changes in share prices, analyst earnings forecasts, and management earnings forecasts); Keith W. Chauvin & Catherine Shenoy, *Stock Price Decreases Prior to Executive Stock Option Grants,* 7 J. Corp. Fin. 53 (2001) (finding, in a May 1991 to Feb. 1994 sample covering 313 CEOs, ''a statistically significant abnormal decrease in stock prices during the 10-day period immediately preceding the grant date'' and concluding that ''[e]xecutives who expect to be granted stock options have the incentive, opportunity and ability to affect the exercise price with their inside information'').

[527] *See* Giulian Bianchi, *Stock Options: From Backdating to Spring Loading,* 59 Q. Rev. Econ. Fin. 215 (2016) (examining data through 2011).

disaggregate the 1992–2012 period into pre- and post-2006 sub–periods.[528]

2. Benefits

As discussed in Section II.C above, certain practices related to the timing of executive compensation option grants may raise investor concerns about the use of MNPI. Improved disclosure may potentially enhance the transparency of such compensation awards (informing investment and voting decisions) and potentially mitigate the economic costs of the associated incentive distortions, consistent with the suggestions of commenters that supported the proposed amendments.[529]

The amendments will make information that investors may seek to help them identify the occurrence and effects of potential spring-loading more salient and readily accessible. Spring-loading increases the effective economic value of the options granted to the executive upon MNPI becoming public.[530] Holding the number of the granted options and the policy to grant options with the exercise price equal to the current observable market price (*i.e.,* ''at-the-money'') constant, the executive would effectively receive a higher compensation award than if the timing of option grants were completely independent of MNPI releases.[531] Further, lowering an option's exercise price through timing of an option award around an MNPI release affects the sensitivity of the awarded options to changes in the issuer's share price.[532]

Some have argued that these practices may be the result of an optimal compensation policy.[533] Whether such practices constitute an optimal compensation policy or not, a lack of transparency about such compensation awards may limit investors' ability to fully gauge the key terms of compensation arrangements and their implications for executives' incentives and thus, potentially, firm value, and may limit shareholders' ability to make informed voting decisions. The amendments incrementally improve the accessibility of information about option grant timing practices. Item 402(x) will require additional disclosure regarding practices related to the awards of stock options, SARs, and similar option-like instruments to provide a more comprehensive picture of the timing of these awards relative to MNPI releases. New Item 402(x)(1) will require issuers to provide disclosure of their policies and procedures related to timing of these awards in relation to the disclosure of MNPI, which is not currently required. The tabular disclosure requirement of new Item 402(x)(2) will make information about such awards that are made shortly before MNPI releases more readily available to investors.

New Item 402(x)(3) will require issuers to submit this disclosure in Inline XBRL. This requirement is expected to offer incremental benefits to investors by facilitating automated extraction of the information for purposes of aggregation, analysis, and comparison (across time periods and filers), potentially enabling more informed investment and voting decisions. Even though investors can fairly readily extract the dates of MNPI disclosures and share prices around such MNPI disclosures respectively from EDGAR and third-party sources today, because option grant information in proxy statement disclosures does not use a structured data language, extracting such information from HTML filings for a large set of issuers requires additional cost and effort.[534]

We recognize that there may be various reasons, besides strategic spring-loading, for option grants within the specified number of days before disclosure of MNPI. Nevertheless, we believe that making this data more accessible to investors will help them analyze whether spring-loading is a concern as part of a comprehensive review of the various elements of compensation practices. Investors can then compare this information with the executive's on-the-job performance in assessing the optimality of executive compensation, which, will, on the margin, benefit investors by equipping them to make better informed voting and investment decisions. Combined with the narrative disclosure of the applicable policies, the tabular disclosure also may incrementally help to alleviate information asymmetries between issuers and investors with respect to this aspect of executive compensation practices and better inform investors about executives' incentives. Besides contributing to better informed voting and investment decisions, the disclosure may facilitate more informed shareholder say-on-pay votes and votes in director elections.[535]

Another potential benefit of the disclosure is that, to the extent that strategically timed option grants were

[528] *See* Erik Devos et al., *CEO Opportunism? Option Grants and Stock Trades around Stock Splits,* 60 J. Acct. Econ. 18 (2015). However, companies may adjust exercise prices to account for the effect of stock splits.

[529] *See supra* note 293.

[530] Past studies have focused primarily on options. In this context, the same economic effects can be expected in the case of awards of SARs and similar instruments. For purposes of this analysis, the term ''option'' includes stock options, SARs and similar instruments with option-like features.

[531] *See* David Yermack, *Good Timing: CEO Stock Option Awards and Company News Announcements,* 52 J. Fin. 449 (1997); *see also* Iman Anabtawi, *Secret Compensation,* 82 N.C.L. Rev. 835 (2004); Alex Edmans et al., Chapter 7—Executive Compensation: A Survey of Theory and Evidence, Handbook of the Econ. of Corporate Governance 383–539 (2017). They note that the use of ''stealth compensation'' is a ''challenge for the shareholder value view'' and that, in most cases, ''[i]f executive pay were efficiently designed and competitive, there would be no need to disguise it from shareholders... hiding these compensation elements from shareholders is suggestive of rent extraction.'' They further note that ''[s]tock options can be a means of camouflaging pay if directors or shareholders do not fully understand their cost'' and that opportunistic option timing practices ''are correlated with weak corporate governance.''

[532] Spring-loading can cause a call option to be in-the-money when it would have otherwise been at-the-money, assuming favorable MNPI is about to be released. Everything else equal, the value of an in-the-money call option has a higher sensitivity to the share price than the value of an at-the-money call. The effects of such changes depend on the objectives of the overall compensation package with respect to inducing optimal executive incentives and the role of option and SAR awards in this package.

[533] *See, e.g.,* Erik Devos et al., *supra* note 528 (stating that ''it is not clear whether shareholders are necessarily harmed by this apparent option grant timing, as it is possible that this is just another way by which the [board of directors] attempts to reward and retain a high performing CEO''); *see also Speech by SEC Commissioner: Remarks Before the International Corporate Governance Network 11th Annual Conference by Commissioner Paul S. Atkins,* U.S. Securities and Exchange Commission, July 6, 2006, *available at https://www.sec.gov/news/speech/2006/spch070606psa.htm. But see supra* note 531.

[534] Daily market prices can be obtained from a wide variety of sources, including commercial databases that provide such data for a subscription fee. Some commercial databases extract option grant information from proxy statements and provide it for a subscription fee, but they tend to focus their coverage on large companies. To obtain comprehensive option grant information for all NEOs of mid-size and small companies, investors would presently need to analyze or ''scrape'' (apply a computer algorithm to extract information from) a large number of proxy statement filings in the HTML format.

[535] *See, e.g.,* Glass Lewis, *2020 Proxy Paper Guidelines: An Overview of the Glass Lewis Approach to Proxy Advice—United States,* 12–13, 41–42 (2020), *available at https://www.glasslewis.com/wp-content/uploads/2016/11/Guidelines_US.pdf. See also, e.g.,* Anabtawi, *supra* note 531 (stating that ''under state law fiduciary duty principles, a manager who receives stock options while in possession of inside information that will raise the stock price when it is later released discharges her fiduciary duty of loyalty through full disclosure to and ratification by a disinterested board. It is then the board's responsibility, pursuant to its fiduciary duty of disclosure, to inform the corporation's shareholders of the favorable timing of the grant, if it disseminates to them information about the company's executive compensation arrangements''); Matthew E. Orso, *'Spring-Loading' Executive Stock Options: An Abuse in Need of a Federal Remedy,* 53 St. Louis U. L. J. 629 (2009); Jonathan Tompkins, *Opportunity Knocks, But the SEC Answers: Examining the Manipulation of Stock Options Through the Spring-Loading of Grants and Rule 10b–5,* 26 Wash. U. J. L. & Pol'y 413 (2008).

not the result of a value-maximizing compensation policy but rather an outcome of agency conflicts (such as executives' attempts to extract additional compensation without drawing investor scrutiny to the full amount of such compensation),[536] and to the extent that companies forgo such grants in anticipation of the additional disclosure, the disclosure requirement may improve shareholder value. However, if the extra compensation is currently optimally awarded, forgoing such compensation could negatively impact shareholder value.[537]

Further, to the extent that the practice of strategically timed option grants in some instances created incentives for executives to change the timing and content of MNPI disclosures around option grant dates in an attempt to increase the economic value of compensation awards,[538] the amendments may partly mitigate such incentives. In those instances, the indirect effect of the amendments may improve the information content, timeliness, and quality of disclosures and result in more efficient share prices and better informed voting and investment decisions.

We recognize that several factors may potentially limit the magnitude of these economic benefits. First, the economic benefits of the amendments are likely to be modest because the information required by the new tabular disclosure can be obtained from other sources today. In particular, the benefits of the new tabular disclosure will be limited by the fact that investors today can research and assess, based on historical option grant dates already required to be disclosed under Item 402, how grant timing relates to EDGAR filings containing MNPI and to share price changes around such filings (information that is publicly accessible but not all found in one location), as indicated by various commenters.[539] The new disclosure will aggregate this information in a more readily accessible tabular format in one location, potentially incrementally lowering investor search costs and increasing investor awareness of option grant timing around MNPI. The Inline XBRL tagging requirement also is expected to further facilitate automated extraction of the information for purposes of aggregation, analysis, and comparison across time periods and filers.

Second, the discussed benefits may also be limited to the extent that issuers are already disclosing similar information today.

Third, the discussed benefits may be attenuated if some investors find the new tabular disclosure to be of limited use. For example, some investors may find the tabular disclosure difficult to parse for issuers with multiple filings containing MNPI and option awards. As another example, investors may find that the information value of the disclosure is diminished due to confounding events that occur between the option grant date and the dates of MNPI filings within the reporting window; however, the considerable narrowing of the reporting window from the proposal should partly alleviate this potential limitation. Investors in issuers with thinly traded securities may find that the percentage change in the market value of the underlying securities on the trading day following the MNPI disclosure, relative to the trading day before the MNPI disclosure, may not fully capture the effects of the MNPI disclosure. Some other investors may find that the information value of the disclosure is diminished due to market- or sector-wide events that may affect the issuer's share price on some MNPI filing dates, notwithstanding the substance of the MNPI that was disclosed. Further, some issuers may issue these awards shortly prior to MNPI filings due to pure coincidence rather than strategic reasons, as noted by some commenters.[540] For instance, several commenters noted that the timing of equity awards may be based on a meeting schedule established several months in advance without consideration of disclosure of MNPI.[541] Further, issuers that routinely award options on a specified schedule (*e.g.,* monthly or quarterly) may have grants within the reporting window of the new disclosure simply due to their obligations to file quarterly reports or to report current events on Form 8–K.[542]

New Item 402(x)(1) will require annual disclosure of policies and practices related to option grant timing close in time to the release of MNPI and will offer new information that is not presently available to investors. The disclosure of the presence or absence of such policies and practices may inform investment and voting decisions. The anticipation of public disclosure may also lead issuers to adopt policies and practices disallowing option grants around MNPI, leading to the benefits discussed above. To the extent such disclosures already are provided by issuers in light of the 2006 Executive Compensation Release,[543] such indirect benefits incremental to the amendments would be diminished.

A few other potential considerations may limit the economic benefits of the new disclosures (both in Items 402(x)(1) and 402(x)(2)). First, shareholders of some issuers may view the described option granting practices as an optimal compensation policy set by the board.[544] Second, the discussed benefits of the amendments are expected to be modest at issuers that rely less on stock options and primarily or exclusively grant restricted stock or do not grant equity-linked compensation.[545] Third,

[536] One article notes that ''[t]here are, of course, constraints that check the extent to which the level and structure of executive compensation can deviate from what would be optimal for shareholders. . . To circumvent such pressures, managers will want to enhance their compensation as discreetly as possible. By 'camouflaging' elements of their pay, managers can maximize their compensation while minimizing adverse reaction. Timing option grants is an especially attractive way to enhance executive compensation both because it is difficult to detect and because it has generally eluded attention.'' *See, e.g.,* Anabtawi, *supra* note 531; *see also, e.g.,* Bianchi, *supra* note 527 (stating that ''[o]pportunistic option timing is found to be associated with weaker corporate governance. Indeed, practices such as backdating and spring loading raise governance concerns. . . Eventually, the opportunistic option timing casts doubt on the efficacy of incentives to address the principal agent models.''); *see supra* note 294.

[537] *See, e.g.,* Tompkins, *supra* note 535; *see also supra* note 533. *But see supra* note 531.

[538] *See supra* note 526 and accompanying and following text.

[539] *See supra* note 298.

[540] *See supra* note 299.

[541] *See supra* note 300. Nevertheless, even if the grant schedule dates are set in advance, to the extent that some investors may be concerned about strategic management of MNPI disclosures around such pre-scheduled grants, the tabular disclosure may help investors more readily access information as they evaluate such occurrences. *See* Daines et al. (2018), *supra* note 525.

[542] *See supra* note 301.

[543] *See* 2006 Executive Compensation Release, *supra* note 277.

[544] *See supra* notes 533 and 537 and accompanying and following text. *But see supra* note 531.

[545] The proportion of companies that grant options to executives has declined substantially after the introduction of FAS 123R in 2004 (now codified in Accounting Standards Codification Topic 718). *See, e.g., Prevalence of Options Decreases as Companies Tie Awards to Performance,* Equilar (Aug. 23, 2018), *available at https://www.equilar.com/press-releases/103-prevalence-of-options-decreases-as-companies-tie-awards-to-performance;* Aubrey Bout et al., *S&P 500 CEO Compensation Increase Trends,* 2020 *Harv. L. School Forum Corp. Gov.* (Feb. 11, 2020), *available at https://corpgov.law.harvard.edu/2020/02/11/sp-500-ceo-compensation-increase-trends-3/.* Based on the analysis of Execucomp data for fiscal year 2021 (version retrieved on June 27, 2022), approximately 34 percent of companies reported option grants. Execucomp data covers S&P 1500 companies and thus may not be representative of option compensation at smaller companies. Small business issuers and registrants other than small business issuers were required to comply with FAS 123R beginning with the first reporting period of the first fiscal year beginning on or after Dec. 15, 2005 and June 15, 2005, respectively. *See Amendment to Rule 4–01(a) of Regulation S–X*

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the effects of the amendments may be modest to the extent that other factors already deter spring-loading (for example, best practices implemented by the compensation committee or generally robust internal corporate governance mechanisms). Finally, the effects of the amendments on executives may be small if issuers adjust compensation to offset the decline in spring-loading under the amendments (*e.g.,* by changing option terms, the allocation of compensation between cash, options, and restricted stock, or the overall amount of compensation).

3. Costs

We recognize that the amendments to Item 402 requiring additional disclosure of the timing of option awards and related corporate policies will impose certain costs on issuers, as suggested by various commenters.[546] The amendments will result in direct compliance-related costs for affected filers of compiling the information required in amended Item 402 for inclusion in the annual report or proxy or information statement. Because issuers either already provide such information (option grant information and dates) for other disclosures or can readily obtain the information (daily share prices and dates of EDGAR filings), the direct costs are expected to be modest. We acknowledge that issuers will incur some direct costs of aggregating such existing information into the tabular format. Further, issuers will incur compliance-related costs to assess which of the filings from the reporting period contained MNPI and thus should be a part of the tabular disclosure. These direct costs of complying with the new tabular disclosure may be potentially mitigated to the extent that issuers can leverage existing systems and recordkeeping practices used to prepare the plan-based table disclosure required today, as well as internal records on the dates of other disclosures filed on EDGAR with the Commission.

Issuers will incur compliance costs of structuring the Item 402(x) disclosure in Inline XBRL. Such costs will be higher for filers with more option grants subject to the new disclosure. However, because filers subject to the amendments already are or will soon be subject to other structured disclosure requirements (*e.g.,* Inline XBRL requirements for financial statement information and cover page information in certain filings), the incremental cost of submitting the compensation disclosure using a structured data language will likely be relatively modest.[547] We expect that the direct costs of Inline XBRL tagging of the new disclosure may be potentially mitigated to the extent that issuers subject to the amendments, which already utilize Inline XBRL tagging to comply with other filing obligations, may leverage existing systems or only incur an incremental cost when utilizing outside service providers to tag the new disclosures in proxy statements.

The amendments also may result in indirect costs for issuers and executives. Disclosure of option grant timing practices could result in reputational harms for some issuers or individual executives, such as unfavorable say-on-pay votes, if investors perceive such practices as inconsistent with shareholder value maximization and optimal compensation policies. Outside scrutiny of this disclosure may cause issuers to forgo such option grant timing practices. For issuers at which such practices arose from efforts to implement an economically optimal compensation policy for issuers and executives,[548] deviating from such a policy could result in less optimal compensation. Some commenters also indicated that these disclosures may mislead investors by causing them to infer a causal link between option awards and the release of MNPI where none exists.[549] The shorter reporting window for the tabular disclosure in the final amendments and removal of the share repurchase triggering event are expected to substantially alleviate this concern. At issuers that forgo option grant timing but do not change other compensation terms to offset it, executives could experience smaller, more volatile compensation awards. However, it is important to note that the final rules do not require a particular option grant timing policy. Rather, the amendments aim to incrementally improve transparency about such compensation awards, enabling investors to more fully gauge the key terms of compensation arrangements and their implications for executives' incentives and thus, ultimately, firm value.

Several considerations would mitigate the potential indirect costs of the disclosure requirement to issuers. Given that this disclosure would incrementally improve access to information about option grant timing practices, in cases where such practices are optimal from the standpoint of shareholder value, issuers likely would not make inefficient changes to those compensation practices as a result of the improved investor access to such information under the new rules (however, the direct costs of compliance with the rule, discussed above, may potentially result in inefficient compensation changes). Issuers for which compensation awards timed in this manner are consistent with shareholder value maximization should be able to readily preserve the economic effects of such compensation for executives, either by continuing their existing compensation practices or by altering the size or other terms of the award to ensure a similar value of compensation. Moreover, issuers may be able to use other, readily available means to adjust compensation terms to achieve a similar outcome.[550]

As discussed in Section V.D.2 above, several factors are expected to potentially limit the incremental impact of the new tabular disclosure and thus the magnitude of the discussed indirect economic costs. First, the indirect costs of the amendments likely will be modest due to the availability of the information subject to the new disclosure requirement in other sources today, as indicated by various commenters.[551] Second, the discussed indirect costs may also be reduced to the extent that the newly required information is already contained in compensation disclosures. Third, the discussed indirect costs may be partly attenuated to the extent that some investors may find the tabular disclosure to be too extensive or difficult to parse for issuers with multiple MNPI filings and option grants for different NEOs.

Further, as discussed in Section V.D.2 above, some investors may incorrectly interpret information in the disclosure as evidence of spring-loading, which may in turn increase indirect costs for issuers and insiders. Such incorrect interpretations may happen due to confounding events between the option grant date and MNPI disclosure dates within the reporting window (with less potential for confounding with a shorter window); market prices being slow to adjust to the MNPI disclosure (*e.g.,* at some issuers with thinly traded securities); market- or sector-wide

Regarding the Compliance Date for Statement of Financial Accounting Standards No. 123 (Revised 2004), Share-Based Payment, Release No. 33–8568 (Apr. 15, 2005) [70 FR 20717 (Apr. 21, 2005)].

[546] *See supra* note 297.

[547] *See supra* note 496.

[548] *See supra* notes 533 and 537. *But see supra* note 531.

[549] *See supra* note 540.

[550] Issuers could lower the exercise price, increase the number of options granted, decrease the proportion of options in overall pay, increase overall pay, modify performance-based or other compensation terms, or some combination of those.

[551] *See supra* note 539.

events affecting market prices on MNPI disclosure dates; or coincidental nature of option grants close in time with MNPI disclosures (*e.g.,* with frequent or routine grants).[552]

The above discussion has focused on the tabular disclosure of new Item 402(x)(2). In addition, new Item 402(x)(1) mandates disclosure of policies and practices related to option grant timing around MNPI, which is not presently required. While issuers are likely to have information readily available about policies and practices related to option grant timing, they will likely incur some direct compliance costs to compile and prepare that information for public disclosure. Issuers may also incur indirect costs of this disclosure. Specifically, issuers with policies and practices that allow strategic option grant timing may incur reputational costs of such disclosure. Further, the anticipation of public disclosure may lead such issuers to adopt policies and practices disallowing option grants around MNPI, which, in some cases may result in a deviation from optimal compensation policies.[553] Such changes may also impose costs on executives, to the extent other compensation terms are not adjusted in an offsetting manner, as described above. To the extent that issuers already provide disclosures of policies and procedures related to option grant timing following the 2006 Executive Compensation Release,[554] the costs incremental to the amendments will be lower.

Finally, as discussed in Section V.D.2 above, the overall economic costs of the new disclosures required by Items 402(x)(1) and 402(x)(2) are expected to be more modest to the extent that fewer issuers rely on stock option compensation.[555] Further, the cost to executives of the decline in strategic option grant timing may be lower if other factors already deter such option grant timing (*e.g.,* compensation committee policies or other corporate governance mechanisms) or if issuers make offsetting adjustments to executive compensation (*e.g.,* by changing option terms, the mix of cash, options, and restricted stock, or the amount of compensation).

4. Effects on Efficiency, Competition, and Capital Formation

We expect the disclosures required in new Item 402(x) to incrementally decrease the information asymmetry between insiders and investors about the issuer's option compensation awards and associated policies, resulting in better information about the insiders' incentives that may derive from such option awards. This effect may result in more informationally efficient prices and more efficient allocation of capital in investor portfolios. Greater accessibility to investors of information about the timing of option compensation awards may marginally reduce shareholders' information gathering costs and enable them to make more efficient voting decisions in say-on-pay and director election votes.

To the extent that option spring-loading is inconsistent with shareholder value maximization and the amendments draw market scrutiny to issuers engaged in spring-loading, the amendments may result in a decrease in option spring-loading. In turn, a decrease in spring-loading may weaken insiders' incentives to game corporate disclosures, which may result in potentially timelier and higher-quality disclosures (that enable more informationally efficient share prices and more efficient allocation of capital in investor portfolios).

To the extent that the Item 402 requirements impose a fixed cost on issuers, they will have a negative competitive effect on smaller issuers subject to the amendments, as well as on issuers that do not already disclose policies and practices related to the timing of awards of stock options close in time to the release of MNPI. The final amendments defer by six months the date of compliance with the additional disclosure requirements for SRCs,[556] potentially mitigating some of the adverse competitive effects of the amendments. The disclosure requirements will not apply to FPIs, placing them at a relative competitive advantage to domestic filers.

Because the disclosure amendments will apply broadly across domestic public issuers, generally, we do not anticipate them to result in meaningful competitive disparities in the labor market for executive talent.[557]

The described effects are expected to be attenuated to the extent investors already can infer whether issuers time option awards prior to releases of MNPI based on existing disclosures of option grant dates and other public information. The described effects may also be attenuated to the extent that issuers engaged in option spring-loading already disclose such policies and practices as a result of the 2006 Executive Compensation Release.[558]

5. Reasonable Alternatives

New Item 402(x) includes both a new table with information on individual option grants and a requirement to disclose policies and practices regarding the timing of option awards in relation to the disclosure of MNPI. As an alternative, we could adopt only one of those requirements, which could reduce the costs of disclosure for filers discussed in Section V.D.3 above.[559] However, omitting one of the disclosure requirements would provide investors with less information about option compensation practices, resulting in potentially less informed investment and voting decisions. For example, omitting the tabular disclosure requirement could marginally reduce the salience of information about the actual timing of option grants around MNPI releases and the effects of such timing on the value of granted options in cases where an issuer discloses that it does not have policies restricting option awards around MNPI releases. In turn, omitting the requirement to disclose the issuer's practices and policies regarding the timing of option awards would reduce the amount of information about potential future compensation practices, compared to the amendments. Nevertheless, there is likely to be some substitution between the information benefits of the two requirements, particularly in combination with the existing requirements to disclose grant dates.

New Item 402(x)(2) will require tabular disclosure of awards made during a period starting four business days before and ending one business day after the filing of a periodic report on Form 10–Q or Form 10–K or the filing or furnishing of a current report on Form 8–K that discloses MNPI other than a current report on Form 8–K disclosing a material new option award grant under Item 5.02(e). A typical issuer files or furnishes multiple such reports in a given year and may include multiple option and SAR awards in the new tabular disclosure.[560] As an

[552] *See supra* note 540.

[553] *See supra* notes 533 and 537.

[554] *See* 2006 Executive Compensation Release, *supra* note 277.

[555] *See supra* note 545.

[556] Based on staff review of EDGAR filings for calendar year 2021, approximately 3,200 of the filers subject to the new Item 402(x) requirements are SRCs and thus will be eligible for the extended compliance date under the amendments.

[557] The amendments will not apply to FPIs.

[558] *See* 2006 Executive Compensation Release, *supra* note 277.

[559] *See* letter from Dow (suggesting that the Commission's concerns are sufficiently addressed by the narrative disclosure requirements of proposed Item 402(x)).

[560] During calendar year 2021, the average annual report/proxy statement filer (excluding asset-backed

Continued

alternative, we could use a shorter or longer time period around reports with MNPI during which awards would be subject to the tabular disclosure. A shorter (longer) time period could result in less (more) disclosure and thus incrementally lower (higher) disclosure costs for issuers, compared to the amendments. Because prices may change for reasons other than the release of MNPI when a longer time period is used, pre- and post-filing prices might be more informative for assessing the effects of the MNPI release on the valuation of option awards made during a shorter window around the filing. Shortening (lengthening) the window under these alternatives would reduce (increase) the amount of information aggregated in one location about options granted in proximity to MNPI releases, potentially resulting in marginally less (more) informed investment and voting decisions.

As another alternative, we could further modify the scope of reports that trigger the tabular disclosure, such as by omitting Forms 8–K or limiting it to Forms 8–K that contain Items 1.01 or 2.02, as suggested by some commenters.[561] Narrowing the set of triggers in this manner would reduce the amount of information aggregated in one location about options granted in proximity to MNPI releases,[562] potentially resulting in marginally less informed investment and voting decisions. At the same time, it would reduce the costs incurred by issuers, discussed in Section V.D.3 above.

As another alternative, we could require tabular disclosure of awards made within four business days before and four business after the filing of a periodic report or the filing or furnishing of any Form 8–K that discloses MNPI.[563] Compared to the amendments, this alternative would potentially improve the accessibility to investors of data that can be used to gauge the presence of bullet-dodging as well as spring-loading, rather than primarily focusing on spring-loading.[564] This could incrementally improve the information benefits of the disclosure to investors. However, the improvement in information benefits under this alternative may be small if the additional disclosure introduces considerable noise. For example, if issuers schedule option grants shortly after the disclosure of MNPI in a periodic or current report, specifically because they are least likely to be in possession of MNPI during that time frame, the tabular disclosure would include a considerable number of options that are not granted strategically. In turn, this alternative could increase costs (discussed in detail in Section V.D.3 above), compared to the amendments.

Consistent with other provisions of Item 402, the amendments apply to awards to NEOs. This approach ensures consistency with other existing compensation disclosures and provides information about awards to the subset of executives likely to have MNPI as well as the most influence on the issuer's business decisions. As alternatives, we could limit the disclosure to the CEO or expand it to all executives. The alternative of narrowing (expanding) the set of executives whose awards are subject to the new disclosure requirement would result in lower (higher) disclosure costs but also would result in less (more) information about the timing of option awards and executive incentives, compared to the amendments. These alternatives would also decrease consistency across compensation disclosures.

The amendments require the additional disclosure to be submitted using a structured (*i.e.,* machine-readable) data language. As an alternative, we could require the disclosure but not require the use of a structured data language. Compared to the amendments, this alternative could make it harder for investors to extract the disclosure information, potentially increasing the costs they incur in making investment and voting decisions. However, this alternative also would decrease costs for affected filers (particularly for filers with more option grants subject to the new disclosure), compared to the amendments.

E. Additional Disclosure of Insider Gifts of Stock

The amendments will require the disclosure of insiders' gifts of stock within two business days on Form 4. This amendment is a change from the existing rules that allow a stock gift to be disclosed on Form 5, which is required to be filed within 45 days of the end of the year during which the gift was made. It will result in timelier disclosure of such transactions across all affected insiders.

1. Baseline and Affected Parties

The amendments will affect insiders that make gifts of stock and report them on Form 5 today, although the majority of insiders already report gifts of stock

securities issuers and registered investment companies) filed Forms 10–K, 10–Q, 8–K, or amendments to them, on 15 different days. The use of a window starting four business days before and ending one business day after the date of a filing on Form 10–K, 10–Q, or 8–K results in a potential average disclosure coverage period of approximately 91 calendar days out of 365 (compared to the average disclosure coverage period of 220 calendar days based on the proposed +/−14 calendar day window). Because option grants, unlike EDGAR filings, are sometimes made on non-business days, the estimate reports the number of potentially affected calendar days. As issuers typically grant options only a few times a year, rather than on every one of those potentially affected days, we also evaluate the number of actual option grants that fall in the disclosure coverage period under the amendments. Based on staff analysis of Institutional Shareholder Services' (ISS) Incentive Lab data on plan-based option and SAR awards made during calendar year 2021 (retrieved Aug. 10, 2022), the use of this window results in 2.9 grants (out of 5.4 grants) subject to the disclosure for the average affected filer (compared to the 4.6 grants subject to the disclosure for the average affected filer based on the proposed +/−14 calendar day window). To account for potential lags in proxy data ingestion, which may make the data for 2021 underinclusive of some affected filers with plan-based awards made in 2021, we also consider the ISS Incentive Lab estimate for calendar year 2020 (also based on data retrieved August 10, 2022): this results in 2.9 grants (out of 5.6 grants) subject to the disclosure for the average affected filer (compared to 4.8 grants subject to the disclosure for the average affected filer based on the proposed +/−14 calendar day window). As a caveat, ISS Incentive Lab data is constructed from proxy statement information for a subset of the affected filer universe, dominated by larger companies (371 issuers with option or SAR grant data for year 2021 and 461 for year 2020), and thus may not be representative of all affected filers, such as smaller filers that may make fewer awards or file fewer current reports. The above estimates exclude from the list of MNPI filings those Forms 8–K that are classified as reporting compensation arrangements (Item 5.02(e)) to avoid mechanical effects (such filings are identified as Form 8–K filings that only report Item 5.02, based on EDGAR data, and that also mention either Item 5.02(e) or related keywords (''stock option'', ''option'' and ''grant'', ''named executive officer'') in the body of the filing, based on the analysis of Intelligize data). The definition of ''business days'' excludes weekends and Federal holidays.

[561] *See supra* note 307.

[562] For example, requiring disclosure of option grants made during a window starting four business days before and ending one business day after the filing of Form 10–K or 10–Q (omitting the Form 8–K trigger) would shorten the disclosure coverage period to approximately 33 calendar days out of 365 for the average affected filer during calendar year 2021, based on EDGAR filings data, and decrease the number of affected grants to approximately 1.4 out of 5.4 for calendar year 2021 (1.4 out of 5.6 for calendar year 2020) for the average issuer, based on Incentive Lab data. See *supra* note 560 for a description of how these estimates were obtained.

[563] The use of a window starting four business days before and ending four business days after filings of Form 10–K, 10–Q, or 8–K would result in a potential average disclosure coverage period of approximately 126 calendar days out of 365, based on EDGAR filings data for calendar year 2021, and approximately 3.7 grants (out of 5.4 grants) subject to the disclosure for the average issuer, based on ISS Incentive Lab data for calendar year 2021 (and approximately 3.8 affected grants out of 5.6 grants for the average filer, based on ISS Incentive Lab data for calendar year 2020). See *supra* note 560 for a description of how these estimates were obtained.

[564] Bullet-dodging can cause a call option to be at-the-money when it would have otherwise been out-of-the-money, assuming negative MNPI is about to be released. Generally speaking, the value of an at-the-money call option has a higher sensitivity to the share price than the value of an out-of-the-money call.

on Form 4. We estimate that approximately 800 insiders reported gifts of stock on Form 5 during calendar year 2021 (including approximately 200 insiders that reported gifts both on Form 4 and Form 5).[565] The majority of insiders reporting gifts of stock already report gifts of stock on Form 4: during calendar year 2021 approximately 3,000 insiders reported stock gifts on Form 4 (including approximately 200 insiders that made both Form 4 and Form 5 filings reporting stock gifts).

2. Benefits

To the extent that not all insiders presently report gifts of stock on Form 4, the amendments to Form 4 to require disclosure of such gifts of stock will result in timelier availability of information about beneficial ownership by the issuer's insiders, which was supported by various commenters.[566] Disposition of an insider's shares through a gift in many cases reduces that insider's economic exposure to the issuer, which potentially weakens the alignment of incentives with the shareholder value maximization objective. A scenario in which an insider gifts stock while aware of MNPI and the recipient sells the gifted securities while the information remains nonpublic and material is economically equivalent to a scenario in which the insider trades on the basis of MNPI and gifts the trading proceeds to the recipient (see Section II.E for more details).

While non-pecuniary motives may be more important in a gift than in an open-market sale, the timing of a gift can reveal the insider's beliefs about the issuer's future share price. For an insider that has decided to make a gift, finding the time when the shares are priced higher (*e.g.,* before the release of negative MNPI) will allow the insider to reduce the effective cost of the gift.[567] In light of this, disclosure of timely information about the stock gift could be informative for investors evaluating the issuer's share price and making investment or sale decisions.[568] However, these information benefits will be lower if the officer or director does not consider the cost of a gift (*e.g.,* because the amount of the gift is small or relatively inconsequential in the context of the insider's overall net worth).

Finally, the requirement to disclose insiders' stock gifts on Form 4 will facilitate market scrutiny and may reduce an insider's marginal incentive to donate stock based on MNPI, thereby reducing the associated incentive distortions.[569] While an insider's benefit from using MNPI to time stock gifts may be smaller than in the case of timing trades, the ability to profit from such stock gift timing is expected to have a similar direction of the effect on insider incentives (such as incentives to pursue inefficient corporate decisions or to distort disclosure, in line with the discussion in Section V.A above).

We recognize that these benefits of the amended Form 4 requirements will be substantially reduced to the extent that most insider gifts of stock already are reported on Form 4, as noted in Section V.E.1 above.

3. Costs

As several commenters noted, amended Form 4 disclosure with regard to gifts of stock will result in additional costs for insiders.[570] Direct costs of accelerated gift reporting will include additional compliance-related costs, which may be higher for more complex transactions involving gifts, such as estate planning transactions.[571] Indirect costs may include reputational and investor relations costs stemming from increased market scrutiny of gifts of stock, as well as potential changes to gifting behavior in anticipation of such scrutiny.[572] We note that these costs of the amended Form 4 requirements will be substantially reduced to the extent that most insider gifts of stock already are reported on Form 4, as noted in Section V.E.1 above.

4. Effects on Efficiency, Competition, and Capital Formation

We expect the amendments to incrementally decrease the information asymmetry between insiders and investors. Recent disposition of shares through gifts of stock informs investors about changes to officers' and directors' incentives derived from holdings of issuer stock. Timely information about the disposition of shares through stock gifts could in some circumstances inform investors about officers' and directors' outlook on future changes to the issuer's share prices. Both factors may result in more informationally efficient prices and more efficient allocation of capital in investor portfolios.

Importantly, we expect the amendments to draw market scrutiny to insiders' use of MNPI in the timing of stock gifts, potentially decreasing the incidence of such stock gift timing. This reduces insiders' incentives to manipulate corporate disclosures around stock gifts, which could in turn yield more informationally efficient share prices and more efficient allocation of capital in investor portfolios. The amendments also could marginally reduce insider incentives to pursue inefficient corporate investment decisions driven by personal gain from gifts based on MNPI, in line with the discussion in Sections V.A and V.E.2 above.

Because this amendment will apply broadly across all insiders' stock gifts, generally, we do not anticipate it to result in meaningful competitive disparities among insiders.

5. Reasonable Alternatives

The amendments require timelier disclosure of insider gifts of stock. As an alternative, we could narrow the scope of the amended gift disclosure to apply only to officers and directors, or only to

[565] The estimate is based on Form 5 data in Thomson Reuters/Refinitiv insiders dataset (version retrieved June 27, 2022). Gifts of stock are identified based on transaction code ''G'' (''bona fide gift'').

[566] *See supra* notes 329 and 330 and accompanying text.

[567] In addition to any tax benefit from charitable stock gifts, an altruistic insider-donor may internalize the benefit to the donee. *See, e.g.,* Louis Kaplow, *A Note on Subsidizing Gifts,* 58 J. Public Econ. 469 (1995); Louis Kaplow, *Tax Policy and Gifts,* 88 Am. Econ. Rev. 283 (1998).

[568] *See* letter from Mittendorf (citing Anil Arya et al., *Tax-favored Stock Donations by Corporate Insiders and Consequences for Equity Markets,* 2022 Mgmt. Sci. (forthcoming) (2022) (developing a ''model of informed stock trading when disposal of stock by insiders takes the form of tax-favored charitable donations rather than direct trading'' and demonstrating ''that charitable gifts by insiders can reflect nonpublic information about firm value'') (''Arya et al. (2022)'') and concluding that ''evidence suggests both prevalence of insiders making gifts strategically and potential consequences of accelerating public disclosure of such gifts as proposed in the amendment to Exchange Act Rule 16a–3.''); *see also* Sureyya Burcu Avci et al., *Insider Giving,* 2021 Duke L. J. 71 (2021) (finding evidence of informed timing of gifts of stock by the subset of insiders that are beneficial owners and also pointing to gift backdating as a potential consequence of delayed reporting of stock gifts with the latter providing inaccurate information to investors about changes to an insider's ownership incentives and incentive alignment with shareholder interests); Yermack (2009), *supra* note 328 (demonstrating that these effects of strategic giving behavior are even more pronounced when gifts are to (nonoperating) private foundations).

[569] *But see* letter from Mittendorf citing Arya et al. (2022) (demonstrating, in a ''model of informed stock trading when disposal of stock by insiders takes the form of tax-favored charitable donations,'' ''that charitable gifts by insiders can reflect nonpublic information about firm value, and that they do so in a manner that promotes greater market efficiency'' and that ''relative to informed trading, insider donations yield greater market liquidity, more efficient equity prices, and superior investor protection.'') As an important caveat, the paper is based on a theoretical model rather than an empirical analysis of insider giving.

[570] *See supra* notes 331 and 332 and accompanying text.

[571] *See, e.g.,* letters from Davis Polk and HRPA.

[572] *See supra* note 333. In effect, then, allowing insiders to donate based on MNPI without Form 4 reporting would transfer value to donees at the expense of other traders and of market liquidity.

a certain type of gift of stock (*e.g.,* charitable gifts to charities affiliated with the insider). Compared to the amendments, narrowing the scope of gifts subject to the disclosure could provide less information to market participants [573] but also result in lower aggregate costs. Further, because the majority of insiders already disclose gifts on Form 4, the economic significance of potential exemptions under this alternative may be modest. The requirement will provide consistency in the timeliness of reporting of stock gifts across insiders.

VI. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules, schedules, and forms that would be affected by the rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[574] The Commission published a notice requesting comment on revisions to these collections of information requirements in the Proposing Release and has submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[575] The hours and costs associated with preparing, filing, and sending the schedules and forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The titles for the collections of information are:

- Form 10–K (OMB Control No. 3235–0063);
- Form 10–Q (OMB Control No. 3235–0070);
- Schedule 14C (OMB Control No. 3235–0057);
- Schedule 14A (OMB Control No. 3235–0059);
- Form 4 (OMB Control Number 3235–0287);
- Form 20–F (OMB Control Number 3235–0288);
- Form 5 (OMB Control Number 3235–0362); and
- Rule 10b5–1 (a new collection of information).

The forms, schedules, and regulations listed above were adopted under the Securities Act and/or the Exchange Act. These regulations, schedules, and forms set forth the disclosure requirements for registration statements, periodic and current reports, distribution reports, and proxy and information statements filed by registrants to help investors make informed investment and voting decisions. Compliance with these information collections is mandatory. Responses to these information collections are not kept confidential, and there is no mandatory retention period for the information disclosed. Rule 10b5–1 sets forth the conditions to the affirmative defenses under the rule. The use of the affirmative defenses is voluntary, and compliance with this information collection would be mandatory only if a respondent chooses to rely on the affirmative defenses. Responses to this information collection will not be confidential and there is no mandatory retention period for the collection of information.

A description of the amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the economic effects of the amendments can be found in Section V above.

B. Summary of Comment Letters

In the Proposing Release, the Commission requested comment on the PRA burden hour and cost estimates and the analysis used to derive such estimates. We did not receive any comments that directly addressed the PRA analysis of the proposed amendments. Several commenters, however, did provide responses to certain requests for comment that have informed some of our PRA estimates. As discussed, above, we have made some changes to the proposed amendments as a result of comments received in response to the Proposing Release. We have revised our estimates from the Proposing Release accordingly, taking into account the changes and the comments received.

C. Summary of Collections of Information Requirements

As discussed in more detail in the Proposing Release,[576] we derived the burden hour estimates by estimating change in paperwork burden as a result of the amendments. As discussed in Section II, we have made several changes to the proposed amendments as a result of comments received. Some of these changes impact our estimates.[577]

In the Proposing Release, the Commission estimated that the average incremental burden for an issuer to prepare the Item 408(a) disclosure would be 15 hours. The proposed estimate included the time and cost of preparing the disclosure, as well as tagging the data in XBRL format. We have revised new Item 408(a) to (1) clarify that Item 408(a) does not require disclosure of pricing terms, and (2) not require quarterly disclosure regarding the adoption and termination of Rule 10b5–1 plans and non-Rule 10b5–1 trading arrangements by an issuer. To reflect the impact of this change on our estimate, we first estimate the burden of each of the two proposed components we are not adopting and deduct this amount from the proposed 15 hours. We estimate that the burden of disclosing the proposed disclosure of pricing terms of Rule 10b5–1 plans would have been two hours and that burden of preparing proposed disclosure regarding the adoption and termination of Rule 10b5–1 and non-Rule 10b5–1 trading arrangements by a registrant would have been three hours for a combined burden of five hours. Therefore, we are reducing the estimated the burden of Item 408(a) from 15 hours to 10 hours.

We also are not adopting the proposed optional checkboxes on Forms 4 and 5 that would allow a filer to indicate whether a reported transaction was made pursuant to a pre-planned contract, instruction, or written plan for the purchase or sale of equity securities of the issuer that did not satisfy the affirmative conditions of Rule 10b5–1(c). We do not believe this change would substantively modify the collection of information requirements or otherwise affect the overall burden estimates associated with these forms. We are, however, adjusting the burden estimate for Form 5 to reflect the impact of requiring the disclosure of dispositions of equity securities by bona fide gifts on Form 4, rather than on Form 5. We believe this change would

[573] *See supra* note 568 (discussing a recent study that documents widespread informed gift timing not limited to insider-affiliated charities).

[574] 44 U.S.C. 3501 *et seq.*

[575] *See* 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[576] *See* Section V of the Proposing Release.

[577] The changes to new Item 408(b) and Item 16J, the amendments to Forms 4 and 5, and the new certification condition of Rule 10b5–1(c)(1)(ii)(C) did not impact our estimates. Item 408(b) and Item 16J of Form 20–F will require that an issuer file its insider trading policies and procedures as an exhibit to the applicable filing rather than in its body, and that exhibit will not be tagged. Because this change only moves the location of this disclosure and eliminates one tagging requirement, we believe a four hour burden estimate remains appropriate. Finally, the certification will be included in the Rule 10b5–1 plan as a representation rather than prepared as a separate document to be furnished to the issuer. We do not expect this change in disclosure location to change the PRA burden on the director or officer. The removal of the retention instruction for the certification similarly does not affect our PRA burden estimates as that retention instruction was not included in the PRA estimate in the Proposing Release.

result in a decrease in 0.25 hours in the information collection burden for Form 5.

In addition, the table required by new Item 402(x) will cover stock options, SARs, and/or similar option-like instruments awarded to a named executive officer within a four business day period before and a one day period after certain triggering events. This is a change from the proposal, in which the time window for disclosure would have been the 14 day period before and after the event. We also narrowed the events that trigger this disclosure by removing the issuer share repurchase disclosure trigger and carving out Item 5.02(e) Forms 8–K that report the grant of a material new option award. As a result, we expect fewer awards will be disclosed. Accordingly, we have adjusted our PRA estimate for this disclosure from nine hours to six hours per form.

The following table summarizes the estimated effects of the final amendments on the paperwork burdens associated with the affected forms.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE FINAL AMENDMENTS

Final amendments	Affected forms or schedules	Estimated burden increase and/or decrease
Item 402(x):		
• Require disclosure of a registrant's policies and practices on the timing of awards of stock options, SARs or similar option-like instruments in relation to the disclosure of material nonpublic information by the registrant, including how the board determines when to grant options, whether the board or compensation committee takes material nonpublic information into account when determining the timing and terms of an award; and whether the registrant has timed the disclosure of material nonpublic information for the purpose of affecting the value of executive compensation..	Form 10–K* and Schedules 14A, and 14C.	6 hour increase in compliance burden per form.
• Require tabular disclosure of each option award granted within four business days before and one business day after the filing of a periodic report or the filing or furnishing of a current report on Form 8–K that contains material nonpublic information (other than disclosure of a material new option award grant under Item 5.02(e) of Form 8–K).		
• Require information to be reported using a structured data language..		
Item 408(a):		
• Require disclosure of the adoption or termination of any contract, instruction or written plan for the purchase or sale of securities intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) and non-Rule 10b5–1 trading arrangements, by directors and officers (as defined in Exchange Act Rule 16a-1(f)), including the name and title of the director or officer; and a description of the material terms of the contract, instruction or written plan (other than pricing terms).	Forms 10–K and 10–Q	10 hour increase in compliance burden per form.
• Require information to be reported using a structured data language.		
Item 408(b) and Item 16J:		
• Require disclosure of whether the registrant has adopted (and if not, why) insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities and require filing of a copy of its insider trading policies and procedures as an exhibit to Form 10–K..	Forms 10–K,* 20–F, and Schedules 14A, and 14C.	4 hour increase in compliance burden per form.
• Require information to be reported using a structured data language..		
Form 4:		
• Require reporting of dispositions of equity securities by bona fide gifts.	Form 4	0.5 hour increase in compliance burden per form.
• Require new checkbox disclosure to indicate that a sale or purchase reported on the form was made pursuant to a contract, instruction, or written plan that is intended to satisfy the Rule 10b5–1(c)(1) affirmative defense, and require disclosure of the date of adoption of the plan..		
Form 5:		
• Require new checkbox disclosure to indicate that a sale or purchase reported on the form was made pursuant to a contract, instruction, or written plan that is intended to satisfy the Rule 10b5–1(c)(1) affirmative defense, and require disclosure of the date of adoption of the plan..	Form 5	0.25 hour increase in compliance burden per form.
.....		
• Require reporting of dispositions of equity securities by bona fide gifts on Form 4, rather than on Form 5..	.....	0.25 hour decrease in compliance burden per form.
Rule 10b5–1(c)(1)(ii):		
• Require directors and ''officers'' (as defined in Exchange Act Rule 16a-1(f)) as a condition to the affirmative defense, to provide representations in written Rule 10b5–1 plans that, on the date of adoption of the plan, (i) they are not aware of any material nonpublic information about the security or issuer or any subsidiary of the issuer; and (ii) that they are adopting the contract, instruction, or plan in good faith and not as part of a plan or scheme to evade the prohibitions of this section..	.....	1.5 hour compliance burden per written Rule 10b5–1 plan.

NOTES:
*The burden estimate for Form 10–K assumes that Schedules 14A and 14C would be the primary disclosure documents for the information provided in response to Item 402(x) and Item 408(b) of Regulation S–K and the disclosure requirement under Form 10–K would be satisfied by incorporating the information by reference from the proxy or information statement.

D. Burden and Cost Estimates Related to the Amendments

Below we estimate the incremental and aggregate increase in paperwork burden as a result of the final amendments. These estimates represent the average burden for all respondents, both large and small. In deriving our estimates, we recognize that the burdens will likely vary among individual respondents based on a number of factors.

We do not believe that the final amendments will change the frequency of responses to the existing collections of information; rather, we estimate that the proposed amendments would change only the burden per response. For the new collection of information, we estimate that there would be 8,700 responses based on the staff's analysis, discussed in Section V.B.1, of beneficial ownership filings on Forms 3, 4, and 5 made in the 2021 calendar year.[578] Based on the data from these filings, approximately 5,800 officers and directors reported a transaction pursuant to a Rule 10b5–1 trading arrangement. As noted above, the number of officers and directors using a Rule 10b5–1 trading arrangement is likely larger. Accordingly, we adjusted the estimate upward by 50 percent.

The burden estimates were calculated by multiplying the estimated number of responses by the estimated average

[578] *See supra* note 377 and accompanying text.

amount of time it would take a respondent to prepare and review the disclosures that will be required under the final amendments. For purposes of the PRA, the information collection burden is allocated between internal burden hours and outside professional costs.

The table below sets forth the percentage estimates we typically use for the burden allocation for each form.[579] We also estimate that the average cost of retaining outside professionals is $600 per hour.[580]

PRA TABLE 2—STANDARD ESTIMATED BURDEN ALLOCATION FOR SPECIFIED FORMS AND SCHEDULES

Form/schedule type	Internal (percent)	Outside professionals (percent)
Forms 10–K, 10–Q, and Schedules 14A and 14C	75	25
Form 20–F	25	75
Forms 4 and 5	100	
Rule 10b5–1	100	

The table below illustrates the incremental change to the total annual compliance burden of affected forms and schedules, in hours and in costs, as a result of the final amendments.[581]

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS

Form or schedule	Number of estimated affected responses (A)	Estimated burden hour increase /affected response (B)	Total incremental increase in burden hours (C) = (A) × (B)	Estimated increase in internal burden hours (D) = (C) × (allocation %)	Estimated increase in outside professional hours (E) = (C) × (allocation %)	Total increase in outside professional costs (F) = (E) × $600
10–K	8,292	11	91,212	68,409	22,803	$13,681,800
10–Q	22,925	10	229,250	171,937.5	57,312.5	34,387,500
20–F	729	4	2,916	729	2,187	1,312,200
14A	6,369	10	63,690	47,767.5	15,922.5	9,553,500
14C	569	10	5,690	4,267.5	1,422.5	853,500
4	338,207	0.5	169,103.5	169,103.5	0	0
5	5,939	0			0	0
Total				461,485		59,788,500

PRA Table 4 illustrates the change to the annual cost burden of the affected forms as a result of the adjustment to the average cost of retaining outside professionals from $400 to $600 per hour.[582]

PRA TABLE 4—CALCULATION OF THE CHANGE IN COSTS OF CURRENT RESPONSES RESULTING FROM THE AVERAGE HOURLY COST ADJUSTMENT

Form or schedule	Number of affected responses	Current cost burden at $400 per hour	Adjusted cost burden at $600 per hour
10–K	8,292	$1,840,481,319	$2,805,092,400
10–Q	22,925	414,613,154	626,150,400
20–F	729	576,927,825	862,826,400
14A	6,369	101,958,512	152,989,800
14C	569	7,350,144	11,023,600

[579] In the Proposing Release, we used a 75% company and 25% outside professional allocation for Form 20–F, but upon further consideration we believe that a 25% company and 75% outside professional allocation for Form 20–F better reflects current practice for this form because FPIs rely more heavily on outside counsel for their preparation.

[580] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of this PRA analysis, we estimate that such costs would be an average of $600 per hour. At the proposing stage, we used an estimated cost of $400 per hour. We are increasing this cost estimate to $600 per hour to adjust the estimate for inflation from August 2006 to the present. The inflation-adjusted hourly amount is $583.88, which we have rounded up to $600.

[581] The number of estimated affected responses is based on the number of responses in the Commission's current OMB PRA filing inventory. The OMB PRA filing inventory represents a three-year average. These averages may not align with the actual number of filings in any given year.

[582] *See supra* note 580. The table adjusts the average cost of retaining outside professionals from $400 to $600 per hour for the affected Exchange Act forms.

The following tables summarizes the requested paperwork burden changes to existing information collections, including the estimated total reporting burdens and costs, under the final amendments.[583]

PRA TABLE 5—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

Form or Sch.	Current burden			Program change			Requested change in burden		
	Current annual responses (A)	Current burden hours (B)	Current cost burden (C)	Number of affected responses (D)	Increase in internal hours (E)	Increase in outside professional costs (F)	Annual responses (G) = A	Burden hours (H) = B + (E)	Cost burden (I)
10–K	8,292	14,025,462	$1,840,481,319	8,292	68,409	$13,681,800	8,292	14,093,871	$2,818,774,200
10–Q	22,925	3,130,752	$414,613,154	22,925	171,938	$34,387,500	22,925	3,302,690	$660,537,900
20–F	729	479,348	$576,927,825	729	729	$1,312,200	729	480,077	$864,138,600
14A	6,369	764,949	$101,958,512	6,369	47,768	$9,553,500	6,369	812,717	$162,543,300
14C	569	55,118	$7,350,144	569	4,268	$853,500	569	59,386	$11,877,100
4	338,207	169,104	0	338,207	169,104	0	338,207	338,208	0
5	5,939	5,939	0	5,939	0	0	5,939	0	0

PRA Table 6 summarizes the requested paperwork burden for the collection of information for the representations that will be required under Rule 10b5–1(c)(1)(ii), including the estimated total reporting burdens and costs. For purposes of the PRA, we estimate that the Rule 10b5–1(c)(1)(ii) representation would entail a 1.5 compliance burden per response with 8,700 annual responses.

PRA TABLE 6—REQUESTED PAPERWORK BURDEN FOR THE NEW COLLECTION OF INFORMATION

Collection of information	Paperwork burden	
	Annual responses (A)	Burden hours (A) × 1.5
Rule 10b5–1(c)(1)(ii) Representation	8,700	13,050

VII. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Analysis (''FRFA'') has been prepared in accordance with the Regulatory Flexibility Act (''RFA'').[584] It relates to amendments to Rule 10b5–1(c)(1); Regulation S–K, Forms 10–K, 20–F, 10–Q, 4, and 5; and Schedules 14A and 14C.

A. Need for, and Objectives of, the Amendments

The purpose of the final amendments is to address potentially abusive practices associated with Rule 10b5–1 trading arrangements, grants of options and other equity instruments with similar option-like features and the gifting of securities. The final amendments are also intended to provide greater transparency to investors about issuer and insider trading arrangements and restrictions, as well as insider compensation and incentives, enabling more informed voting and investment and decisions about an issuer. The need for, and objectives of, the final rules are described in greater detail in Sections I and II above. We discuss the economic impact and potential alternatives to the amendments in Section V, and the estimated compliance costs and burdens of the amendments under the PRA in Section VI above.

B. Significant Issues Raised by Public Comments

In the Proposing Release, the Commission requested comment on any aspect of the Initial Regulatory Flexibility Analysis (''IRFA''), including how the proposed amendments could achieve their objective while lowering the burden on small entities, the number of small entities that would be affected by the proposed rule and form amendments, the existence or nature of the potential effects of the proposed amendments on small entities discussed in the analysis, and how to quantify the effects of the proposed amendments. We did not receive any comments that specifically addressed the IRFA. However, some commentators addressed aspects of the proposals that could potentially affect small entities.[585] In particular, one commenter supported exempting SRCs from proposed Item 408(a),[586] while other commenters expressed support for requiring SRCs to provide the proposed disclosures.[587] For the reasons discussed above, we have not adopted such an exception.[588]

C. Small Entities Subject to the Amendments

The final amendments would apply to registrants that are small entities. The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[589] For purposes of the RFA, under our rules, a registrant, other than an investment company, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year and is engaged or proposing to engage in an offering of securities that does not exceed $5 million.[590] Under 17 CFR 270.0–10, an investment company, including a business development company, is considered to be a small entity if it,

[583] Figures in this table have been rounded to the nearest whole number. Figures in column (I) are the sum of column (F) and the adjusted cost burdens for each affected form calculated in PRA Table 4 above.

[584] 5 U.S.C. 601 *et seq.*

[585] *See* Section II above.

[586] *See* letter from MD Bar.

[587] *See, e.g.,* letters from ICGN, and Cravath.

[588] *See supra* Section II.B.2.c.

[589] 5 U.S.C. 601(6).

[590] *See* Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. An investment company, including a business development company,[591] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[592] The Commission staff estimates that, as of January 2022, there were approximately 1,380 issuers and two business development companies that may be considered small entities that would be subject to the proposed amendments.[593]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final amendments to Rule 10b5–1(c) will apply to small entities to the same extent as other entities, irrespective of size. They also do not directly impose any recordkeeping or compliance requirements on small entities.

The amendments to Regulation S–K, Forms 10–K, 20–F, 10–Q, and Schedules 14A and 14C are designed to provide greater transparency about officer and director trading arrangements; policies and procedures with respect to insider trading; and the timing of certain equity compensation awards to NEOs close in time to the release of material nonpublic information. These amendments generally will require:

- Disclosure regarding the adoption and termination of Rule 10b5–1 plans and non-Rule 10b5–1 trading arrangements of officers (as defined in Rule 16a–1(f)) and directors, as well as the material terms of such trading arrangements (other than pricing terms);
- Disclosure of whether the registrant has adopted (and if not, why) insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, officers and employees that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the issuer, and filing such policies and procedures as an exhibit to the registrant's annual report;
- Narrative disclosure of a registrant's policies and practices on the timing of awards of stock options, SARs, and/or similar option-like instruments; and
- Tabular disclosure of each such award granted to an NEO within four business days before and one business day after the filing of a periodic report or the filing or furnishing of a current report on Form 8–K that contains material nonpublic information (other than a current report on Form 8–K disclosing a material new option award grant under Item 5.02(e)).

In addition, the amendments to Forms 4 and 5 will:

- Add a Rule 10b5–1 checkbox to these forms that will require a Form 4 or 5 filer to indicate whether a sale or purchase reported on that form was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c). Filers would also be required to provide the date of adoption of such trading arrangement; and
- Require the reporting of dispositions of bona fide gifts of equity securities on Form 4.

We anticipate that the direct costs of preparing disclosures in response to the amendments will likely be relatively small as such information will be readily available to issuers. To the extent that the disclosure requirements have a greater effect on small filers relative to large filers, they could result in adverse effects on competition. The fixed component of the legal costs of preparing the disclosure could be one contributing factor. Compliance with certain provisions of the final amendments may require the use of professional skills, including accounting, legal, and technical skills. The final amendments are discussed in detail in Sections I and II above. We discuss the economic impact, including the estimated compliance costs and burdens of the final rules on all issuers, including small entities, in Sections V and VI above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

Insider trading imposes costs on the investors in a company.[594] The disclosure amendments and the amendments to Rule 10b5–1(c)(1) are intended to provide greater transparency to investors; decrease information asymmetries between corporate insiders and outside investors; and to deter abusive and problematic practices associated with the use of Rule 10b5–1 plans, grants of option awards, and the gifting of securities. Importantly, we anticipate the final amendments will work in tandem to significantly reduce improper insider trading through Rule 10b5–1 plans. As discussed in above in Section V, deterring insider trading will result in benefits for investor protection, capital formation, and orderly and efficient markets. In addition, the amendments will disincentivize insider behavior that undermines investor confidence and harms the securities markets. For these reasons, we generally do not believe it would be appropriate to provide simplified or consolidated reporting requirements, a differing compliance timetable, or an exemption for small entities from all or part of the final amendments, although the final amendments provide for scaled disclosure for SRCs under new Item 402(x), consistent with our scaled approach to executive compensation disclosure. However, to minimize the initial compliance burden on SRCs we are providing a six month transition period for compliance with the new issuer disclosure requirements to mitigate the compliance burdens that SRCs may experience.[595]

With respect to using performance rather than design standards, the final amendments use design standards to promote uniform compliance requirements for all registrants and to address the concerns underlying the amendments, which apply to entities of all sizes. For example, the amendments set forth specific requirements that a

[591] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a-2(a)(48) and 80a-53–64].

[592] 17 CFR 270.0–10(a).

[593] This estimate is based on staff analysis of Form 10–K filings on EDGAR, or amendments thereto, filed during the calendar year of Jan. 1, 2021 to Dec. 31, 2021, and on data from XBRL filings, Compustat, and Ives Group Audit Analytics. The staff noted that the estimated number of small entities includes approximately 344 entities that are special purpose acquisition companies (''SPACs''). A SPAC is typically a shell company that is organized for the purpose of merging with or acquiring one or more unidentified private operating companies within a certain time frame. Some of these small entities that are SPACs are unlikely to remain small entities once the SPAC has completed its initial business combination and becomes an operating company.

[594] *See supra* Section V.

[595] *See supra* Section III.

trader must satisfy to rely on the Rule 10b5–1(c)(1) affirmative defense. These design standards will better ensure that our concerns related to the misuse of Rule 10b5–1 plans are addressed and that traders understand how they can plan securities transactions in advance and satisfy the conditions of this defense.

Finally, we generally have not exempted small entities from all of part of the requirements, as some commenters requested, as the concerns related to insider trading that underlie these amendments apply to entities of all sizes. For example, as discussed in more detail above, [596] while we are sensitive to the potential that Item 408(a) could have a disproportionate impact on SRCs, we have not exempted SRCs from providing this disclosure as doing so would deprive investors in those issuers of material information about the use and potential abuse of Rule 10b5–1 plans and non-Rule 10b5–1 trading arrangements by an SRC's officers or directors. We note, however, that, to remain consistent with the scaled approach to SRCs' executive compensation disclosure, SRCs may limit the new tabular disclosure of option awards to the PEO, the two most highly compensated executive officers other than the PEO at fiscal year-end, and up to two additional individuals who would have been the most highly compensated but for not serving as executive officers at fiscal year-end.

Statutory Authority

The amendments contained in this release are being adopted under the authority set forth in Sections 3(b), 6, 7, 10, 17, 19(a), and 28 of the Securities Act; Sections 3, 9, 10, 12, 13, 14, 15(d), 16, 20A, 21A, 23(a), and 36 of the Exchange Act; and Sections 8, 20(a), 24(a), 30 and 38 of the Investment Company Act; and 15 U.S.C. 7264.

List of Subjects in 17 CFR Parts 229, 232, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission- amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78l, 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78 mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11 and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Section 229.402 is amended by adding paragraph (x) to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(x) *Disclosure of the registrant's policies and practices related to the grant of certain equity awards close in time to the release of material nonpublic information.* (1) Discuss the registrant's policies and practices on the timing of awards of options in relation to the disclosure of material nonpublic information by the registrant, including how the board determines when to grant such awards (for example, whether such awards are granted on a predetermined schedule); whether the board or compensation committee takes material nonpublic information into account when determining the timing and terms of such an award, and, if so, how the board or compensation committee takes material nonpublic information into account when determining the timing and terms of such an award; and whether the registrant has timed the disclosure of material nonpublic information for the purpose of affecting the value of executive compensation.

(2)(i) If, during the last completed fiscal year, the registrant awarded options to a named executive officer in the period beginning four business days before the filing of a periodic report on Form 10–Q (§ 249.308a of this chapter) or Form 10–K (§ 249.310 of this chapter), or the filing or furnishing of a current report on Form 8–K (§ 249.308 of this chapter) that discloses material nonpublic information (other than a current report on Form 8–K disclosing a material new option award grant under Item 5.02(e) of that form), and ending one business day after the filing or furnishing of such report provide the information specified in paragraph (x)(2)(ii) of this section, concerning each such award for each of the named executive officers in the following tabular format:

TABLE 13 TO PARAGRAPH (x)(2)(i)

Name	Grant date	Number of securities underlying the award	Exercise price of the award ($/Sh)	Grant date fair value of the award	Percentage change in the closing market price of the securities underlying the award between the trading day ending immediately prior to the disclosure of material nonpublic information and the trading day beginning immediately following the disclosure of material nonpublic information
(a)	(b)	(c)	(d)	(e)	(f)
PEO					
PFO					
A					
B					
C					

[596] *See supra* Section II.B.2.c.

(ii) The Table shall include:

(A) The name of the named executive officer (column (a));

(B) On an award-by-award basis, the grant date of the option award reported in the table (column (b));

(C) On an award-by-award basis, the number of securities underlying the options, (column (c));

(D) On an award-by-award basis, the per-share exercise price of the options (column (d));

(E) On an award-by-award basis, the grant date fair value of each award computed using the same methodology as used for the registrant's financial statements under generally accepted accounting principles (column (e)).

(F) For each instrument reported in column (b), disclose the percentage change in the market price of the underlying securities between the closing market price of the security one trading day prior to and the trading day beginning immediately following the disclosure of material nonpublic information (column (f)).

Instruction to paragraph (x)(2). A registrant that is a smaller reporting company or emerging growth company may limit the disclosures in the table to its PEO, the two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year, and up to two additional individuals who would have been the most highly compensated but for the fact that the individual was not serving as an executive officer at the end of the last completed fiscal year.

(3) The disclosure provided pursuant to this paragraph (x) must be provided in an Interactive Data File as required by 17 CFR 232.405 (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

■ 3. Add § 229.408 to read as follows:

§ 229.408 (Item 408) Insider trading arrangements and policies.

(a)(1) Disclose whether, during the registrant's last fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report), any director or officer (as defined in § 240.16a–1(f) of this chapter) adopted or terminated:

(i) Any contract, instruction or written plan for the purchase or sale of securities of the registrant intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) (§ 240.10b5–1(c) of this chapter) (a ''Rule 10b5–1 trading arrangement''); and/or

(ii) Any ''non-Rule 10b5–1 trading arrangement'' as defined in paragraph (c) of this section.

(2) Identify whether the trading arrangement is intended to satisfy the affirmative defense of Rule 10b5–1(c), and provide a description of the material terms, other than terms with respect to the price at which the individual executing the Rule 10b5–1 trading arrangement or non-Rule 10b5–1 trading arrangement is authorized to trade, such as:

(A) The name and title of the director or officer;

(B) The date on which the director or officer adopted or terminated the trading arrangement;

(C) The duration of the trading arrangement; and

(D) The aggregate number of securities to be purchased or sold pursuant to the trading arrangement.

(3) The disclosure provided pursuant to paragraphs (a)(1) and (2) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 (Rule 405 of Regulation S–T) in accordance with the EDGAR Filer Manual.

(b)(1) Disclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and/or other dispositions of the registrant's securities by directors, officers and employees, or the registrant itself, that are reasonably designed to promote compliance with insider trading laws, rules and regulations, and any listing standards applicable to the registrant. If the registrant has not adopted such policies and procedures, explain why it has not done so.

(2) If the registrant has adopted insider trading policies and procedures, the registrant must file such policies and procedures as an exhibit. If all of the registrant's insider trading policies and procedures are included in its code of ethics (as defined in 17 CFR 229.406(b)) and the code of ethics is filed as an exhibit pursuant to 17 CFR 229.406(c)(1), that would satisfy the exhibit requirement of this paragraph.

(3) The disclosure provided pursuant to paragraph (b)(1) of this section must be provided in an Interactive Data File as required by 17 CFR 232.405 in accordance with the EDGAR Filer Manual.

(c) For purposes of this Item 408, a director or officer (as defined in § 240.16a–1(f) of this chapter) (each a ''covered person'') has entered into a *non-Rule 10b5–1 trading arrangement* where:

(1) The covered person asserts that at a time when they were not aware of material nonpublic information about the security or the issuer of the security they had adopted a written arrangement for trading the securities; and

(2) The trading arrangement:

(i) Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;

(ii) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

(iii) Did not permit the covered person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the trading arrangement, did exercise such influence must not have been aware of material nonpublic information when doing so.

■ 4. Amend § 229.601 by:

■ a. In the exhibit table in paragraph (a), revising entry 19; and

■ b. Adding paragraph (b)(19).

The revisions read as follows:

§ 229.601 (Item 601) Exhibits.

(a) * * *

EXHIBIT TABLE

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
*		*		*			*		*			*		*		
(19) Insider trading policies and procedures	x1	x1	x1	x1	x1	x1	x1	x1	x1	x1	x1	x1	x1	x1	X	

EXHIBIT TABLE—Continued

	Securities act forms										Exchange act forms					
	S–1	S–3	SF–1	SF–3	S–4[1]	S–8	S–11	F–1	F–3	F–4[1]	10	8–K[2]	10–D	10–Q	10–K	ABS–EE
*	*		*		*		*		*		*		*			

[1] An exhibit need not be provided about a company if: (1) With respect to such company an election has been made under Form S–4 or F–4 to provide information about such company at a level prescribed by Form S–3 or F–3; and (2) the form, the level of which has been elected under Form S–4 or F–4, would not require such company to provide such exhibit if it were registering a primary offering.

[2] A Form 8–K exhibit is required only if relevant to the subject matter reported on the Form 8–K report. For example, if the Form 8–K pertains to the departure of a director, only the exhibit described in paragraph (b)(17) of this section need be filed. A required exhibit may be incorporated by reference from a previous filing.

* * * * *

(b) * * *

(19) *Insider trading policies and procedures.* Any insider trading policies and procedures, or amendments thereto, that are the subject of the disclosure required by § 229.408(b) (Item 408(b) of Regulation S–K).

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 5. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–10, 80b–11,7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Amend § 232.405 by adding paragraph (b)(4)(iii) to read as follows:

§ 232.405 Interactive Data File Submissions.

* * * * *

(b) * * *

(4) * * *

(iii) Any disclosure provided in response to: § 229.402(x) of this chapter (Item 402(x) of Regulation S–K); § 229.408(a)(1) and (2) of this chapter (Item 408(a)(1) and (2) of Regulation S–K); § 229.408(b)(1) of this chapter (Item 408(b)(1) of Regulation S–K); and Item 16J(a) of § 249.220f of this chapter (Item 16J(a) of Form 20–F).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 8. Amend § 240.10b5–1 by:

■ a. Removing the Preliminary Note;

■ b. Revising paragraphs (a), (b), (c)(1)(i), and (c)(1)(ii); and

■ c. Adding paragraph (c)(1)(iv).

The revisions and additions read as follows:

§ 240.10b5–1 Trading on the basis of material nonpublic information in insider trading cases.

(a) *Manipulative or deceptive devices.* The ''manipulative or deceptive device[s] or contrivance[s]'' prohibited by Section 10(b) of the Act (15 U.S.C. 78j) and § 240.10b–5 (Rule 10b–5) thereunder include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

(b) *Awareness of material nonpublic information.* Subject to the affirmative defenses in paragraph (c) of this section, a purchase or sale of a security of an issuer is on the basis of material nonpublic information for purposes of Section 10(b) and Rule 10b–5 if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. The law of insider trading is otherwise defined by judicial opinions construing Rule 10b–5, and Rule 10b5–1 does not modify the scope of insider trading law in any other respect.

(c) *** (1)(i) Subject to paragraph (c)(1)(ii) of this section, a person's purchase or sale is not on the basis of material nonpublic information if the person making the purchase or sale demonstrates that:

(A) Before becoming aware of the information, the person had:

(*1*) Entered into a binding contract to purchase or sell the security,

(*2*) Instructed another person to purchase or sell the security for the instructing person's account, or

(*3*) Adopted a written plan for trading securities;

(B) The contract, instruction, or plan described in paragraph (c)(1)(i)(A) of this section:

(*1*) Specified the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold;

(*2*) Included a written formula or algorithm, or computer program, for determining the amount of securities to be purchased or sold and the price at which and the date on which the securities were to be purchased or sold; or

(*3*) Did not permit the person to exercise any subsequent influence over how, when, or whether to effect purchases or sales; provided, in addition, that any other person who, pursuant to the contract, instruction, or plan, did exercise such influence must not have been aware of the material nonpublic information when doing so; and

(C) The purchase or sale that occurred was pursuant to the contract, instruction, or plan. A purchase or sale is not ''pursuant to a contract, instruction, or plan'' if, among other things, the person who entered into the contract, instruction, or plan altered or deviated from the contract, instruction, or plan to purchase or sell securities (whether by changing the amount, price, or timing of the purchase or sale), or entered into or altered a corresponding or hedging transaction or position with respect to those securities.

(ii) Paragraph (c)(1)(i) of this section is applicable only when:

(A) The contract, instruction, or plan to purchase or sell securities was given or entered into in good faith and not as part of a plan or scheme to evade the prohibitions of this section, and the person who entered into the contract, instruction, or plan has acted in good faith with respect to the contract, instruction or plan;

(B) If the person who entered into the contract, instruction, or plan is:

(*1*) A director or officer (as defined in § 240.16a–1(f) (Rule 16a–1(f)) of the issuer, no purchases or sales occur until expiration of a cooling-off period consisting of the later of:

(*i*) Ninety days after the adoption of the contract, instruction, or plan or

(*ii*) Two business days following the disclosure of the issuer's financial results in a Form 10–Q (§ 249.308a of this chapter) or Form 10–K (§ 249.310 of this chapter) for the completed fiscal quarter in which the plan was adopted or, for foreign private issuers, in a Form 20–F (§ 249.220f of this chapter) or Form 6–K (§ 249.306 of this chapter) that discloses the issuer's financial results (but, in any event, this required cooling-off period is subject to a maximum of 120 days after adoption of the contract, instruction, or plan); or

(*2*) Not the issuer and not a director or officer (as defined in § 240.16a–1(f) (Rule 16a–1(f)) of the issuer, no purchases or sales occur until the expiration of a cooling-off period that is 30 days after the adoption of the contract, instruction or plan;

(C) If the person who entered into a plan as described in paragraph (c)(1)(i)(A)(3) of this section is a director or officer (as defined in Rule 16a–1(f) (§ 240.16a–1(f)) of the issuer of the securities, such director or officer included a representation in the plan certifying that, on the date of adoption of the plan:

(*1*) The individual director or officer is not aware of any material nonpublic information about the security or issuer; and

(*2*) The individual director or officer is adopting the plan in good faith and not as part of a plan or scheme to evade the prohibitions of this section;

(D) The person (other than the issuer) who entered into the contract, instruction, or plan has no outstanding (and does not subsequently enter into any additional) contract, instruction, or plan that would qualify for the affirmative defense under paragraph (c)(1) of this section for purchases or sales of the issuer's securities on the open market; except that:

(*1*) For purposes of this paragraph (c)(1)(ii)(D), a series of separate contracts with different broker-dealers or other agents acting on behalf of the person (other than the issuer) to execute trades thereunder may be treated as a single ''plan,'' provided that the individual constituent contracts with each broker-dealer or other agent, when taken together as a whole, meet all of the applicable conditions of and remain collectively subject to the provisions of this rule, including that a modification of any individual contract acts as modification of the whole contract, instruction of plan, as defined in paragraph (c)(1)(iv) of this section. The substitution of a broker-dealer or other agent acting on behalf of the person (other than the issuer) for another broker-dealer that is executing trades pursuant to a contract, instruction or plan shall not be a modification of the contract, instruction, or plan (as defined in paragraph (c)(1)(iv) of this section) as long as the purchase or sales instructions applicable to the substitute and substituted broker are identical with respect to the prices of securities to be purchased or sold, dates of the purchases or sales to be executed, and amount of securities to be purchased or sold; and

(*2*) The person (other than the issuer) may have one later-commencing contract, instruction, or plan for purchases or sales of any securities of the issuer on the open market under which trading is not authorized to begin until after all trades under the earlier-commencing contract, instruction, or plan are completed or expired without execution; provided, however, that if the first trade under the later-commencing contract, instruction, or plan is scheduled during the Effective Cooling-Off Period, the later-commencing contract, instruction, or plan may not rely on this paragraph (c)(1)(ii)(D)(*2*). For purposes of this paragraph (c)(1)(ii)(D)(*2*), ''Effective Cooling-Off Period'' means the cooling-off period that would be applicable under paragraph (c)(1)(ii)(B) of this section with respect to the later-commencing contract, instruction, or plan if the date of adoption of the later-commencing contract, instruction, or plan were deemed to be the date of termination of the earlier-commencing contract, instruction, or plan; and

(*3*) A contract, instruction, or plan providing for an eligible sell-to-cover transaction shall not be considered an outstanding or additional contract, instruction, or plan under paragraph (c)(1)(ii)(D) of this section, and such eligible sell-to-cover transaction shall not be subject to the limitation under paragraph (c)(1)(ii)(D) of this section. A contract, instruction, or plan provides for an eligible sell-to-cover transaction where the contract, instruction, or plan authorizes an agent to sell only such securities as are necessary to satisfy tax withholding obligations arising exclusively from the vesting of a compensatory award, such as restricted stock or stock appreciation rights, and the insider does not otherwise exercise control over the timing of such sales; and

(E) With respect to persons (other than the issuer), if the contract, instruction, or plan does not provide for an eligible sell-to-cover transaction as described in paragraph (c)(1)(ii)(D)(*3*) of this section and is designed to effect the open-market purchase or sale of the total amount of securities as a single transaction, the person who entered into the contract, instruction, or plan has not during the prior 12-month period adopted a contract, instruction, or plan that:

(*1*) was designed to effect the open-market purchase or sale of all of the securities covered by such prior contract, instruction or plan, in a single transaction; and

(*2*) Would otherwise qualify for the affirmative defense under paragraph (c)(1) of this section.

* * * * *

(iv) Any modification or change to the amount, price, or timing of the purchase or sale of the securities underlying a contract, instruction, or written plan as described in paragraph (c)(1)(i)(A) of this section is a termination of such contract, instruction, or written plan, and the adoption of a new contract, instruction, or written plan. A plan modification, such as the substitution or removal of a broker that is executing trades pursuant to a Rule 10b5–1 arrangement on behalf of the person, that changes the price or date on which purchases or sales are to be executed, is a termination of such plan and the adoption of a new plan.

* * * * *

■ 9. Amend § 240.14a–101 by revising paragraph (b) introductory text of Item 7 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. * * *

* * * * *

(b) The information required by Items 401, 404(a) and (b), 405, 407 and 408(b) of Regulation S–K (§§ 229.401, 229.404(a) and (b), 229.405, 229.407, and 229.408(b) of this chapter), other than the information required by:

* * * * *

■ 10. Amend § 240.16a–3 by revising paragraphs (f)(1)(i)(A) and (g)(1) to read as follows:

§ 240.16a–3 Reporting transactions and holdings.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(A) Exercises and conversions of derivative securities exempt under either § 240.16b–3 or § 240.16b–6(b), dispositions by bona fide gifts exempt under § 240.16b–5, and any transaction exempt under § 240.16b–3(d), § 240.16b–3(e), or § 240.16b–3(f), (these are required to be reported on Form 4);

* * * * *

(g)(1) A Form 4 must be filed to report: All transactions not exempt from section 16(b) of the Act; all transactions exempt from section 16(b) of the Act pursuant to § 240.16b–3(d), § 240.16b–3(e), or § 240.16b–3(f); and dispositions by bona fide gifts and all exercises and conversions of derivative securities, regardless of whether exempt from section 16(b) of the Act. Form 4 must be filed before the end of the second business day following the day on which the subject transaction has been executed.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 11. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012), Sec. 107 Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3 Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

Section 249.220f is also issued under secs. 3(a), 202, 208, 302, 306(a), 401(a), 401(b), 406 and 407, Pub. L. 107–204, 116 Stat. 745, and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063.

* * * * *

Section 249.308a is also issued under secs. 3(a) and 302, Pub. L. 107–204, 116 Stat. 745.

* * * * *

Section 249.310 is also issued under secs. 3(a), 202, 208, 302, 406 and 407, Pub. L. 107–204, 116 Stat. 745.

* * * * *

■ 12. Amend Form 4 (referenced in § 249.104) by:

■ a. Adding new General Instruction 10; and

■ b. Adding text and one check box at the top of the first page immediately below the text ''Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).''

The additions read as follows:

Note: The text of Form 4 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 4

* * * * *

General Instructions

* * * * *

10. Rule 10b5–1(c) Transaction Indication

Indicate by check mark whether a transaction was made pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) under the Exchange Act [§ 240.10b5–1(c) of this chapter]. Provide the date of adoption of the Rule 10b5–1(c) plan in the ''Explanation of Responses'' portion of the Form.

* * * * *

☐ Check this box to indicate that a transaction was made pursuant to a contract, instruction or written plan that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c). *See* Instruction 10.

* * * * *

■ 13. Amend Form 5 (referenced in § 249.105) by:

■ a. Adding new General Instruction 10; and

■ b. Adding text and one check box at the top of the first page immediately below the text ''Form 4 Transactions Reported''.

The additions read as follows:

Note: The text of Form 5 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 5

* * * * *

General Instructions

* * * * *

10. Rule 10b5–1(c) Transaction Indication

Indicate by check mark whether a transaction was made pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c) under the Exchange Act [§ 240.10b5–1(c) of this chapter]. Provide the date of adoption of the Rule 10b5–1(c) plan in the ''Explanation of Responses'' portion of the Form.

* * * * *

☐ Check this box to indicate that a transaction was made pursuant to a contract, instruction or written plan for the purchase or sale of equity securities of the issuer that is intended to satisfy the affirmative defense conditions of Rule 10b5–1(c). *See* Instruction 10.

* * * * *

■ 14. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Adding new Item 16J; and

■ b. Revising exhibit 11.

The additions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 20–F

* * * * *

Item 16J. Insider trading policies

(a) Disclose whether the registrant has adopted insider trading policies and procedures governing the purchase, sale, and other dispositions of the registrant's securities by directors, senior management, and employees that are reasonably designed to promote compliance with applicable insider trading laws, rules and regulations, and any listing standards applicable to the registrant. If the registrant has not adopted such policies and procedures, explain why it has not done so.

(b) If the registrant has adopted insider trading policies and procedures, the registrant must file such policies and procedures as an exhibit. If all of the registrant's insider trading policies and procedures are included in its code of ethics (as defined in Item 16B(b)) and the code of ethics is filed as an exhibit pursuant to Item 16B(c)(1), the registrant may satisfy the exhibit requirement of this paragraph by filing the code of ethics that would satisfy the exhibit requirement of Item 16B(c)(1).

(c) The disclosure provided pursuant to Item 16J(a) must be provided in an Interactive Data File as required by Rule 405 of Regulation S–T (17 CFR 232.405) in accordance with the EDGAR Filer Manual.

Instruction to Item 16J: Item 16J applies only to annual reports, and does not apply to registration statements, on Form 20–F.

* * * * *

Instructions as to Exhibits

* * * * *

11. (a) Any code of ethics, or amendment thereto, that is the subject of the disclosure required by Item 16B of Form 20–F, to the extent that the registrant intends to satisfy the Item 16B requirements through filing of an exhibit

(b) Any insider trading policies and procedures that is the subject of the disclosure required by Item 16J. If all of the registrant's insider trading policies and procedures are included in its code of ethics and the code of ethics is filed as an exhibit, that exhibit filing would

satisfy the exhibit requirement of this paragraph (b).

* * * * *

■ 15. Amend Form 10–Q (referenced in § 249.308a) by adding paragraph (c) to Item 5 in Part II to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 5. Other Information.

* * * * *

(c) Furnish the information required by Item 408(a) of Regulation S–K (17 CFR 229.408(a)).

* * * * *

■ 16. Amend Form 10–K (referenced in § 249.310) by revising Item 9B in Part II and Item 10 in Part III to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM 10–K

* * * * *

Part II

Item 9B. Other Information.

* * * * *

Furnish the information required by Item 408(a) of Regulation S–K (§ 229.408(a) of this chapter).

* * * * *

Part III

* * * * *

Item 10. Directors, Executive Officers and Corporate Governance.

Furnish the information required by Items 401, 405, 406, 407(c)(3), (d)(4), (d)(5), and 408(b) of Regulation S–K (§ 229.401, § 229.405, § 229.406, § 229.407(c)(3), (d)(4), (d)(5), and § 229.408(b) of this chapter).

* * * * *

By the Commission.

Dated: December 14, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–27675 Filed 12–28–22; 8:45 am]

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